

Establishing a Qualified Income Trust (also known as a Miller Trust)

A short guide to help explain and clarify the process, goal, and maintenance of Miller Trusts

What is a Miller Trust account?

- A Miller Trust account is an irrevocable trust that is created in the name of the Medicaid recipient. It is a trust that includes all gross sources of income of the Medicaid recipient which exceed the Special Income Level, an amount which changes every year. Gross income received by the Medicaid applicant/recipient which exceeds the Special Income Level must be deposited into the Miller Trust each month in order to meet Medicaid eligibility guidelines.
 - A Medicaid applicant/recipient who has gross income exceeding the Special income Level may either choose to put only the gross income which exceeds the Special Income Level per month in the trust account OR one may put the entirety of the gross income in the Miller Trust each month and use it to pay bills and expenses as one would normally would.

Who needs a Miller Trust?

- Anyone who is receiving Medicaid benefits or is currently under a Medicaid gifting penalty period absolutely must establish a Miller Trust IF they meet the following conditions:
 - **Gross** monthly income of the Medicaid applicant/recipient exceeds the Special Income Level.
 - **What is Income?** Income is money received on a regular basis for work (earned or unearned) or through investments. Examples of income: Social Security, monthly pension, Required Minimum Distribution payments received from retirement accounts, paychecks, dividends from stock/investment holdings

Is it necessary to establish a Miller Trust to continue receiving Medicaid benefits?

- If the Medicaid applicant/recipient meets the above listed conditions, he or she **absolutely** must establish a Miller Trust in order to continue to qualify and receive Medicaid. If he or she does not establish a trust, then he or she will no longer be eligible to receive Medicaid benefits.

What is the purpose of a Miller Trust?

- This trust essentially functions as a way to isolate the recipient's gross income which exceeds the Special Income Level per month and ensure that, upon death of the applicant/recipient, unused funds which remain in the trust account will be paid to the State of Indiana to reimburse the state for any costs incurred for his or her Medicaid benefits.
 - Any remaining assets in this account will be administered as stated in the Trust. Any remaining assets after paying the state will be administered through the estate to stated heirs.

What do you need to do as Attorney-in-Fact, Guardian, or Trustee?

- **Execute the Miller Trust document.**
- **Provide the executed Miller Trust document to the bank of your choice and set up a new Miller Trust checking account using the Medicaid Recipient's Social Security Number.**
 - **It is advisable to create the account at the bank where the existing checking account is located to make it easier to transfer funds if you do not wish to deposit the entirety of the Medicaid recipient's income into it each month.**
 - **It is theoretically possible to convert an account that is listed solely in the Medicaid recipient's name and only contains their gross income each month; however, it must be renamed under the trust and many banks refuse to convert existing accounts without shutting them down and starting a new one.**
 - **The banking account that you open should be called as such: "The *Medicaid Applicant/Recipient's Name* Qualified Income Trust U/T/A dated the ___ day of ___ by *Medicaid Recipient's Name*, Medicaid Recipient's Name, and *Trustee's Name*, Trustee."**
 - **Only income of the Medicaid applicant/recipient is allowed to be deposited into the Miller Trust checking account. For instance, if the applicant/recipient has to liquidate a Certificate of Deposit, then the funds from the liquidation of the Certificate of Deposit may NOT be deposited into the Miller Trust account, since those funds were not a part of the monthly income.**
 - **After the account is created, the gross income exceeding the Special Income Level must be deposited into this account each month.**
 - **If you decide to deposit the all of the gross income that the Medicaid applicant/recipient earns each month, the allotment for personal needs allowance (\$52.00), monthly spousal maintenance allowance (if applicable), payment of Medicare supplement premiums or Prescription Drug Plan and the nursing home monthly liability will be paid from this account.**



Michael R. Pence, Governor
State of Indiana

Indiana Family and Social Services Administration
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What to tell the bank when you are establishing a Miller trust (Qualified Income Trust)

1) Due to a change in Medicaid eligibility you need to set up an account for a Qualified Income Trust, also known as a "Miller trust," and be able to

- (1) make a monthly deposit to the account and
- (2) pay monthly bills with the account funds.

2) Due to the nature of the trust almost all funds deposited into the trust monthly will be depleted at the end of each month.

3) A Miller trust is established with a Social Security Number. (The bank may try to require an EIN which is required for some other trust types. A Miller trust does not use an EIN.) Banks can verify this information at:

http://www.irs.gov/irm/part21/irm_21-007-013r-cont02.html where the below content is provided.

The trust is a Miller type trust	<p>Do not assign an EIN. Instead, inform the trustee that he/she <i>must</i>:</p> <ul style="list-style-type: none">• Use the SSN of the beneficiary or trustee to report trust activities, and• Provide information such as the SSN, BOD, closing month of accounting year, principal activity, and the market to which they sell their product or services, if not already provided on Form SS-4 under Treasury Regulation 301.6109-1(d)(2). <p>Note: Miller Trusts are treated as grantor trusts under IRC § 671.</p>
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- 4) The individual establishing the trust must have a Power of Attorney or legal guardianship to act on behalf of the member. Some banks may have internal policy that requires that the Power of Attorney specifically grant the authority to establish trusts. If a POA grants general authority to handle the financial or health care affairs of an individual, this should be sufficient to allow the POA to establish a Miller Trust for that individual. If you run into this issue with your bank please report the issue at office.communications@fssa.in.gov and contact your nursing home or waiver case manager for help addressing the concern.**

- 5) The state has sent information on the establishment of Miller trusts to banks and credit unions through their associations. If banks have questions on trusts they should address them to their regional or corporate office or their association.**

**More information on Miller trusts is also available online at:
<http://www.in.gov/fssa/ddrs/4860.htm>**

**Banks with specific questions on the Miller trusts may contact FSSA by email at:
office.communications@fssa.in.gov.**

_____ QUALIFIED INCOME TRUST (MILLER TRUST)
[Name of Beneficiary]

_____ [name of settlor] hereby creates a trust, to be known as
_____ [name of primary beneficiary] Qualified Income Trust and to be
governed by the terms set out below:

The primary beneficiary of the trust is _____ [name of primary
beneficiary]. The purpose of this trust is to assure eligibility of the primary beneficiary for
medical assistance program benefits.

The property to be placed in the trust is the income received by the primary beneficiary from the
following source(s):

1. _____
2. _____
3. _____

No property other than the primary beneficiary's income may be placed in the trust. The trust
may receive any or all of the primary beneficiary's income, but the entire amount of the income
allocated to the trust from each income source shall be deposited directly in the trust account or
deposited in the trust account in the same month the income is received by the primary
beneficiary.

The Trustee shall make distributions from the trust in amounts and for the purposes necessary to
maintain eligibility of the primary beneficiary for medical assistance program benefits,
notwithstanding any other provisions of this document. Among the requirements of the medical
assistance program at the time of establishment of this trust, which the Trustee shall meet as long
as and to the extent required, is the requirement that the trustee make payments from the trust in
the following priority, no later than the last day of the month after the income is received by the
trust:

1. A monthly personal needs allowance for the primary beneficiary, if the primary beneficiary is depositing his/her entire income into the trust;
2. A sum to the spouse of the primary beneficiary, if any, sufficient to provide but not exceed the minimum monthly maintenance needs allowance for the spouse as provided by Title XIX of the Social Security Act;
3. Incurred medical expenses of the primary beneficiary as defined by the Medicaid program;
4. The cost of medical assistance provided to the primary beneficiary;
5. Payments to or on behalf of the primary beneficiary that will not result in the loss or reduction of benefits available to the beneficiary from the medical assistance program.

_____ (name of initial trustee) shall serve as Trustee of this trust. In the event the Trustee resigns, becomes legally incapacitated or dies while holding office, _____ (name of successor trustee) shall serve as successor trustee. Any Trustee may, while serving as Trustee, appoint one or more successor trustees. If there is no named trustee eligible or willing to serve as Trustee, any interested person may apply to the primary beneficiary of the trust in order to be appointed Trustee. No bond shall be required for any Trustee. The Trustee shall have all powers given to a trustee by the Indiana Trust Code, Ind. Code § 30-4.

The Trust's assets, income and distributions shall not be subject to anticipation, assignment, pledge, sale or transfer in any manner, nor shall the primary beneficiary have the power to anticipate or encumber such interest 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.

This trust is irrevocable. This trust shall terminate upon the death of the primary beneficiary. Upon the death of the primary beneficiary, the Trustee shall distribute to the Indiana Family and

Social Services Administration or its successor agency any remaining trust property up to an amount equal to the total medical assistance paid on behalf of the primary beneficiary by the State of Indiana. The Trustee shall distribute any remaining trust property to

_____ [name(s) of distributee(s)].

Signed the _____ day of _____ 20____.

Settlor

Initial Trustee

Qualified Income Trust (Miller Trust) – SAMPLE CASE

In this example, the fictional individual who is applying for Medicaid is named **John J. Smith**. His gross monthly income (before taxes and other deductions are taken out) exceeds the maximum amount allowed in order to qualify for Medicaid benefits, so he needs a special kind of checking account called a Qualified Income Trust, or Miller Trust, checking account.

FACTS:

John J. Smith receives **Social Security** each month, as well as a pension from **Alcoa**. His wife, **Susan K. Smith**, is going to be the individual named as the Initial Trustee. His daughter, **Rhonda M. Smith**, is going to be the individual named as Successor (or backup) Trustee.

If John J. Smith passes away with a balance in his Qualified Income Trust (Miller Trust) checking account, then those funds may be used to pay any of his final expenses (funeral expenses, nursing home balance, medical bills, taxes). Any balance that remains in the account is to be paid to Indiana Family & Social Services Administration – Estate Recovery, to reimburse the state for any Medicaid benefits paid out on John J. Smith's behalf. If the balance in John J. Smith's Qualified Income Trust (Miller Trust) checking account exceeds the Medicaid benefits paid out on his behalf, then he has chosen for those remaining funds to be distributed to **beneficiaries per his Last Will & Testament**. If there is no Last Will & Testament, or if another beneficiary is to be named, then the individual beneficiaries' name(s) may be listed on that line.

The attached Qualified Income Trust (Miller Trust) form is an example of how to complete the form in this fictional situation.

SAMPLE MILLER TRUST

John J. Smith QUALIFIED INCOME TRUST (MILLER TRUST)
[Name of Beneficiary]

John J. Smith [name of settlor] hereby creates a trust, to be known as
John J. Smith [name of primary beneficiary] Qualified Income Trust and to be
governed by the terms set out below:

The primary beneficiary of the trust is John J. Smith [name of primary
beneficiary]. The purpose of this trust is to assure eligibility of the primary beneficiary for
medical assistance program benefits.

The property to be placed in the trust is the income received by the primary beneficiary from the
following source(s):

1. Social Security
2. Alcoa Pension
3. _____

No property other than the primary beneficiary's income may be placed in the trust. The trust
may receive any or all of the primary beneficiary's income, but the entire amount of the income
allocated to the trust from each income source shall be deposited directly in the trust account or
deposited in the trust account in the same month the income is received by the primary
beneficiary.

The Trustee shall make distributions from the trust in amounts and for the purposes necessary to
maintain eligibility of the primary beneficiary for medical assistance program benefits,
notwithstanding any other provisions of this document. Among the requirements of the medical
assistance program at the time of establishment of this trust, which the Trustee shall meet as long
as and to the extent required, is the requirement that the trustee make payments from the trust in
the following priority, no later than the last day of the month after the income is received by the
trust:

SAMPLE MILLER TRUST

1. A monthly personal needs allowance for the primary beneficiary, if the primary beneficiary is depositing his/her entire income into the trust;
2. A sum to the spouse of the primary beneficiary, if any, sufficient to provide but not exceed the minimum monthly maintenance needs allowance for the spouse as provided by Title XIX of the Social Security Act;
3. Incurred medical expenses of the primary beneficiary as defined by the Medicaid program;
4. The cost of medical assistance provided to the primary beneficiary;
5. Payments to or on behalf of the primary beneficiary that will not result in the loss or reduction of benefits available to the beneficiary from the medical assistance program.

Susan K. Smith (name of initial trustee) shall serve as Trustee of this trust. In the event the Trustee resigns, becomes legally incapacitated or dies while holding office, Rhonda M. Smith (name of successor trustee) shall serve as successor trustee. Any Trustee may, while serving as Trustee, appoint one or more successor trustees. If there is no named trustee eligible or willing to serve as Trustee, any interested person may apply to the primary beneficiary of the trust in order to be appointed Trustee. No bond shall be required for any Trustee. The Trustee shall have all powers given to a trustee by the Indiana Trust Code, Ind. Code § 30-4.

The Trust's assets, income and distributions shall not be subject to anticipation, assignment, pledge, sale or transfer in any manner, nor shall the primary beneficiary have the power to anticipate or encumber such interest 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.

This trust is irrevocable. This trust shall terminate upon the death of the primary beneficiary. Upon the death of the primary beneficiary, the Trustee shall distribute to the Indiana Family and

SAMPLE MILLER TRUST

Social Services Administration or its successor agency any remaining trust property up to an amount equal to the total medical assistance paid on behalf of the primary beneficiary by the State of Indiana. The Trustee shall distribute any remaining trust property to

beneficiaries per Last Will and Testament of John J. Smith [name(s) of distributee(s)].

Signed the 16 day of JANUARY 2020.

John J. Smith
Settlor
(Signature)

Susan K. Smith
Initial Trustee
(Signature)