



Instructional Packet for Establishing a Qualifying Income Trust (Miller trust)

This packet was developed for individuals desiring institutional care or home and community-based services whose income may exceed the Medicaid eligibility limit. Such individuals may need to establish a Qualifying Income Trust, also known as a Miller trust, in order to be eligible for Medicaid coverage for the aforementioned services. **If you think you will need a Qualifying Income Trust in order to stay eligible for Medicaid, you may want to contact an attorney for help with this process.**

The packet contains the following:

1. An overview of QITs (Miller trusts)
2. An explanation of how to establish an account for a QIT at a financial institution
3. An FSSA-approved QIT template, which can be completed by the applicant's attorney or legal counsel

Overview of QITs (Miller trusts)

If you are applying for (1) institutional (nursing home) Medicaid or (2) home and community-based services and your income is greater than the Medicaid eligibility limit, you cannot be eligible unless your income (part or all) goes into a QIT, where it can be disregarded in the eligibility determination. Income in excess of allowable post-eligibility deductions will be paid to the institution or healthcare providers by the trustee on your behalf, and Medicaid will cover the balance of the cost of your care. You may place all or part of your income into the QIT. If you deposit your entire income into the QIT, the trustee will distribute a monthly personal needs allowance to you from the trust. If, however, you only deposit the portion of your income that exceeds the Medicaid eligibility limit, the personal needs allowance does not apply.

Establishing a QIT is generally a three-step process. First, you must establish a valid QIT document or instrument that complies with the requirements. Second, you must set up a bank account which will be the trust account. Finally, you should take action to divert all or part of the income into the QIT account before Medicaid can exclude the income in determining eligibility.



When the trust document has been completed, the trust bank account has been established and efforts have been made to divert your income to the trust, submit this verification, along with a completed Medicaid application, to the local FSSA Division of Family Resources office serving your area. This information is available at www.dfrbenefits.in.gov.

Income is disregarded for Medicaid eligibility purposes the first month that a valid written trust instrument is signed and properly executed, a trust bank account with the beneficiary's Social Security number is established and enough of the beneficiary's income is placed into the account to reduce any remaining income to below the limit for Medicaid eligibility. The trust may be established with any or all sources of a beneficiary's income. At minimum, the amount of monthly income a person receives that is greater than the Special Income Limit for that calendar year, must be delivered to the trust for the exemption to take place. These things may be done before the beneficiary applies for Medicaid. This standard is updated on an annual basis and the most current information can be found at <https://www.in.gov/fssa/ompp/forms-documents-and-tools2/medicaid-eligibility-policy-manual/>, section 3010.20.15.

The first possible month of eligibility for Medicaid will be the month the income goes into the QIT account.

NOTE: The information in this packet and the accompanying materials are not intended as legal advice. They are intended to be educational and instructive resources. Persons seeking legal advice or information on the legal consequences of these documents are encouraged to consult legal counsel.

Should you require legal advice or would prefer to have the trust completed and/or reviewed by an attorney, contact your attorney. Persons with low or limited income may contact the organizations listed below for information on free or low-cost legal counsel.

Resources for free or low-cost legal assistance to establish a QIT

- Local Area Agencies on Aging (for referral): 1-800-986-3505
- Indiana Legal Services, Inc.
 - Bloomington office: 812-339-7668
 - Columbus office: 812-372-6918
 - Evansville office: 812-426-1295
 - Fort Wayne office: 260-424-9155
 - Indianapolis office: 317-631-9410
 - Lafayette office: 765-423-5327
 - Merrillville office: 219-738-6040
 - New Albany office: 812-945-4123
 - South Bend office: 574-234-8121
- Senior Law Project 317-631-9410
- Indianapolis Legal Aid Society: 317-635-9538

- Indiana University, Bloomington (Disability Law Clinic): 812-855-9229

Step 1: Drafting the QIT document

The first step in establishing a valid QIT is to draft an appropriate trust document that complies with the requirements. To set up a QIT, you may use this packet as a guide, as well as the FSSA-approved template which should be completed and/or reviewed by an attorney. To qualify as a valid QIT, the trust document must have the following characteristics:

- The assets placed in the trust must be the applicant's income only.
- No resources, except money resulting from the accumulation of the applicant's income, can be part of the QIT assets.
- The trust must be irrevocable.
- The trust must state: "Upon the death of the beneficiary, the trust assets shall be paid to the Medicaid agency of the State of Indiana up to the total amount of the Medicaid payments made to or on behalf of the beneficiary," or words substantially to that effect.
- The trust must be properly executed, that is, and have signatures on all the appropriate lines.

The person who establishes the trust (termed the "settlor" in a Miller Trust) is typically the Medicaid applicant/recipient. However, the applicant/recipient's legal guardian, attorney-in-fact (Power of Attorney), or Medicaid Authorized Representative, may serve as the Settlor instead.

Once completed, the trust document should be submitted with your Medicaid application.

Step 2: Establishing a Bank or Other Financial Account as the QIT Account

Once you have drafted, signed and dated a valid QIT document that meets the requirements, you must set up a financial account for the trust. A trust account is a bank (or other financial institution, such as a credit union) account used to deposit the income from the sources listed in the QIT instrument. The trust account must contain only income and cannot contain resources. Therefore, the bank account must be used only to deposit the income from the sources listed in the QIT instrument.

You may use an existing account, as long as the account is only used to deposit the QIT income. You may need to open a new account if an existing account includes money from sources other than your QIT income. You may also need to open a new account if an existing account is a joint account and other account holders make deposits to and withdraw from the joint account using the joint account holders' income and resources. If a joint account holder is on the account for convenience and does not use the account for the joint account holder's personal use, you can use the account for the QIT.

If you do need to open a new account, some financial institutions may require small deposits (for example, \$10 to \$20) as initial funding. A small amount of the beneficiary's money or money from another person may be deposited to open a new account. The money that a bank requires as a deposit to open a new account is not counted as a resource or income to the beneficiary.

If you have any questions as to whether something constitutes income or resources, or questions as to whether an existing account can be used as a QIT account, you should consult an attorney.

Step 3: Arrange for income to be deposited into the QIT account.

After the QIT account is set up, you should make efforts to have the income deposited into the QIT account. You may be required to show copies of correspondence requesting this. In your correspondence, you should give the name of the bank, the QIT account number and the bank's routing number. Income deposited into a QIT may not be assigned to the trust but must remain income of the individual and be delivered to the QIT. You will need to provide documentation to your DFR case worker showing that your income has been deposited into the QIT either through statements showing electronic deposits or with copies of deposit slips.

Once the trust account is opened, only the beneficiary's income may be directed to the trust account. The following actions will result in the bank account becoming a countable resource and impacting Medicaid eligibility:

- if income is deposited into the QIT bank account from a source that is not listed in the QIT instrument;
- if deposits are made to the QIT bank account from other resources the beneficiary may own;
- or if deposits are made to the QIT bank account from another person.