

WHAT DO I NEED TO KNOW ABOUT  
**Qualified Income Trusts?**



## WHAT IS A QUALIFIED INCOME TRUST?

Tennessee\* is an “income cap” state for Medicaid qualification purposes. Therefore, if a Medicaid applicant’s total income is more than a certain amount per month (\$2,382.00 in 2021), then the applicant is disqualified from receiving Medicaid. Fortunately, federal law permits a Medicaid applicant to deposit his or her income into a Qualified Income Trust (QIT) or “Miller” Trust and be eligible for Medicaid. The income placed in the QIT is not counted as income for purposes of the income cap. Therefore, the Medicaid applicant can then qualify for Medicaid.

\*Mississippi is also an “income cap” state.

## WHAT ARE THE REQUIREMENTS OF A VALID QIT?

A trust is a valid QIT under Tennessee law if: (i) the trust is irrevocable and cannot be amended or changed by the Medicaid Recipient; (ii) all disbursements or payments from the QIT are made ONLY for Medicaid Allowable Disbursements; (iii) during the Medicaid Recipient’s lifetime, the Medicaid Recipient is the ONLY beneficiary of the QIT; and (iv) upon the death of the Medicaid Recipient or upon the termination of the QIT, whichever occurs first, the State of Tennessee (Bureau of TennCare) or State of Mississippi (Division of Medicaid) is paid or reimbursed for the total amount of medical assistance paid by the State to the Medicaid Recipient.

## DOES THE QIT NEED A FEDERAL EMPLOYER OR TAX IDENTIFICATION NUMBER?

The QIT is a “grantor trust” for federal income tax purposes. Generally, a federal employer or tax identification number of a grantor trust is the social security number of the Medicaid Recipient (SSN). However, the QIT is an irrevocable trust. Therefore, as an irrevocable trust, the QIT is required to have a separate Federal Employer or Tax Identification Number (EIN).

The Trustee will use the EIN to open a trust bank account and to file any fiduciary income tax return required to be filed for the QIT.

## HOW IS THE QIT INCOME TAXED?

Because the QIT is a “grantor trust” for federal income tax purposes, all of the income deposited into the QIT will be taxed to the grantor, who is the Medicaid Recipient.

## DOES THE QIT NEED A SEPARATE BANK ACCOUNT?

The QIT needs a bank account separate from the bank account of the Medicaid Recipient. The Trustee must open the bank account in the name of the QIT. The QIT trust bank account is usually a non-interest bearing checking account with zero to minimal monthly bank charges. The tax identification number for the QIT trust bank account must be the QIT EIN.

## WHAT INCOME SHOULD BE DEPOSITED INTO THE TRUST BANK ACCOUNT?

All of the Medicaid Recipient’s income should be directly deposited into the QIT trust bank account. However, in certain situations, your elder law attorney or the State may recommend that only some of the Medicaid Recipient’s income be deposited into the QIT trust bank account.



## WHAT DISBURSEMENTS OR PAYMENTS CAN BE MADE FROM A QIT?

The Trustee must make ALL disbursements or payments from the QIT in strict compliance with the Medicaid rules and regulations. Any improper payment will disqualify the QIT, which will disqualify the Medicaid Recipient from receiving Medicaid.



## THE TRUSTEE CAN MAKE THE FOLLOWING DISBURSEMENTS FROM THE QIT:

- ✘ **YES Personal Needs Allowance.** The Trustee may pay a Personal Needs Allowance. The Personal Needs Allowance is the amount the Medicaid Recipient is allowed to keep and use for his or her personal needs. Personal needs may include personal hygiene and toiletry items, hair care and clothing. The amount is \$50.00 in TN or \$44.00 in MS per month.
- ✘ **YES Trust Management Expenses.** The Trustee may pay Trust Management Expenses. The Trust Management Expenses are the expenses necessary for managing the Trust and primarily consist of monthly bank charges or fees. The amount cannot exceed \$20.00 in TN or \$10.00 in MS per month. The Trust Management Expenses do NOT include Trustee's fees.
- ✘ **YES Spousal Income Allocation.** If the Medicaid Recipient is married AND if the State approves a Spousal Income Allocation, then the Trustee may distribute to the Medicaid Recipient's spouse a Spousal Income Allocation. The Spousal Income Allocation is the amount determined by the State that the Medicaid Recipient is allowed to pay to his or her spouse from the Medicaid Recipient's income.
- ✘ **YES Dependent Allocation.** If the Medicaid Recipient claims one or more dependent(s) other than his or her spouse AND if the State approves a Dependent Allocation, then the Trustee may distribute a Dependent Allocation to the dependent person. The Dependent Allocation is the amount determined by the State that the Medicaid Recipient is allowed to pay to his or her dependent from the Medicaid Recipient's income.
- ✘ **YES Health Insurance Premiums.** The Trustee may pay for any health insurance premiums for the Medicaid Recipient, such as Medicare premiums and any Medicare supplement or "Medigap" policy premiums.
- ✘ **YES Item D Deductions.** The Trustee may pay for Item D Deductions. The Item D Deductions are defined as medical, dental and remedial medical expenses: which are incurred by the Medicaid Recipient; which are listed as allowed Item D Deductions by the State; which are deemed medically necessary by a physician; and which are not subject to third-party payment. Examples of Item D Deductions include eyeglasses and necessary related services, hearing aids and necessary related services, certain routine and emergency dental services, and certain specialized chairs for mobility purposes.

- ✘ **YES Patient Liability Amount.** The Trustee must pay the Patient Liability Amount to the long term care facility or nursing home. The Patient Liability Amount is the amount determined by the State that the Medicaid Recipient owes the long term care facility or nursing home each month. In general, the Patient Liability Amount is all of the income of the Medicaid Recipient less the items described above.

## WHAT DISBURSEMENTS OR PAYMENTS CAN NOT BE MADE FROM A QIT?

- ✘ **NO Trustee's fees.** Trustees must serve without compensation or can be paid from a third-party other than the Medicaid Recipient such as a family member.
- ✘ **NO Attorney's fees.** Any legal fees for the preparation of the QIT can be paid by the Medicaid Recipient as part of the "spend-down" process, or can be paid by a family member, but cannot be paid from the income deposited into the QIT.
- ✘ **NO Life Insurance Premiums.** Any premiums for life insurance insuring the life of the Medicaid Recipient cannot be paid from the income deposited into the QIT.
- ✘ **NO Home Maintenance.** Any home maintenance expenses such as insurance, real estate taxes and repairs cannot be paid from the QIT.
- ✘ **NO Funeral expenses.** As part of the Medicaid "spend-down" process, a pre-paid burial or funeral policy should be purchased for the Medicaid Recipient since funeral expenses cannot be paid from the QIT.
- ✘ **NO Medical bills.** Any medical expenses not paid for by Medicare or other health insurance cannot be paid from the QIT.
- ✘ **NO Any other debts.** Any debts such as credit card debts or home mortgage payments cannot be paid from the QIT.

## WHO SHOULD DRAFT A QIT?

An elder law attorney with Medicaid eligibility experience should prepare a QIT agreement so that the QIT will be valid under the applicable federal and state Medicaid laws and regulations.

## THE BAILEY LAW FIRM

The Bailey Law Firm concentrates its legal practice in the areas of wills and trusts, estate taxation and planning, asset protection planning, charitable gift planning, business succession planning, elder law, and estate administration and probate. The Bailey Law Firm has attorneys licensed to practice law in the states of Mississippi and Tennessee.

### OLEN M. "MAC" BAILEY, JR.

The Bailey Law Firm was founded by Olen M. "Mac" Bailey, Jr. Mr. Bailey received his Master of Laws (LL.M.) degree in Elder Law with honors from Stetson University College of Law, his J.D. from Vanderbilt University School of Law, and his B.A. from Millsaps College. Mr. Bailey is an accredited attorney with the Department of Veterans Affairs.

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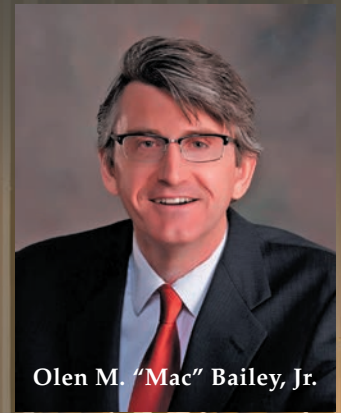
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