

# Change is Coming

## Preparing for Ohio's 1634 Transition

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# The Pending 1634 Transition

- Effective July 1, 2016, Ohio will terminate its 209(b) option and become a 1634 state for Medicaid eligibility purposes
- Decision to terminate the 209(b) option was set forth in House Bill 64 which passed on Jun 30, 2015
- Ohio Department of Medicaid has labeled the 1634 Transition the “Disability Determination Redesign”

# A Brief History

- Medicaid established in 1965 with passage of the Social Security Act
- Initially Medicaid required states to provide assistance to “categorically needy” citizens who receive cash payments through one of four welfare programs
- States were also permitted to provide Medicaid to the “medically needy”

# A Brief History

- In 1972 Congress established the Supplemental Security Income for the Aged, Blind, and Disabled Program (SSI)
- Creation of SSI allowed the federal government to set Medicaid eligibility standards and the new criteria expanded the number of citizens who qualified for benefits
- Fearing that states would exit the Medicaid Program Congress offered the 209(b) option

# A Brief History

- The 209(b) option allows states to provide Medicaid benefits to citizens who would have been eligible to receive Medicaid benefits pursuant to the state's Medicaid program in effect on January 1, 1972
- States electing the 209(b) option retained authority over Medicaid eligibility determinations and became known as 209(b) states
- States not electing the 209(b) option let the federal government make Medicaid eligibility determinations based on SSI criteria and become known as 1634 states

# A Brief History

- Currently states fall into one of three categories regarding Medicaid eligibility: 209(b) states, 1634 states, and SSI states
  - **209(b) States** = State sets its own Medicaid eligibility criteria which cannot be more restrictive than eligibility criteria as of January 1, 1972. There are ten 209(b) states.
  - **1634 States** = State has the SSA make Medicaid eligibility determinations pursuant to SSI standards. There are thirty-three 1634 states.
  - **SSI States** = State or SSA make Medicaid eligibility determinations pursuant to SSI standards. There are seven SSI states.

# A Brief History

- In addition to the 209(b), SSI, or 1634 state categories, states can also elect to have a medically needy program
- A medically needy program allows states to extend Medicaid eligibility to citizens who meet all eligibility criteria aside from having income in excess of program limits and who have health care expenses that overwhelm their income
- A medically needy programs equates to eligibility through monthly spend down

# Ohio's Medicaid Status

- Ohio is a 209(b) state but only until July 1, 2016
- On July 1, 2016, Ohio's 209(b) terminates and Ohio becomes a 1634 state
- Ohio elected not to have a medically needy program
- Collectively this means that eligibility through monthly spend down is no longer possible



# Current Income Eligibility Determinations

- When a person applies for Medicaid, that person's gross monthly income is compared to the "special income level" which is currently \$2,199
- If the person's gross monthly income is above the "special income level" then a net calculation occurs to see if that net calculation puts the person's net income below the "Medicaid need standard"
- The current "Medicaid need standard" is \$643

# Current Income Eligibility Determinations

- Allowable deductions from gross income include:
  - Medical Insurance Premiums
  - Medicare Part B Premiums
  - Medicaid Reimbursement Rate for the Facility (if in Nursing Home)
  - Recurring Medical Expenses
  - Past Unpaid Medical Expenses

If net income after the above expenses is below the \$643

“Medicaid need standard” then the person is income eligible

# Ohio's Medicaid Status

- The 1634 transition also means that income eligibility determinations become a “yes” or “no” question
- Does the applicant's income exceed the special income level? If yes, then there is no eligibility. If no, then income eligible.
- Starting July 1, 2016 any Ohio citizen receiving community Medicaid who has monthly income in excess of \$733 will no longer be eligible for Medicaid benefits and any Ohio citizen receiving institutional Medicaid who has monthly income in excess of \$2,199 will no longer be eligible for Medicaid benefits
- For those citizens impacted...

# It's Miller Time!

- Starting July 1, 2016 all citizens with income in excess of program limits must establish a Miller Trust which is known in Ohio as a Qualified Income Trust (QIT)
- The phrase Miller Trust comes from the case of Miller v. Ibara out of Colorado
- The type of trust used, and judicially approved, in the Miller case was later recognized by Congress at 42 USC section 1396(d)(4)(B)
- Ohio just issued regulations concerning the qualification and operation of QIT's in Ohio: See Appendix A: 5160:1-6-03.2 Medicaid: use of qualified Income Trusts (QIT)
- Ohio QIT form see Appendix B
- Ohio FAQ's see Appendix C

## Appendix A

### 5160:1-6-03.2

## Medicaid: Use of Qualified Income Trusts (QIT)

- (A) This rule sets forth the requirements that must be met in order to establish and use a qualified income trust (QIT) (also referred to as a Miller trust) to become eligible for Medicaid payment of long-term care services.
- (B) Definitions
  - (1) “Beneficiary” is defined in rule 5160:1-3-05.2(B)(2) of the Administrative Code.
  - (2) “Grantor” is defined in rule 5160:1-3-05.2(B)(3) of the Administrative Code.
  - (3) “Individual” is defined in rule 5160:1-1-01.1(B)(33) of the Administrative Code
  - (4) “Irrevocable trust” is defined in rule 5160:1-3-05.2(B)(4) of the Administrative Code.
  - (5) Long-term care (LTC) services, for the purpose of establishing and using a QIT, means long-term care (LTC) services defined as:
    - (a) Inpatient care in an institution such as a nursing facility.
    - (b) Home and community-based waiver services as described in section 5166.01 of the Revised Code.
    - (c) Program for All-Inclusive Care for the Elderly (PACE) serviced in accordance with Chapter 5160-36-2 of the Administrative Code.

## Appendix A

### 5160:1-6-03.2

## Medicaid: Use of Qualified Income Trusts (QIT)

- (6) “Primary beneficiary” means the “individual” as defined in paragraph (B)(3) of this rule.
- (7) “Qualified Income Trust” (QIT) means a trust that allows an individual whose income is over the income limit for eligibility for Medicaid payment of long-term care services to have some or all of his or her income not be counted when determining Medicaid eligibility by placing income in the trust.
- (8) “QIT account” means the account that hold the income placed into a QIT.
- (9) “Trustee” is defined in rule 5160:1-3-05.2(B)(12) of the Administrative Code.
- (C) A QIT can only be used to establish Medicaid eligibility by an individual who is eligible for LTC services covered by the Ohio Medicaid program, and who is subject to the calculation of patient liability under rule 5160:1-3-04.3 of the Administrative Code.

## Appendix A

### 5160:1-6-03.2

## Medicaid: Use of Qualified Income Trusts (QIT)

- (D) A QIT must be a valid trust under the law of Ohio or another state and meet the following requirements:
  - (1) The trust must be irrevocable.
  - (2) Only the individual's income can be placed into the QIT.
  - (3) The source(s) of income placed into the QIT must be identified.
  - (4) The individual cannot transfer or assign to the trust his or her right to receive income.
  - (5) No other property or resources, except for any interest earned on the trust corpus, can be placed into the QIT.
  - (6) The trust document must provide that the trust shall terminate upon the death of the primary beneficiary, at which point the remaining trust property shall be distributed to the Ohio department of Medicaid or its successor up to an amount equal to the total medical assistance paid on behalf of the primary beneficiary; the trustee is prohibited from repaying other persons or creditors prior to this distribution.

## Appendix A

### 5160:1-6-03.2

## Medicaid: Use of Qualified Income Trusts (QIT)

- (E) Distributions from the trust shall be in amounts and for the purposes necessary to maintain the individual's income eligibility for Medicaid. In accordance with rule 5160:1-3-04.3 of the Ohio Administrative Code, distributions from the trust shall be made in the following order, no later than the last day of the calendar month in which the income is placed in the QIT account:
  - (1) A monthly personal or maintenance needs allowance for the primary beneficiary;
  - (2) A maintenance allowance for the spouse, if any, of the primary beneficiary and, if applicable, a maintenance allowance for family dependents;
  - (3) Incurred medical expenses of the primary beneficiary. In accordance with rule 5160:1-3-04.3 of the Administrative Code, when income is used to help pay for LTC services or other medical care provided to the individual, the individual is considered to have received fair market value for the income placed in the trust, up to the amount actually paid for other medical care provided to the individual and to the extent that the payments purchased care at fair market value;
  - (4) The trustee may make payments in an amount up to fifteen dollars per month from the QIT account for bank fees, attorney fees, and other expenses required to establish and administer the trust. If fifteen dollars is insufficient to cover the cost to administer the trust, the individual can request that the payment amount be increased. Requests for an increased payment amount must be approved by the Ohio Department of Medicaid (ODM).



## Appendix A

### 5160:1-6-03.2

## Medicaid: Use of Qualified Income Trusts (QIT)

- (F) The trust corpus is not counted as a resource available to the individual in determining his or her eligibility for Medicaid.
- (G) The establishment of the QIT must be documented, including the location of the QIT account, the QIT account number, and details about who has access to the QIT account. The title of the QIT account must clearly identify it as a QIT account in the name of the individual.
- (H) If the individual's income cannot be automatically transferred to the QIT account each month, then the individual must provide ODM with documentation showing that the individual's income is being deposited into the QIT account on a monthly basis. Every effort should be made to have the individual's excess income deposited directly into the QIT account on a monthly basis. Efforts to have income deposited directly into the QIT account must be documented. If for some reason income cannot be deposited directly into the QIT account, the reason(s) must be documented and documentation that deposits of income to the QIT account are being made on a monthly basis must be provided to the administrative agency.

## Appendix A

### 5160:1-6-03.2

## Medicaid: Use of Qualified Income Trusts (QIT)

- (I) The properly executed QIT document, proof of the establishment of the QIT account, documentation of the required monthly deposit amount, and verification of monthly deposits from an income source or sources into the QIT account, including efforts to have income deposited directly into the QIT account, must be submitted along with the application for Medicaid for an individual needing LTC services.
- (J) Documentation of monthly deposits into the QIT must be presented at the individual's annual eligibility review or at the request of the administrative agency. If such documentation is not presented, any income that should have been placed into the QIT but was not will be considered available for purposes of determining the individual's Medicaid eligibility for that month. Any Medicaid payments made by the administrative agency during a period of ineligibility are subject to recovery under rule 5160:1-2-04 of the Administrative Code.
- (K) The individual can elect to have all, or only a portion, of his or her income placed into the QIT account. Any income not placed into the QIT account will be counted as available to the individual when determining eligibility for Medicaid.

## Appendix A

### 5160:1-6-03.2

## Medicaid: Use of Qualified Income Trusts (QIT)

- (L) Income placed into the QIT is subject to the patient liability requirements as set forth in rule 5160:1-3-04.3 of the Administrative Code. All income placed into a QIT is combined with any countable income not placed into the QIT to arrive at a base income figure to be used in the patient liability calculation. The base income figure is used for post-eligibility distributions.
- (M) Distributions or payments from the QIT, other than as authorized by this rule, may be considered a transfer of assets for less than fair market value and subject to a penalty in accordance with rule 5160:1-3-07 of the Administrative Code. When income placed into the QIT exceeds the amount paid out of the QIT in accordance with paragraph (E) of this rule, the excess income may be subject to penalties under the transfer of assets provisions as set forth in rule 5160:1-3-07 of the Administrative Code.
- (N) In accordance with rule 5160:1-3-03.1 of the Administrative Code, payments made from the QIT directly to the individual that are not authorized by paragraph (E) of this rule are counted as income to the individual in the month they are received.

## Appendix A 5160:1-6-03.2

### Medicaid: Use of Qualified Income Trusts (QIT)

- (O) In accordance with rule 5160:1-3-03.8 of the Administrative Code, payments made from the QIT to a third party to purchase something in-kind for the individual will be counted as unearned income to the individual in the month received. Payments to a third-party for something other than in-kind support and maintenance that are not authorized under paragraph (E) of this rule, are subject to the transfer of asset penalties as set forth in rule 5160:1-3-07 of the Administrative Code.

Effective:

Five Year Review (FYR) Dates:

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Certification

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Date

Promulgated Under: 111.15

Statutory Authority: 5160.02, 5163.02

Rule Amplifies: 5160.02, 5163.02

## Appendix B

### Qualified Income Trusts

### Frequently Asked Questions

Upcoming changes to Ohio's Medicaid program will simplify coverage for thousands of Ohioans.

Beginning July 1, individuals receiving long-term care services who have income over the Medicaid limit may deposit their excess income into a Qualified Trust to stay eligible for Medicaid.

- **What is a Qualified Income Trust?**
  - A Qualified Income Trust (QIT), sometimes referred to as a "Miller Trust," is a special legal arrangement that allows the Ohio Department of Medicaid to not count an individual's income that is over a certain amount. This will allow individuals receiving long-term care services to remain eligible for health care coverage through Medicaid.

## Appendix B

### Qualified Income Trusts

### Frequently Asked Questions

- **Who needs a QIT?**
  - In order to receive Medicaid long-term care services, an individual's income must be below the Medicaid limit set by the State of Ohio. In 2016, the monthly income limit is \$2,199.00. Individuals can deposit their excess income into a QIT to stay or to become eligible for Medicaid long-term care services.
  - Medicaid long-term care services are provided to eligible people who:
    - Live in a nursing facility; or
    - Live in intermediate care facilities for individuals with intellectual disabilities (ICF-IDD); or
    - Receive home and community-based services (HCBS), like PASSPORT, Assisted Living, Ohio Home Care, Individual Options, MyCare Ohio, etc.

## Appendix B

# Qualified Income Trusts

## Frequently Asked Questions

- **What are the requirements of QIT?**
  - To be valid in the State of Ohio, a QIT must:
    - Include only an individual's own income. It cannot contain a spouse's income or income from other relatives. It cannot be used for other assets.
    - Be irrevocable. Once the trust is established, it cannot be changed or canceled.
    - Name the State of Ohio as the beneficiary. The State of Ohio can recover up to the total amount of Medicaid payments made on an individual's behalf.
- **What can the money in the Trust be used for?**
  - Money in the QIT can be used to pay for the following expenses, but is not limited to this list:
    - Incurred medical expenses;
    - Monthly personal or maintenance needs allowance;
    - Bank fees associated with the maintenance of the Trust; and
    - Patient liability, if applicable.

## Appendix B

### Qualified Income Trusts

### Frequently Asked Questions

- **Is help available to set up a QIT?**
  - The Ohio Department of Medicaid has hired Automated Health Systems (AHS) to reach out to individuals about their QIT and answer questions. A QIT is a legal document and the State of Ohio strongly recommends that individuals that choose not to use AHS for assistance with setting up the QIT seek other legal assistance.
  - Individuals are encouraged to establish a QIT prior to July 1. Individuals who do not establish a trust by July 1, will need to do so prior to their next Medicaid redetermination date in order to maintain coverage.



## Appendix B

### Qualified Income Trusts

### Frequently Asked Questions

- **Definitions**

- **Long-term care services** are defined as health care related services and supports used by individuals of all ages with functional limitations and chronic illnesses who need assistance to perform routine daily activities.
- **Automated Health Systems** was founded in 1979 with the goal of promoting health in families and communities. The Ohio department of Medicaid has hired Automated Health Systems to help individuals set up a QIT. Additionally, AHS currently works with the Ohio Department of Medicaid to help individuals enroll in a Medicaid Managed Care Plan and operates the Medicaid Consumer Hotline.

## Appendix C

# Qualified Income Trust Form

### QUALIFIED INCOME TRUST

This declaration of trust made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_ (Settlor-name of person establishing the Trust), is to be known as the \_\_\_\_\_ (name of the Primary Beneficiary) Qualified Income Trust, and is to be governed by the terms set forth below.

### Article I

**Trust Purpose.** This is an irrevocable Qualified Income Trust, sometimes referred to as a “Miller Trust,” and is authorized by 42 U.S.C. §1396p(d)(4)(B). The purpose of this Trust is to enable the Primary Beneficiary to qualify for medical assistance (“Medicaid”). The Primary Beneficiary of the trust is

\_\_\_\_\_.

# Appendix C

## Qualified Income Trust Form

### Article II

**Trust Funding.** The property to be placed in the Trust is monthly income received by the Primary Beneficiary including income from the following sources(s):

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_
4. \_\_\_\_\_

No property other than the Primary Beneficiary's income may be placed in the Trust. Income must be deposited into the trust account during the same month in which the income is received by the Primary Beneficiary.

# Appendix C

## Qualified Income Trust Form

### Article III

**Trust Distributions.** No expenditures shall be made from the Trust except in accordance with this paragraph. The trustee shall make distributions from the trust only in amount and for the purposes necessary to maintain income eligibility of the Primary Beneficiary for Medicaid. Consistent with the requirements of the Medicaid program that require all income including any income that is not placed in the Trust be used for post eligibility expenses, the Trustee shall make payments from the Trust in the following priority, no later than the last day of the calendar month in which the income is received by the Trust:

1. A monthly personal or maintenance needs allowance for the Primary Beneficiary;
2. A maintenance allowance for the spouse, if any, of the Primary Beneficiary and, if applicable, a maintenance allowance for family dependents;
3. Incurred medical expenses of the Primary Beneficiary. In accordance with rule 5160:1-3-04.3 of the Administrative Code, when income is used to help pay for long term care services or other medical care provided to the individual, the individual is considered to have received fair market value for the income placed in the trust, up to the amount actually paid for other medical care provided to the individual and to the extent that the payments purchased care at fair market value;
4. The Trustee may also make payments from the Trust for bank fees, attorney fees, and other expenses required to establish and administer the trust in a reasonable amount up to fifteen dollars per month or as otherwise authorized under Rule 5160:1-6-03.2 of the Ohio Administrative Code.

# Appendix C

## Qualified Income Trust Form

### Article IV

**Trustee.** The Trustee shall administer this Trust in good faith to effectuate its purpose, and shall act in accordance with the terms of the Trust and with all applicable laws including, but not limited to Chapters 5801. to 5811. of the Ohio Revised Code. The initial Trustee hereunder is \_\_\_\_\_. If the initial Trustee resigns, becomes deceased or is otherwise unable or unwilling to serve, then \_\_\_\_\_ shall serve as successor Trustee. Any Trustee may, while serving as Trustee, appoint one or more successor trustees.

### Article V

**No Transfers or Assignments.** The Trust's assets, income and distributions shall not be anticipated, assigned, transferred or encumbered in any manner. The Primary Beneficiary shall not have the power to anticipate, assign, transfer or encumber the Primary Beneficiary's interest in the Trust, nor shall such interest, while in the possession of the Trustee, be liable for, or subject to the debts, contracts, obligations, liabilities or torts of the Primary Beneficiary.

Appendix C  
**Qualified Income Trust Form**

**Article VI**

**Termination.** This Trust shall terminate upon the death of the Primary Beneficiary, at which point the remaining Trust property shall be distributed to the Ohio Department of Medicaid or its successor up to an amount equal to the total medical assistance paid on behalf of the Primary Beneficiary; the Trustee is prohibited from prepaying other person or creditors prior to this distribution. Any remaining Trust property after the Ohio Department of Medicaid (or its successor)'s claim has been paid shall be distributed to \_\_\_\_\_.

Signed this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_.

\_\_\_\_\_  
Settlor

\_\_\_\_\_  
Initial Trustee