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# **BASIC MEDICAID PLANNING FROM APPLICATION TO RECOVERY**

## **The QIT Trust: What Is It and How Does It Work?**

**Presented By:**


Attorney Kyla A. Williger  
Williger Legal Group, LLC





**BIO**

- Double graduate of the Ohio State University
- Founding Partner at Williger Legal Group LLC
- Areas of Practice Include:
  - Estate Planning
  - Estate Administration
  - Guardianship
  - Long Term Care

A black and white portrait photograph of Attorney Kyla A. Williger. She is a woman with long, dark hair, smiling at the camera. She is wearing a dark blazer over a light-colored top. The background of the photo is slightly blurred.

## A History

- In 1972 Congress expanded Medicaid to say anyone who gets SSI automatically qualify for Medicaid.
- Under section 209(b) states could opt out of some of this expansion and Ohio did with more restrictive requirements for who receives Medicaid than who receives SSI.
  - States could be more restrictive, but required to allow individuals to “Spend Down”
- Only 10 states (until recently including OH) are 209(b) states

## Big Changes

- In August 2016, Ohio switched from a 209(b) Medicaid state to a 1634 Medicaid state
- The main things this will affect are
  - Changes Eligibility Requirements
  - Anyone on SSI automatically enrolled in Medicaid
  - Recipients can keep \$2,000 of assets rather than \$1,500
  - Does away with “spend down” for income

## Miller Trusts

- One of the most confusing changes will be the new income limits, that come with having no income spend down, which will require the use of new tricks to apply and qualify for LTC Medicaid

## Income (Old Rules)

- Income really didn't matter much in the past
- As long as your medical costs were more than your income, you could qualify for Medicaid by "spending down" your income on care each month.
- Once on Medicaid, all income (minus \$50 allowance) goes to pay the nursing home and then Medicaid picks up the rest of the tab

## Income (New Rules)

- A person may be ineligible for Medicaid if income is too high
- 2016 A person is ineligible if she earns more than \$2,199 per month
- Can no longer simply “spend down”
- If income is over this limit, you must establish a Qualified Income Trust (QIT), commonly referred to as a Miller Trust.
- Refer to OAC 5160:1-6-03.2 Medicaid use of Qualified Income Trusts (QIT)

## What is a Miller Trust

- A Miller Trust is also commonly known as a qualified income trust (QIT)
- It is a trust that is only set up to receive the excess income of a person applying for Medicaid who is over the income eligibility restrictions.
- If an individual applying for Medicaid has income greater than the Medicaid “Special Income Limit” (SIL - \$2,199 in 2016) the applicant cannot be eligible unless the excess goes into a Miller Trust where it can be disregarded in the eligibility determination
- Each month, excess funds go in and then come right back out

## QIT Restrictions

- Must be a valid trust
- Must be irrevocable
- Grantor (Primary Beneficiary) cannot be trustee
- Must be properly executed
- Trust must terminate at death of the primary beneficiary
- The state must be named as the beneficiary (Resource Recovery)
- No creditors may be paid at death before the state
- Must be established with a bank, credit union, or other financial institution
- Cannot transfer or assign his right to receive income to the QIT
- Only can be used to establish Medicaid eligibility by person who is eligible for LTC services

## Process of Using a Miller Trust

- Who will be Settlor, Trustee and Beneficiaries
- Draft QIT Trust that meets legal requirements
- Open QIT account at financial institution
- Identify income source to transfer to the QIT
- Allow monthly income to be deposited into the individual's account
- Arrange for an automatic transfer to the QIT
- Pay qualified expenses out of trust

## Step One

- Who can be the Settlor for a QIT (pursuant to 5160:1-3-05.2(B)(3))
  - The individual
  - The individual's spouse
  - A person with legal authority to act in place of or on behalf of an individual or the individual's spouse
  - A person acting at the direction or upon the request of an individual or the individual's spouse
- Nursing Homes?
- Who can get money into QIT?

## Step Two

- Need to set up the QIT
  - Establish a valid QIT document or instrument that complies with all requirements
  - Ohio Medicaid has a standard trust form for establishing QIT
    - <http://medicaid.ohio.gov/Portals/0/Initiatives/DDR/QIT-template.pdf>
  - ODM 10193 is the Qualified Income Trust Bank Verification Form (Needs to be filled out at time QIT is set up and returned to Medicaid)



### Step Three

- Take the Trust and Trust Certificate to the bank to establish trust account
- Account Title must be “The (beneficiary’s name) Qualified Income Trust”
- The EIN on the account must be the Primary Beneficiary’s Social Security number
- The signer on the account must be the Trustee

### Step Four

- Arrange to have all or part of the income transferred automatically from the Primary Account to the QIT Account each month
- Must be transferred in the same month the income will be received into the Primary Account

## Step Five

- Apply for Medicaid after the QIT has been established and money has been diverted
- If client is already on Medicaid, alert Medicaid of QIT trust

## What Goes In a Miller Trust

- What can go in a Miller Trust
  - Must Be used for income only (cannot shield other assets)
  - Can contain only the individual's income
  - Cannot contain spousal or family resources
  - Source or sources of income must be identified
  - Fund with either *All Income* **OR** *Portion of Income*

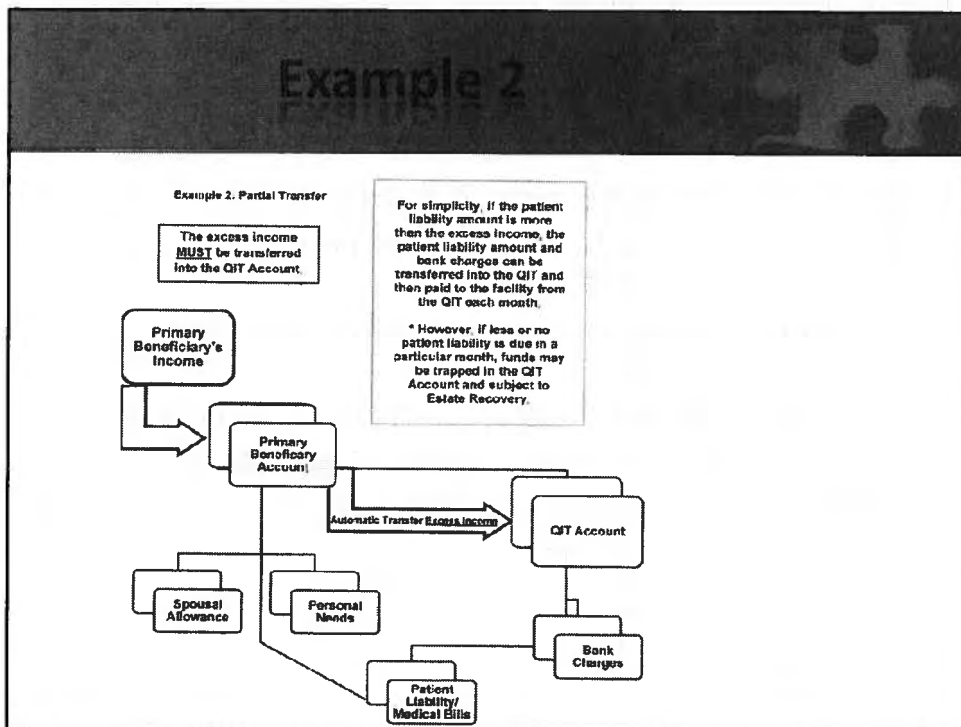
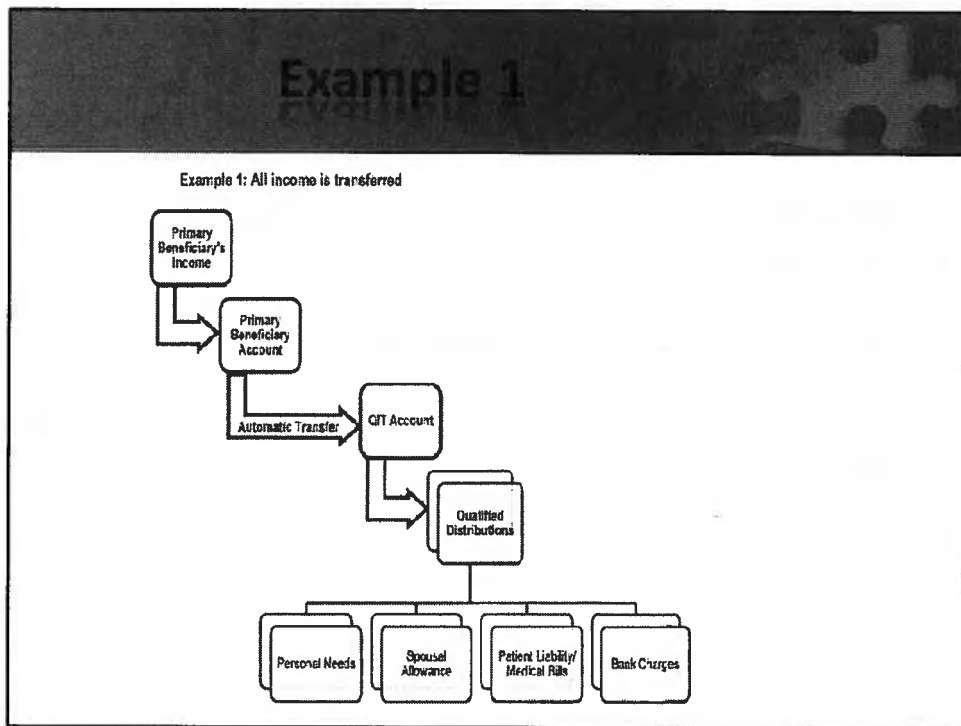
## Calculating Income

Calculate the income, to see what amount goes into the trust.

Source	Net Received	Deductions	Gross Monthly Income
Social Security			
Veteran's Benefits			
Railroad Retirement			
Company Retirement			
Other			
	Total Gross Monthly Income		
	Special Income Limit (SIL)		\$2,188.00
Minimum Income to be deposited to Trust _____			

## Miller Trust Pays For

- Money in QIT can be used to pay for:
  - A monthly personal or maintenance needs allowance for the primary beneficiary
  - Maintenance allowance for beneficiary's spouse or family dependents
  - Incurred medical expenses of the primary beneficiary
  - Cost of medical assistance provided to the primary beneficiary including patient liability to the LTC provider
  - Up to \$15 for bank fees, attorney fees, or other administrative costs



## Penalties

- If QIT not established...
  - Beneficiary cannot qualify for Medicaid
- If QIT not drafted correctly...
  - Everything in QIT considered available resource
- Verifying information must be provided to Medicaid every month
  - Income considered available and beneficiary ineligible
- Any funds put in accidentally...
  - Considered an improper transfer
- Any unpermitted distributions...
  - Considered Improper transfer

## Admitting New Patients

- It is still unclear whether standard retroactive 90-day eligibility applies when a Miller Trust is used, and, by law, eligibility cannot start until all of the elements are fulfilled.
- This could affect an institution's willingness to admit an individual before eligibility is determined.

## Troubling Questions

- Who will establish QITs for disabled individuals who do not have an agent or guardian?
  - Summit County Court has created a form for this. It has a \$20 filing fee
- Who will arrange for the transfer of income each month?
- Who will serve as trustee?
- What will happen to those who cannot afford an attorney to set up trusts?
- What will happen to those receiving Medicaid currently who will be disqualified without a QIT?
- Will banks cooperate in establishing accounts?
- Why???????

## CONTACT INFORMATION

- Kyla A. Williger
  - [kyla@willigerlegalgroup.com](mailto:kyla@willigerlegalgroup.com)
  - [www.willigerlegalgroup.com](http://www.willigerlegalgroup.com)
  - 330-686-7777



IN THE COURT OF COMMON PLEAS  
PROBATE DIVISION  
SUMMIT COUNTY, OHIO

IN THE MATTER OF: )  
 )  
€ THE GUARDIANSHIP OF: ) JUDGE ELINORE MARSH STORMER  
€ THE TRUSTEESHIP OF: )  
 )  
\_\_\_\_\_ )  
 ) **MOTION TO ESTABLISH AND**  
 ) **FUND QUALIFIED INCOME TRUST**  
 ) [OAC 5160: 1-3-05.2]  
 ) [OAC 5160: 1-6-03.2]

1) The Applicant is € Guardian of the person and/or € the estate

€ A person who has authority to manage the income of the beneficiary for the above named individual

2) The Ward/Beneficiary has income that exceeds the Special Income Limit necessary to qualify for Ohio Medicaid.

3) Said income is being deposited into account number \_\_\_\_\_ at \_\_\_\_\_ at  
(last 4 numbers of account)  
(Financial Institution)

4) In order to qualify for Medicaid Long Term Care Services, any income in excess of the Special Income Limit must be transferred into a Qualified Income Trust account each month.

5) The applicant has attached a copy of the proposed Qualified Income Trust. The applicant represents that the attached trust document is in compliance with Section 1634 of the Social Security Act and complies with the requirements set forth therein. The applicant further agrees to comply with all rules, regulations and reporting requirements set forth by the Ohio Department of Medicaid in administering the Qualified Income Trust attached hereto.

**WHEREFORE**, the Applicant moves this Court for an Order allowing Applicant to:

1. Establish a Qualified Income Trust for the Ward/Beneficiary appointing

\_\_\_\_\_  
(Name, Address, Phone Number)  
a suitable person, as Trustee, pursuant to Exhibit "A" attached.

2. Transfer monthly income of the Ward/Beneficiary from the account where it is originally deposited into the QIT account as necessary to qualify him/her for Long Term Care Medicaid benefits.





Respectfully submitted,

\_\_\_\_\_  
Attorney for Applicant

\_\_\_\_\_  
Typed or Printed Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
City State Zip

\_\_\_\_\_  
Phone

\_\_\_\_\_  
Email

Attorney Registration Number: \_\_\_\_\_

\_\_\_\_\_  
Applicant Signature

\_\_\_\_\_  
Applicant Printed Name

\_\_\_\_\_  
Address Line 1

\_\_\_\_\_  
Address Line 2

\_\_\_\_\_  
Phone

\_\_\_\_\_  
Email



IN THE COURT OF COMMON PLEAS  
PROBATE DIVISION  
SUMMIT COUNTY, OHIO

IN THE MATTER OF: )  
 )  
€ THE GUARDIANSHIP OF: ) CASE NO.  
€ THE TRUSTEESHIP OF: ) JUDGE ELINORE MARSH STORMER  
 )  
 )  
\_\_\_\_\_ ) **ORDER TO ESTABLISH AND**  
 ) **FUND QUALIFIED INCOME TRUST**  
 )

1) Upon review, the Court finds that the Qualified Income Trust attached hereto will serve the best interest of the ward and should be approved.

2) The Court hereby appoints \_\_\_\_\_  
\_\_\_\_\_ as Trustee. (Name, Address, Phone Number)

3) The Applicant shall transfer monthly income from the Ward/Beneficiary's personal account with account number \_\_\_\_\_ at \_\_\_\_\_  
(Financial institution) (last 4 numbers of account)  
into a QIT account in an amount sufficient to qualify the Ward/Beneficiary for Medicaid Benefits.

**IT IS SO ORDERED.**

Date: \_\_\_\_\_  
\_\_\_\_\_  
**JUDGE ELINORE MARSH STORMER**

Approved:

\_\_\_\_\_  
Applicant Signature

\_\_\_\_\_  
Applicant Printed Name

