

Notice of Rulemaking Hearing  
The Tennessee Department of Human Services  
Division of Medical Services

There will be a hearing before the Tennessee Department of Human Services to consider the promulgation of amendments to rules pursuant to Tennessee Code Annotated §§ 4-5-201 et seq. and 71-1-105(12). The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, § 4-5-204 and will take place in the 2nd Floor, Board Room, Citizens Plaza Building, 400 Deaderick Street, Nashville, Tennessee at 1:30 p.m. CDT on, Thursday, November 17, 2005.

Any individuals with disabilities who wish to participate in these proceedings (to review these filings) should contact the Department of Human Services to discuss any auxiliary aids or services needed to facilitate such participation. Such initial contact may be made no less than ten (10) days prior to the scheduled meeting date (the date the party intends to review such filings), to allow time for the Department of Human Services to determine how it may reasonably provide such aid or service. Initial contact may be made with the Department of Human Services' ADA Coordinator, Fran McKinney, Citizens Plaza Building, 400 Deaderick Street, 3rd Floor, Nashville, Tennessee 37248, telephone number (615) 313-5563 (TTY)-(800) 270-1349.

For a copy the proposed rule contact: Phyllis Simpson, Assistant General Counsel, Department of Human Services, Citizens Plaza Building, 400 Deaderick Street, 15<sup>th</sup> Floor, Nashville, TN 37248-0006, telephone number (615) 313-4731.

Substance of Proposed Rules  
of  
The Tennessee Department of Human Services  
Medical Services Division

Chapter 1240-3-3  
Technical And Financial Eligibility  
Requirements For Medicaid

Amendments

Rule 1240-3-3-.03, Resource Limitations For Categorically Needy, is amended by inserting a new Paragraph (7) and renumbering the current Paragraph (7) as Paragraph (8), so that, as amended the new Paragraph (7) shall read as follows:

- (7) Qualified Income Trust (QIT).
- (a) Effective July 1, 2005, individuals who are receiving or will receive nursing facility services or home and community based services (HCBS) and whose income exceeds the Medicaid Income Cap (MIC) may establish an income trust, referred to as a Qualified Income Trust (QIT) or "Miller Trust". Funds placed in a QIT that meets the standards set forth in paragraph (7) are not treated as available resources or income for purposes of determining the individual's Medicaid eligibility.
  - (b) A QIT is a trust consisting only of the individual's pension income, Social Security Income, and other monthly income that is created for the purpose of establishing income eligibility for Medicaid coverage when an individual is or soon will be confined to a nursing facility, HCBS or ICF/MR waiver program.
  - (c) An individual is only eligible to establish a QIT if his or her income is above the level at which he or she would be financially eligible for nursing facility, HCBS, or ICF/MR care under Medicaid, but below the statewide average Nursing Facility (NF) private pay rate for Level 1 care.
    - 1. The initial average NF private rate will be computed by the Comptroller's Office based on data submitted to the Comptroller's Office in the most recent complete set of nursing facility cost reports. Beginning on July 1, 2006, this amount will be trended forward annually by the Medicare Economic Index (MEI).
    - 2. An individual whose income level would otherwise preclude establishment of a QIT under subparagraph (c) may, in the sole discretion of the Department of Human Services, be permitted to establish a QIT for purposes of meeting the Medicaid eligibility criteria, if denying the individual Medicaid eligibility would otherwise result in undue hardship. Undue hardship will be considered in circumstances where the individual's income is over the allowable limit to establish a QIT but below the cost of care at the private pay rate and there are no other resources available to the patient and discharge from the facility would endanger the patient's life and/or health.
  - (d) A QIT must meet the following criteria:
    - 1. The trust must be irrevocable and cannot be modified or amended in whole or in part by the Grantor at any time. However, the Trustee or a court of competent jurisdiction shall have the right and jurisdiction to modify any provision of the trust to the extent necessary to maintain the eligibility of the Grantor for medical assistance.

2. Other than disbursements under Part 3 below, each month the Trustee may only make disbursements from the trust for:
  - (i) A personal needs allowance up to the amount recognized under Tennessee Medicaid policies. As of January 1, 2005, this amount is Forty Dollars (\$40) per month;
  - (ii) Up to Twenty Dollars (\$20) in necessary expenses for management of the trust (i.e., bank charges);
  - (iii) A spousal income allocation in the amount permitted under Tennessee Medicaid policies;
  - (iv) Expenses for health insurance premiums for health insurance coverage of the Grantor other than Medicaid; and
  - (v) Expenses for qualifying medical or remedial care received by the Grantor, to the extent such care is recognized under Tennessee law as provided in Department of Human Services State Rule 1240-3-3-.04(2)(d) but not covered as medical assistance under the State's Medicaid program.
3. Each month the Trustee shall distribute the entire amount of income remaining in the trust after any disbursements made under Part 2 above to the State of Tennessee, Bureau of TennCare (or directly to the nursing facility or HCBS provider, as directed by the Bureau of TennCare), up to the total amount of expenditures for medical assistance for the Grantor.
4. The sole beneficiaries of the trust are the Grantor for whose benefit the trust is established and the State of Tennessee (Bureau of TennCare). The trust terminates upon the death of the Grantor, or if the trust is no longer required to establish Medicaid eligibility in the State of Tennessee, if nursing facility or HCBS is no longer medically necessary for the Grantor, or if the Grantor is no longer receiving such services.
5. The trust must provide that upon the death of the Grantor or termination of the trust, whichever occurs sooner, the State of Tennessee (Bureau of TennCare) shall receive all amounts remaining in the trust up to the total amount of medical assistance paid by the State on behalf of the individual.
6. Amounts remaining in the trust that are owed to the State must be paid to the Bureau of TennCare within three (3) months after the death of the individual or termination of the trust, whichever is sooner, along with an accounting of the disbursements from the trust. The Bureau of TennCare may grant an extension if a written request is submitted within two months of the termination of the trust.

Authority: T.C.A. §§ 4-5-201 et seq., 4-5-202, 71-1-105(12), 71-5-102 and 71-5-109; and 42 U.S.C. §§ 1396 et seq. and 42 U.S.C. § 1396p(d)(4)(B) and 42 U.S.C. § 1396p(d)(5).

Legal Contact or Party who will approve final copy:

Phyllis Simpson  
Assistant General Counsel  
Citizens Plaza Building, 15<sup>th</sup> Floor  
400 Deaderick Street  
Nashville, Tennessee 37248-0006  
(615) 313-4731

Contact for disk acquisition:

Conswella Wilkes, Legal Assistant  
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(615) 313-4731

I certify that this is an accurate and complete representation of the intent and scope of rulemaking proposed by the Department of Human Services.

*Phyllis Simpson*  
Phyllis Simpson  
Assistant General Counsel  
Tennessee Department of Human Services

Subscribed and sworn to before me this 30 day of Sept, 2005

*Regina D. Mitchell*  
Notary Public



My Commission Expires  
MAY 24, 2008

My commission expires on the 24 day of May, 2008

The notice of rulemaking set out herein was properly filed in the Department of State on the 30 day of Sept, 2005.

*Riley C. Darnell*  
Riley C. Darnell  
Secretary of State

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