

Your Florida Medicaid Information Guide

A Basic Primer on Florida Medicaid: What it is and How to Obtain it

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Chapter 7:

Solutions to the Income Cap Dilemma

There are several options available to otherwise eligible individuals who have monthly income over the income cap in order to qualify for Medicaid benefits. The asset and income limitations mandated by Florida could potentially completely impoverish the individual Medicaid applicant and his spouse if he is married. While some of the strategies differ depending on your marital status most strategies can be used whether you are single or married.

There is only one solution available to Medicaid applicants who have more income than allowable. The Solution is a Qualified Income Trust (QIT), also known as a Millers Trust. Established in 1993 as part of the OBRA '93, the QIT avoids the harsh results of the Income Cap rules in the nineteen states that have Medicaid Income Caps, including Florida.

As mentioned earlier, Medicaid imposes a monthly income cap of \$2,094.00 **gross monthly income**. Prior to 1993, if you had one penny over the cap, it was nearly impossible to obtain Medicaid. The good news is that now if the Medicaid applicant has a gross income which exceeds the \$2,094.00/ a month cap, there is a legitimate method to qualify for Medicaid. Florida permits using specific trusts to administer that portion of income in excess of the income cap. This legal fiction allows people with incomes in excess of the cap to become eligible for Medicaid. The generic name for these trusts is qualified income trusts. Basically, then the Qualified Income Trust (QIT) involves establishing a legal document and the opening of a Qualified Income Trust bank account. The QIT agreement must:

- Be irrevocable (cannot be canceled)
- Require that Florida will receive all funds remaining in the trust at the time of your death (up to the amount of Medicaid benefits paid on your behalf)

- Consist of your income only. Never place ASSETS into this trust, only income
- Be signed and dated by you, your spouse, or a person who has legal authority to act on your behalf or who is acting at your request or the request of your spouse

The trust when it is first signed has independent legal existence, but owns nothing. It is similar to a legally established corporation that has no income or assets, but which is recognized by law as a separate legal entity, existing apart from its shareholders or owners. And since this trust is *irrevocable*, it is treated as a separate tax-reporting/paying entity (unlike a *revocable* trust); therefore, it is required to have a taxpayer identification number assigned to it.

As discussed above, the QIT is composed of the applicant's own income (Social Security, pension, etc.). The bank account is a basic checking account titled in the name of the Medicaid applicant and the Trust, e.g. "JOHN SMITH QUALIFIED INCOME ONLY IRREVOCABLE TRUST". Initially when setting up the QIT checking account make sure that the account does not have any monthly maintenance fees imposed by the banking institution or a monthly minimum balance since a Medicaid ICP applicant is responsible to pay from the QIT their patient responsibility which will include all their income minus allowable expenses to the nursing home which leaves no room for any additional monthly expense.

After setting up the account, you must make deposits into the QIT account **every month** for as long as you need Medicaid. This means you may need to make deposits before a Medicaid application is approved if you need Medicaid coverage while waiting for an approval while living in a facility. You cannot make deposits for a past or future month. If you fail to make a deposit in any given month, or to deposit enough income you will be ineligible for Medicaid payment of long-term care services for the entire month.

As long you deposit the excess income into the QIT account in the month it is received, it will not be counted when we determine whether you are eligible for Medicaid for that particular month. Each and every month you must deposit enough income into the QIT account so that your income outside the QIT account is within program standards. It is better to deposit more income than take the chance of depositing too little to qualify for Medicaid. By depositing the income in excess of the state cap (\$2,094 for 2012) that income becomes not countable and eligibility may be established. Even after Medicaid is approved, the QIT account must be funded on a monthly basis in order to achieve ongoing Medicaid eligibility.

Example:

John Smith receives a GROSS \$ 2,400 per month in social security and pension income and has less than \$2,000 in assets. His GROSS income is \$306 over the \$2094.00 amount allowable by Medicaid in order to be eligible for benefits. In order to cure the income problem John will establish a Qualified Income Trust and Trust checking account at the banking institution of his choosing. Every month he will deposit the overage of \$306 into the trust account, making him now eligible for Medicaid benefits. John can choose to deposit more money in the Trust account every month, to ensure he remains below the allowable assets limit in his non-QIT account; however, he cannot deposit less. He will then use the funds in the Qualified Income Trust to cover the cost of the items mentioned below. Any monies left in his non-QIT account that are over the allowable 2000 asset limit must need to be spent by the last day of the month in order to remain Medicaid eligible.

The QIT account can only be used for:

- 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*);

- Any funds to cover the cost of an ALF
- Cost of a Nurse Aide (where applicant is in home or an ALF)
- 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. 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;

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 Children and Family Services) has expressly approved the payment.

It is important to make sure that the monies deposited into the QIT account are the first funds used to pay for the cost of the care every month. Any monies left over in this account at the time the Medicaid applicant dies will go to pay back the state up to an amount equal to the total Medicaid paid on behalf of the applicant.