

Rulemaking Hearing Rules  
of  
The Tennessee Department of Human Services  
Medical Services Division

Chapter 1240-3-3  
Technical And Financial Eligibility  
Requirements For Medicaid

Amendments

Rule 1240-3-3-.03, Resource Limitations For Categorically Needy, is amended by inserting a new Paragraph (7) and renumbering the current Paragraph (7) as Paragraph (8), so that, as amended the new Paragraph (7) shall read as follows:

- (7) Qualified Income Trust (QIT).
- (a) Effective July 1, 2005, individuals who are receiving or will receive nursing facility services or home and community based services (HCBS) and whose income exceeds the Medicaid Income Cap (MIC) may establish an income trust, referred to as a Qualified Income Trust (QIT) or "Miller Trust". Funds placed in a QIT that meets the standards set forth in paragraph (7) are not treated as available resources or income for purposes of determining the individual's Medicaid eligibility.
  - (b) 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 coverage when an individual is or soon will be confined to a nursing facility, HCBS or ICF/MR waiver program.
  - (c) An individual is eligible to establish a QIT if his or her income is above the level at which he or she would be financially eligible for nursing facility, HCBS, or ICF/MR care under Medicaid.
    - 1. The amount of income that an applicant/recipient places in a QIT cannot be limited nor can it be counted when testing income against the Medicaid Income Cap (MIC). If the applicant/recipient's income that is not placed in a QIT is over the MIC, the individual is not financially eligible for nursing home Medicaid.
    - 2. This Department of Human Services State Rule 1240-3-3-.03(7) shall apply to an income trust established on or after July 1, 2005 and with the undue hardship provision in Section 1613(e) of the Social Security Act. Hardship may be considered to exist when the institutionalized spouse and/or his/her spouse would have resources in excess of the resource limit, is otherwise eligible and for whom Medicaid ineligibility would result in loss of essential nursing care, which is not available.
  - (d) A QIT must meet the following criteria:
    - 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. Other than disbursements under Part 3 below, each month the Trustee may only make disbursements from the trust for:
  - (i) A personal needs allowance up to the amount recognized under Tennessee Medicaid policies. As of January 1, 2005, this amount is Forty Dollars (\$40) per month;
  - (ii) Up to Twenty Dollars (\$20) in necessary expenses for management of the trust (i.e., bank charges);
  - (iii) A spousal income allocation in the amount permitted under Tennessee Medicaid policies;
  - (iv) Expenses for health insurance premiums for health insurance coverage of the Grantor other than Medicaid; and
  - (v) Expenses for qualifying medical or remedial care received by the Grantor, to the extent such care is recognized under Tennessee law as provided in Department of Human Services State Rule 1240-3-3-.04(2)(d) but not covered as medical assistance under the State's Medicaid program.
3. Each month the Trustee shall distribute the entire amount of income remaining in the trust after any disbursements made under Part 2 above to the State of Tennessee, Bureau of TennCare (or directly to the nursing facility or HCBS provider, as directed by the Bureau of TennCare), up to the total amount of expenditures for medical assistance for the Grantor.
4. The sole beneficiaries of the trust are the Grantor for whose benefit the trust is established and the State of Tennessee (Bureau of TennCare). The trust terminates upon the death of the Grantor, or if the trust is no longer required to establish Medicaid eligibility in the State of Tennessee, if nursing facility or HCBS is no longer medically necessary for the Grantor, or if the Grantor is no longer receiving such services.
5. The trust must provide that upon the death of the Grantor 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.
6. Amounts remaining in the trust that are owed to the State must be paid to the Bureau of TennCare within three (3) 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.

Authority: T.C.A. §§ 4-5-201 et seq., 4-5-202, 71-1-105(12), 71-5-102 and 71-5-109; and 42 U.S.C. §§ 1396 et seq. and 42 U.S.C. § 1396p(d)(4)(B) and 42 U.S.C. § 1396p(d)(5).

The rulemaking hearing rules set out herein were properly filed in the Department of State on the 22nd day of December, 2005 and will become effective on the 7th day of March, 2006.