Qualified Income Trust (Miller Trust) Effective July 1, 2005

The State of Tennessee received clarification from the Center for Medicare and Medicaid Services (CMS) on September 8, 2005, of the requirement for Tennessee to implement Qualified Income Trust (QIT) policy for those individuals admitted to or soon to be admitted to long-term-care facility, ICF-MR or Home and Community Based Services. Effective July 1, 2005, when a state no longer has the Medically Needy category as an option for institutionalized adults, the state may allow an individual's monthly income to be placed in a QIT when their gross income is over the Medicaid Income Cap (300% of the SSI Federal Benefit Rate or FBR). This may enable an individual to qualify financially for Medicaid coverage as categorically eligible. Detailed policy guidelines are included below.

A. QIT Defined

A QIT is a trust consisting only of the individual's pension income, Social Security income and other monthly income that is created for the purpose of establishing income eligibility for Medicaid in order to receive Medicaid coverage when an individual is or soon will be confined to a nursing facility or Home and Community Based Services (HCBS) Waiver program (collectively, Long Term Care Setting or LTC setting).

B. QIT Policy

For the purpose of determining Medicaid eligibility of an applicant/recipient who is or soon will be confined to a LTC setting, either in a nursing home or a HCBS waiver, and whose income is over the Medicaid Income Cap (MIC); such individual may still qualify for Medicaid coverage if some or all of his or her income is placed in a valid Qualified Income Trust (Miller Trust). Such individual must also meet all other Medicaid eligibility requirements, such as resource limit, 30 days continuous confinement requirement in a nursing facility or enrolled in HCBS and may have an approved Pre-Admission Evaluation by the Bureau of TennCare.

Income placed in a valid QIT will be treated as unavailable in accordance with federal standards. For the Trust to be valid, the individual's gross monthly income must be above 300% of the Supplemental Security Income Federal Benefit Rate (SSI FBR), which is $1737, effective January 1, 2005. Any income that is not placed in the QIT must be below the Medicaid Income Cap (MIC) of $1737. If the income is not placed in the QIT and this income is over the MIC; the individual is not eligible financially regardless of the income placed in the QIT. An individual whose income is placed in a QIT and who is subsequently found to be eligible for Medicaid will be considered eligible on the first day of the month in which eligibility is established, or the date of admission to the nursing home or HCBS program, whichever is later. Eligibility may be established when the income in the QIT and all other income is under the MIC.

C. Income Test

Test Against Statewide Average Nursing Facility Private Pay Rate for Level 1.

A threshold amount has been established to compare the total income against, by adding together the income in the QIT and other income. The combined income must be below the statewide average Nursing Facility (NF) private pay rate for Level 1 care. The initial average NF private rate will be computed by the Comptroller's Office based on data submitted to the Comptroller's Office in the most recent complete set of nursing facility cost reports. The value calculated beginning July 1, 2005 is $3874. Beginning July 1, 2006, this amount will be trended forward annually by the Medicare Economic Index (MEI).

D. Criteria for a Valid Trust

1. The Trust must be irrevocable and cannot be modified or amended in whole or in part by the Grantor at any time. However, the Trustee or a court of competent jurisdiction shall have the right and jurisdiction to modify any provision of the Trust to the extent necessary to maintain the eligibility of the Grantor for medical assistance.

2. Each month the Trustee shall distribute the entire amount of income transferred into the Trust except for an amount not to exceed $20 for expenses of the Trust.

3. The sole beneficiaries of the Trust are the individual for whose benefit the Trust is established and the State of Tennessee (Bureau of TennCare). The Trust terminates upon the death of the individual, or the Trust is no longer required to establish Medicaid eligibility in the State of Tennessee, if nursing facility care or HCBS is no longer medically necessary for the individual, or if the individual is no longer receiving such services.

4. The Trust must provide that upon the death of the individual or termination of the Trust, whichever occurs sooner, the State of Tennessee (Bureau of TennCare) shall receive all amounts remaining in the Trust up to the total amount of medical assistance paid by the State on behalf of the individual.

5. Amounts remaining in the Trust that are owed to the State must be paid to the Bureau of TennCare within three months after the death of the individual or termination of the Trust, whichever is sooner, along with an accounting of the disbursements from the Trust. The Bureau of TennCare may grant an extension if a written request is submitted within two months of the termination of the Trust.

6. The regulation in this section for Trusts shall apply to income trusts established after July 1, 2005. Under the undue hardship provision in 42 USC 1396p(d)(5), an individual whose income level would prevent the use of a QIT may, in the sole discretion of the Department of Human Services, be permitted to establish a QIT for purposes of meeting the Medicaid eligibility criteria, if denying the individual Medical eligibility would otherwise result in undue hardship. Undue hardship will be considered in circumstances where the individual's income is over the allowable income limit to establish a QIT but below the actual cost of care at the private pay rate, and there are no other resources available to the patient, and discharge from the facility would endanger the patient's life and/or health.

E. Allowable Monthly Disbursements

Other than payments under section D1, the allowable disbursements from the Trust are limited to:

1. Personal Needs Allowance (PNA) – the amount the individual is allowed to retain for his/her personal needs under Tennessee's Medicaid policies. As of January 1, 2005, this amount is $40.

2 A deduction of up to $20 for expenses necessary for managing the trust (i.e. bank charges).

3. Spousal/Dependent Allocation as policy allows.

4. Health Insurance Premiums – allowed when the individual has health insurance other than Medicaid (for example, Medicare premium or a Medicare supplement policy).

5. Item D - payment for types of medical or remedial care recognized under state law, but not covered as medical assistance under the State's Medicaid program. (Qualifying medical or remedial care is specified in DHS Medicaid State rules).

F. Payment for Nursing Facility Care, HCBS, and other Medicaid Covered Services

Any countable income not placed in the QIT **and** any Trust income remaining after allowable deductions are made shall be paid monthly to the facility by the individual or from the Trust in an amount not to exceed the Medicaid reimbursement rate. Any excess income not distributed from the Trust shall accumulate in the Trust monthly.

G. Restrictions on Other Expenses

No other deductions or expenses may be paid from the Trust. Expenses which cannot be paid from the Trust, except as specifically provided herein include, but are not limited to, trustee fees, attorney fees and costs (including attorney fees and costs incurred in establishing the trust), accountant fees, court fees and costs, fees for guardians ad litem, funeral expenses, past due medical bills and other debts.

H. Home and Community Based Services (HCBS)

For an individual with a valid Trust receiving HCBS, the following methodology will be used to determine the financial liability of the individual for the cost of care.

Determine the amount of the individual's gross monthly income. Based on federal regulations and guidance, all of the individual's income is counted, including the amount placed in the Trust. Deduct the individual's Personal Needs Allowance (PNA). The PNA for HCBS is an amount equal to 200% of the SSI FBR ($1158 in 2005). A deduction up to $20 for trust expenses i.e. bank charges is allowed. A deduction may be made for spousal allocation, health insurance or any approved non-covered medical or remedial care expense (Item D). Approved non-covered services are listed in DHS State Rules. The remainder, after the above deductions, is the individual's financial liability amount.

I. Examples

Example #1

Sandra Fielding applied for Medicaid on 6/1/05 for her father, Thomas Fielding. He receives a monthly pension from Wells Fargo of $1263 and Social Security of $1737. Her father's income exceeds the Medicaid Cap so she establishes an Income Trust on 6/12/05 to qualify. She places her father's income of $1737 in the QIT. He has no other source of income or health insurance premiums. Because of the QIT, he is now categorically needy. Mr. Fielding's budget is calculated as follows:

		NF	HCBS	
Qualified Income Trust		1737.00	1737.00	
Private Pension	+	1263.00	1263.00	
Countable Gross	=	3000.00	3000.00	Because the non QIT income is under the MIC and the total income is under the threshold of $3874, continue to work the patient liability budget
Personal Needs Allowance	-	40.00	1158.00	
	=	2960.00	1842.00	
Trust Fee	-	20.00	20.00	
Patient Liability	=	2940.00	1822.00	
Other qualifying deductions		0.00	0.00	
Patient liability		2940.00	1822.00	

- Because $1737 was placed in a Qualified Income Trust, it is considered unavailable. The $1263 pension check is counted as income and must be compared to the Medicaid Cap to determine income eligibility.
- The income trust, along with any other income, is counted in determining how much the individual will pay toward the cost of nursing home care.
- In this example, you would deduct the personal needs allowance and trust fees (not to exceed $20).
- Application approved for 7/1/05 (the date QIT policy became effective).

Example #2

Susan Jones applies on 7/20/05 for her mother, Joyce Singleton, who was just admitted to a nursing home. Her mother's Social Security income of $3000 exceeds the Medicaid Cap so she places all her funds in a QIT to qualify. Ms. Jones places all her mother's income in the account beginning 8/8/05. Ms. Singleton has no other source of income. She pays a monthly health insurance premium of $100. Because of the QIT, she is now categorically needy.
Ms. Singleton's budget is calculated as follows:

		NF	HCBS
Qualified Income Trust		3000.00	3000.00
Other income	+		
Countable Gross	=	3000.00	3000.00
Personal Needs Allowance	-	40.00	1158.00
	=	2960.00	1842.00
Trust Fee	-	20.00	20.00
Patient Liability	=	2940.00	1822.00
Health Insurance Premium	-	100.00	100.00
	=	2840.00	1722.00

Patient liability	2840.00	1722.00

Because the total income is under the threshold of $3874, continue to work the patient liability budget. There is no income to test against the MIC.

- Ms. Singleton's income of $3000 is over the Medicaid Cap of $1737. Her daughter placed all funds in a Qualified Income Trust (QIT). This makes the income unavailable for Medicaid purposes.
- In this example, you would deduct the personal needs allowance, trust fee (up to $20), and health insurance premiums.

Example #3

Tom Jones receives $1800 per month from VA Compensation. He places $100 of his VA Compensation in a Qualified Income Trust every month.

		NF	HCBS
Qualified Income Trust		100.00	100.00
VA Compensation	+	1700.00	1700.00
Countable Gross	=	1800.00	1800.00
Personal Needs Allowance	-	40.00	1158.00
	=	1760.00	642.00
Trust Fee	-	20.00	20.00
Patient Liability	=	1740.00	622.00

Because the total income is under the threshold of $3874, continue to work the patient liability budget.

- The income trust, along with any other income, is counted in determining how much the individual will pay toward the cost of nursing home care.

- Application approved for 7/01/05, because eligibility may begin the first day of the month in which the needed amount of Mr. Jones' income was placed in the QIT.

Example #4

John Block entered a nursing home on August 15. Mr. Block's son placed his income from Social Security ($1000) in a Qualified Income Trust. Mr. Block also has $2000 from a Private Pension. His son applied for Medicaid on September 15.

		NF	HCBS
Qualified Income Trust		1000.00	1000.00
Private Pension	+	2000.00	2000.00

This case must be denied because the private pension amount is over the MIC ($1737) and was not placed in a QIT.

Example #5

Theodore Smith has $4000 gross income. All of his income is placed in a Qualified Income Trust.

NF	HCBS

Qualified Income Trust		4000.00	4000.00
Other income	+	0.00	0.00

This case must be denied because the amount of income placed in the QIT is more than the threshold amount, which is $3874 effective July 1, 2005.

Please document in running comments on ACCENT the amount of income that the applicant/recipient placed in the QIT in the month eligibility was established and the name of the trustee and his/her address. The amount of income in the QIT can be found on Schedule A of the trust document. Since an individual's income may change, please inform the applicant/responsible party that changes must be reported within 10 days.

NOTE: Once a case has been approved based on QIT policy, please mail Pam Guy the name of the trustee and the trustee's address. Please fax or mail a copy of the QIT trust to:

Pam Guy
Director, TPL, Bureau of TennCare
310 Great Circle Rd.
Nashville, TN. 37243
Fax #615-532-7509

Authority: State Rule 1240-3-3-. 03-(7) and 42 U.S.C. §1396p (d) (4) (B)