

# Qualified Income Trusts



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# Objectives



- ❧ Provide you with the legal foundation
- ❧ Establish the purpose of a QIT
- ❧ Equip you with the important concepts necessary to understanding a QIT
- ❧ QIT Requirements
- ❧ What's needed to create a QIT
- ❧ The termination of a QIT

# Legal foundation



Federal and State

# Legal Foundation



∞ 42 USC §1396p(d)(4)

∞ 1 TAC RULE §358.339

∞ MEPD Chapter F-6800; E-3315

# Purpose of QIT



Problem and Solution for potential Medicaid Beneficiaries

# Problem / Solution

## ☞ The Problem



☞ How can a person qualify for Long-term care Medicaid if they are over the income criteria?

## ☞ The Solution

☞ Omnibus Budget Reconciliation Act of 1993 contained provisions allowing relief from the “income cap.” A QIT addresses a problem in Medicaid law in states that have an income cap for long-term care Medicaid programs.

# Important concepts



Income, Resources, Transfer Penalties, and Medicaid Programs

# Countable Income



- ☞ A QIT assists in reducing **countable** income for long term care Medicaid applicants. See MEPD 1210
- ☞ What is the countable income i.e. the amount of a client's income after all exemptions and exclusions?
- ☞ Will the income stay the same?

# Resources and Transfer Penalties

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- ∞ A QIT is NOT counted as a resource
- ∞ Penalty assessed when income / resources transferred for less than fair market value (FMV)
- ∞ See MEPD I-5000 and 1 TAC 338.399(c)(3)

# Transfer Penalty



- ∞ Income in a QIT is **not** a transfer of resources
- ∞ Distributions from QIT not made to beneficiary or spouse / dependent are considered transfer of assets
- ∞ Trustee must make timely distributions

# Long-Term Care Medicaid Programs

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- ❧ A QIT **can only** be used for:
  - ❧ Nursing Home Medicaid
  - ❧ Community Based Alternatives (CBA)
  - ❧ Star + Plus Home and Community Based Services (HCBS)
  - ❧ Other Home and Community-based Waiver Services such as MDCP and CLASS.
- ❧ A QIT **cannot** be used for:
  - ❧ QMB, SLMB, QI
  - ❧ 1929(b) (Primary Home Care or Community Attendant Services programs)
  - ❧ Other home services or Community Care Programs
- ❧ 1 T.A.C. 358.339(c)(4)(B)

# QIT Requirements



Allowable Income, Exemptions, and Trustee Duties

# QIT Requirements



- ❧ Trust is for income ONLY
- ❧ Must identify income sources
- ❧ The entirety of the identified income sources go in the QIT
- ❧ No other income can go in the trust
- ❧ No resources can go in the trust
- ❧ Trust must be irrevocable
- ❧ Remainder must be designated to the state

# Allowable QIT Income



- ❧ What goes in the QIT
  - ❧ Only income like pension and Social Security
    - ❧ No joint income streams
    - ❧ No automatic deductions for domestic support obligations or dues
      - ❧ Only exception is Medicare premiums extracted from SS or RSDI
  - ❧ Income from any given source must go entirely into the QIT, or not at all
    - ❧ A prospective MEPD applicant may divert all income streams or one income stream

# Beneficiary's Income ONLY

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- ☞ Once the QIT is opened, only the beneficiary's income goes in
- ☞ Do not direct:
  - ☞ income deposited into the QIT bank account from a source that is **not listed** in the QIT instrument
  - ☞ deposits made to the QIT bank account from **other resources** the beneficiary may own
  - ☞ deposits to the QIT bank account from **another person**
- ☞ Any of these actions may be viewed by HHSC staff as **countable income**, and could result in the bank account becoming a countable resource

# Exemptions



- ⌘ Note: HHSC exempts from both eligibility and co-payment:
  - ⌘ VA aid and attendance benefits,
  - ⌘ housebound allowances, and
  - ⌘ reimbursements for unusual or continuing medical expenses.
- ⌘ But if these payments are deposited into a QIT, they are countable for co-payment

# Trustee Duties



- ❧ Do not deposit funds received before the month the trust is established
- ❧ Deposit income in the same month in which it is received
- ❧ If income initially goes to the beneficiary or is deposited to another account, transfer it to the trust during the same month it is received
- ❧ For convenience, and to ensure transfer during the month of receipt, arrange for direct deposit of the income into the trust's bank account
- ❧ Note: To open the account before income is available to deposit, you may use a maximum of \$20 in existing funds to open the account

# QIT Requirements of the Trustee

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The trust must require that the trustee:

- ❧ (1) Pay to the beneficiary a monthly personal needs allowance.
- ❧ (2) Pay to the spouse (if any) of the beneficiary a sum sufficient to provide a minimum monthly maintenance needs allowance, and
- ❧ (3) Pay from the funds remaining the cost of medical assistance provided to the beneficiary.

# Distributions by Trustee



- ❧ How can trustee spend income?
- ❧ First level priorities are ordered:
  - ❧ monthly personal needs allowance to the beneficiary
  - ❧ sum sufficient to provide a minimum monthly maintenance needs allowance to the spouse (if any) of the beneficiary
    - ❧ HHSC makes the decision about the community spouse income that is extracted from the QIT, up to the maximum amount
  - ❧ Unreimbursed medical expenses provided to the beneficiary, if funds are remaining
- ❧ Second priority: copayments (normally for NH expenses)
- ❧ Third priority: any use for the benefit of the client. Because use of these funds result in the characterization of these funds as “countable income,” it is important that funds, used for this purpose *plus other countable income* not exceed the income cap of 3X SSI limit.

# Setting up QIT



Contact TLSC

# Setting up a QIT



## How to set it up a QIT

- TLSC attorneys draft a three page form called a Qualified Income Trust for Area Agency on Aging Benefits Counselors and the Aging and Disability Resource Centers (ADRCs).
- It is signed and notarized by both the settlor (beneficiary) and the trustee
- Social Security Number is sufficient for QITs established at financial institutions, do not need to get an EIN
- Recommended to establish new account at financial institution
  - Up to \$20 of resources of Medicaid applicant can be used
- Letter to trustee that we send includes chronological process

# Information Needed to Draft QIT

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- ❧ When TLSC drafts these forms for Benefits Counselors and ADRCs, we need:
- ❧ To have discussed the proposed beneficiary's competency:
  - ❧ Does the beneficiary understand what is going on? Can they sign off on the QIT?
  - ❧ If not, is there a POA or a guardian who is competent and can sign?
- ❧ Then what we need includes:
  - ❧ Name, address of the beneficiary
  - ❧ Name, address of the trustee
  - ❧ Name, address of alternate trustee
  - ❧ Name, type of income streams: SS, RSDI, Railroad Commission, pension, TRS, etc. etc.
- ❧ Turn around time depends on receipt of complete information

# Effective QIT



- ❧ When QIT becomes effective:
- ❧ 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 special income limit
- ❧ May be done before the settlor applies for Medicaid, in which case the effective date may be established as much as three months prior to the application filing date.

# Termination of Trust



- ❧ The QIT terminates upon the death of the beneficiary.
- ❧ Any money left in the QIT after the death of the beneficiary is paid to the State of Texas, up to the total amount of benefits paid on behalf of the beneficiary for medical care.
- ❧ Any remaining funds after the state is paid are paid to the alternate beneficiaries as specified in the QIT document.

# No Benefits = No QIT



- ❧ If the beneficiary of the QIT is no longer a Medicaid beneficiary:
  - ❧ The money in the trust can be used for any needs the beneficiary may have
  - ❧ If any money is left in the trust at beneficiary's death, it will go to the State in the amount of unreimbursed Medicaid expenses

# Contact Information



- ☞ In providing services to Texans, Texas Legal Services Center (TLSC) can provide support.
- ☞ The toll-free numbers for benefits counselors and the ADRCs **1-800-880-9797**
- ☞ Legal Hotline for Texans is **1-800-622-2520**
- ☞ Health Law Program at **1-866-979-4343**.