

QUALIFIED INCOME TRUST (QIT): A GUIDE FOR THE TRUSTEE

You have agreed to serve as the Trustee for a Qualified Income Trust (QIT). This guide tells you more about the Qualified Income Trust.

Definitions:

Beneficiary – The person who benefits from a trust arrangement. With a QIT, the grantor and primary beneficiary is the same person. The State of Tennessee is the secondary beneficiary.

Department of Human Services (DHS) – This department is part of the State of Tennessee's government. DHS workers handle Medicaid applications and determine if the applicant is eligible for Medicaid.

Grantor – A person who puts money in a trust. With a QIT, the grantor is a person who needs Medicaid to help pay the costs of long term care.

Medicaid – Medicaid is a government program that helps some people with medical costs. In Tennessee, Medicaid is also called "TennCare."

Patient Liability – Patient liability is the amount of money that the grantor must pay the nursing home each month for care. Sometimes, persons in the Medicaid Home-and-community-based program must pay patient liability as well.

Qualified Income Trust (QIT) - This kind of trust is also called a "Miller trust." This trust helps a person qualify for Medicaid even if his income is too high. The trust makes it possible for that person to get Medicaid help for long term care.

Trust document – This is the document that sets up the trust arrangement, gives the trust a name and gives the trustee the instructions that he or she must follow. The trust document must be signed by the grantor and the trustee in front of a notary.

Trustee – A trustee is a person who handles money for another person, based upon the duties outlined in trust document. As a trustee, you are a *fiduciary*. A *fiduciary* is a person who has a special duty to protect the *beneficiary*, the person who benefits from the trust. That duty is a strict duty, similar to the duty of a conservator or guardian.

The Qualified Income Trust (QIT) is part of the Medicaid eligibility process.

Tennessee is now one of the states using an “income cap” for Medicaid eligibility. That cap limits Medicaid assistance for long term care to adults with monthly incomes below \$2020.00. Any one who has monthly income above that amount cannot qualify for Medicaid benefits to pay for nursing home care. This rule also applies to the home-and-community-based “waiver” services.

However, the law allows income to be placed in a Qualified Income Trust (QIT). This kind of trust is also called a “Miller trust.” The trust arrangement helps a person qualify for Medicaid even if his income is too high. This trust allows that person, when he is otherwise qualified for Medicaid, to meet the income limit and get Medicaid help.

The Qualified Income Trust (QIT) deals only with income.

The QIT bank account will hold only the income of the grantor. The grantor is the person who needs Medicaid. Savings or other assets cannot be held in this trust account. Income for another person, even a spouse, cannot be put in the trust account.

You cannot open the QIT bank account until the QIT document has been prepared and properly signed. If the grantor still has assets to “spend down,” you can use those assets to pay an attorney to prepare this document for you and give you individual advice. Once the document is signed, you must take it to the bank in order to open the QIT account.

A QIT bank account is opened when the Grantor is ready to get Medicaid coverage.

You should open the QIT bank account during the month in which the grantor would first become eligible for Medicaid benefits. A certain amount of money must be placed in the QIT before Medicaid eligibility can begin. Your advisor or the Medicaid eligibility worker will tell you how much money goes into the trust account. You should wait to fund the QIT until the grantor’s assets are below the Medicaid asset limit. Then, be prompt about setting up the arrangement. Medicaid cannot be approved until the trust is set up and has the right amount of income in it.

The QIT Bank Account is not like other bank accounts.

These types of trusts are fairly new in Tennessee. (Tennessee began using them in May 2005, and the regulations came out in October 2005.) So, your bank may not have handled one of these trusts before. Give the bank a copy of this handout if the bank needs more information.

The QIT bank account should be titled as a trust account. For example, “The Qualified Income Trust of John Doe.” In this example, John Doe is the person who is about to apply for Medicaid. He is also called the *grantor* and *primary beneficiary* of the trust. The State of Tennessee is the *secondary beneficiary*.

The QIT bank account operates more like a “representative account,” set up for the payment of a disabled person’s expenses, rather than as a typical trust fund. There are none of the usual trust management issues because there are no significant assets kept in the QIT account.

A QIT is a “grantor trust” which means that, for tax purposes, the trust finances are the same as the grantor’s finances. Therefore, the bank should use the Social Security Number of the grantor (John Doe) for this account.

As *Trustee*, you are the only person authorized to sign checks on the account. No other person can write checks on the trust account, not even the grantor. Checks are imprinted with the account title. As trustee, you will receive the monthly statements. You must keep these statements, along with an itemized account of how John Doe’s money is spent, for Medicaid to review.

The State of Tennessee allows you to pay bank service charges, of no more than \$20.00 per month, to cover the costs of keeping the account at the bank. If the charges are more than \$20 per month, you will need to get advance approval from the Department of Human Services to pay the charges out of the trust account.

Do not get a bank cash card or credit card for the QIT account.

You must save **all** records about the QIT account and transfer the records to any successor trustee. These records are needed to prepare accountings and to respond to inquiries from the county Department of Human or the Bureau of TennCare.

The grantor or you will want to consult with an attorney or Certified Public Accountant at the end of the calendar year to be certain that all IRS reporting requirements are met. If the grantor cashed out IRAs, pension plans or other tax-deferred savings instruments, a tax return may need to be filed. Make sure that the tax preparer is aware of the trust and all other accounts.

The Grantor may need to have both a regular bank account and the QIT account.

There are good reasons for having two bank accounts for the grantor (John Doe). John Doe’s income is deposited into a general account first. Then some or all of the income is transferred to the QIT account. Your adviser can tell John Doe or you how much to transfer. The right amount of money should be transferred to the QIT account early in the month. The bills should be paid from the account before the end of the month.

Remember, the QIT deposits **must** consist of the **grantor’s income** and **only** that income.

Qualified Income Trust funds may be used for approved payments only.

After John Doe's income is moved into the QIT account, you may write checks out of the QIT account. The funds in the trust may be used **only** for the expenses allowed by the Medicaid rules. One or more of these expenses may be paid out of the trust:

- Medicare premium (if not paid automatically);
- Medicare Supplemental insurance premium;
- A dependent or spousal allowance (only if approved by the Medicaid eligibility worker);
- The money that is owed each month to the nursing home (called *patient liability*);
- The grantor's personal needs allowance. It is usually a good idea to deposit this money in the grantor's Patient Trust Account at the nursing facility. You can also deposit the Personal Needs Allowance in his regular checking account.
- Medical costs, which are not covered by Medicaid, Medicare or insurance, can be paid from the trust account, only if approved by the Medicaid eligibility worker;
- The costs to administer the trust and bank account, up to a maximum of \$20 per month.

There are some other expenses that can be paid from the trust, but only *if* the Medicaid eligibility worker approves them. You should never make payments from the trust unless either the grantor's attorney advises payment, or the Medicaid eligibility worker (at the Department of Human Services) has expressly approved the payment.

Co-Mingling is prohibited.

Never put any money -- other than grantor's countable income -- into the QIT bank account. None of the trustee's other funds should be placed into the QIT account. Never place any savings or other *assets* owned by John Doe in the account.

Check with the attorney if John Doe's patient liability is expected to change substantially. For example, you should check with your advisor if the Grantor (John Doe) spends some time in the hospital, in a rehabilitation setting that is funded by Medicare. This may change the amount of money that is paid to the nursing facility. You will want to check with the attorney or the Medicaid eligibility worker about how the money should be handled during that time.

You cannot charge for your services as Trustee.

You should **never** pay QIT money to yourself for services rendered. *However*, if you are both the trustee of the QIT and the grantor's spouse, you may receive a community spouse allowance payment. Your Medicaid eligibility worker will tell you if you are to receive a community spouse allowance. In that case, it *is* appropriate for you to write a check to yourself. The attorney advising you will help you with this.

You must account for the trust receipts and disbursements.

You must keep records (cancelled checks, receipts, tax returns, bank statements) and do regular accountings to the grantor (if the grantor is interested and able to understand the information). More importantly, you must account to the county Department of Human Services and the Bureau of TennCare. If the grantor is under a conservatorship, the accounting requirements for the conservatorship must be followed as well. The accounting must provide verification of adequate monthly deposits to the QIT, bank statements, and cancelled checks. In Tennessee, conservators are required to produce all cancelled checks written for the ward. You will want to talk to the bank about the best, and most economical, way to get those copies.

When to close the QIT bank account

The QIT ends when one of these things happens:

1. The grantor (John Doe) passes away; or
2. Medicaid is no longer needed; or
3. The Department of Human Services gives you express written authorization and approval to end the Trust. This usually happens when the grantor's income is no longer above the Medicaid Income Cap.

Any money left in the QIT is paid to the State of Tennessee up to the total amount of Medicaid benefits paid on behalf of the grantor for medical care. Any remaining funds are paid to the remainder beneficiaries as specified in the QIT document. Funds cannot be paid to the remainder beneficiaries until the State of Tennessee gives you a written statement that their payment amount satisfies the debt owed to the state.

When the time comes to end the QIT, you must:

1. Stop the deposit of funds into the QIT.
2. Notify the county Department of Human Services, and the Bureau of TennCare of the reason the trust should end.

3. Wait until all expected expenses have cleared the account before you close it. Also, return any checks that may have been sent in error after the grantor's death.
4. You will receive instructions from your Medicaid eligibility worker about sending the money left in the account to the state. The money is sent to:

TennCare Third Party Liability Unit
310 Great Circle Road
Fourth Floor, West
Nashville, TN
37243
Phone: 615-507-6344

If you call the Third Party Liability Unit, expect to leave a message.

5. Generally, the state will allow three months for you to end the trust, but you can request more time if it is needed. Write a check for the balance of the trust fund as instructed by the state. A copy of the bank statement should be enclosed to confirm that balance. Send a cover letter or memo and include a brief explanation that the enclosed check is from a QIT. The cover letter and check should clearly identify the grantor by name, Social Security number and Medicaid number.

No other checks should be written from the QIT account after the grantor's death, unless the state tells you that the Medicaid debt is satisfied and there is still money left in the account.

Legal authorities: 42 U.S.C. § 1396p(d)(4)(B); *See, Miller v. Ibarra*, 746 F.Supp. 19 (D. Colo. 1990); Tennessee Rule 1240-3-3-. 03-(7); DHS Policy Bulletin MA-06-15, issued July 28, 2006; Bulletin 44 MA-05-10, issued November 30, 2005; IRS Opinion Letter (Austin, TX) to Texas Department of Human Services re: Taxpayer Identification Number, Dec. 2, 1996.