Ohio’s New Qualified Income Trust Requirement

Diane Dietz, ddietz@ohca.org
Debbie Jenkins, djenkins@ohca.org
Pete Van Runkle, pvanrunkle@ohca.org
Background - Medicaid Eligibility Change

- Ohio is changing its Medicaid eligibility standards for the Aged, Blind, and Disabled (ABD) population.
- The Kasich Administration proposed this change and the General Assembly endorsed it in the budget bill, although the legislature extended the effective date from January 1 to July 1, 2016.
- Historically, Ohio has been among a minority of states known as “209(b) states,” while most states are “1634 states.”
- Both of these designations refer to specific sections of the Social Security Act that create ABD eligibility options for states.
- The federal government (Centers for Medicare and Medicaid Services) must approve switching from 209(b) to 1634.
- Ohio’s proposal not totally approved, but several component parts are...
Primary Differences Between 209(b) and 1634

- 209(b) states are required to have a spend-down program because their income standards are below Supplemental Security Income (SSI)
- Spend-down is optional for 1634 states (where it usually is referred to as a “medically needy” program)
- 1634 states can use for Medicaid the SSI disability determination (done by Opportunities for Ohioans with Disabilities - OOD)
- People who qualify for SSI automatically receive Medicaid
- 209(b) states must do their own, separate Medicaid disability determination
- 1634 states have higher income and asset tests
Proposed Changes in Ohio

- Ohio is expanding its new eligibility computer system (Ohio Benefits) to include the ABD population
- 1634 is baked into Ohio Benefits
- The Kasich Administration is emphasizing eliminating the duplicative disability determination, which led them to name the transition “Disability Determination Redesign” or DDR
- Income and asset tests will be a little more generous:
  - The asset test for LTSS applicants will change from $1,500 to $2,000
  - The income test for community applicants will change from 64% to 75% of poverty
  - The income test for LTSS applicants (special income level or SIL) will be three times the SSI standard, or $2,199 per month in 2016
  - The SIL will change each time the SSI limit changes
Eliminating Spend-Down

- Ohio is choosing to discontinue spend-down as part of the conversion to 1634 status.
- This change has a significant impact on beneficiaries and gives rise to the QIT requirement.
- There are two main types of spend-down:
  - In the community, based on medical expenses (which tend to vary month-to-month)
  - In LTSS settings, based on contribution to cost of care (which typically stays the same month-to-month)
- State rationales for eliminating spend-down:
  - Higher percentage of poverty for eligibility
  - No need to document medical expenses incurred each month
  - Fairness issue of incurred vs. paid expenses
State Budget Considerations for Eliminating Spend-Down

- Streamlining disability determinations results in some amount of administrative savings.

- Significant savings come from removing 34,050 spend-down beneficiaries in the community from Medicaid coverage and shifting them to other coverage not paid by the state.

- Because of the budget impact, the Administration chose not to keep spend-down as part of the 1634 conversion even though keeping it would not prevent streamlining disability determinations.
State’s Plans to Mitigate Impact of Eliminating Spend-Down

- 8,870 LTSS recipients can maintain eligibility by creating QITs
- 5,527 people with severe and persistent mental illness can keep Medicaid through a new 1915(i) program called Specialized Recovery Services
- People in the community eligible for Medicaid via spend-down in at least one of the 12 months before the effective date of the conversion will get a year of full Medicaid eligibility
- 15,747 former spend-down beneficiaries can qualify for Medicaid under the expansion or via SSI
- 18,754 will have to purchase coverage through the Exchange (with tax subsidies if their income is below 400% of poverty)
- 15,296 will qualify for Medicare
- Medicaid Buy-In for Workers with Disabilities is not affected by the shift to 1634 status
Impact on LTSS Recipients

- A person with income greater than the SIL ($2,199) is not eligible for Medicaid payment of their LTSS

- Previously, over-income individuals could maintain eligibility by spending down their income as a contribution to the cost of care (patient liability)

- This pathway to eligibility will go away

- In 1634 states that do not have spend-down (medically needy) programs, the alternative to allow over-income LTSS recipients to qualify is the qualified income trust (QIT) or “Miller Trust”

- Ohio is adopting this approach
Why QITs?

- Without QITs, people over the SIL would not be eligible for Medicaid coverage of their LTSS and providers would not be paid.

- QITs are a “necessary evil” to allow the benefits of other aspects of 1634 status.

- Absent those other benefits, no one would want QITs - for LTSS beneficiaries, they are an extra hurdle just to keep the status quo.
What is a QIT?

- A QIT is an **irrevocable** legal instrument that transfers control over a person’s income to another person (a trustee) who must use the income for specified purposes.

- The individual who places a portion of their income in a QIT loses control over that money.

- Under 1634 rules, income placed in a QIT is disregarded for Medicaid purposes, rendering the person eligible for Medicaid LTSS payment.

- A “qualified income trust” is so named because it contains only income and it qualifies a person for Medicaid.
Who Must Have a QIT?

The basic rule is anyone seeking Medicaid payment for their facility-based or waiver LTSS who has monthly gross income above $2,199

- Facility-based services include SNF and ICF/IID
- Waiver services include all NF-based and ICF-based waivers, e.g., Assisted Living Waiver, PASSPORT, Individual Options, MyCare Ohio Waiver

The Department of Medicaid estimates that 8,870 individuals currently require a QIT

- Probably 85% of these individuals are in SNFs (and a couple handfuls in ICFs)
- The remaining 15% are on waivers, mostly Aging-related waivers
Transition to the New Requirement

- To ease people into the new system, the state proposed a transition process for the QIT requirement
- ODM expects that the effective date of the 1634 conversion will be August 1, 2016 (not July 1 as previously announced)
- ODM proposes that anyone eligible for Medicaid LTSS payment on July 31, 2016, will not need a QIT until their redetermination date in 2017
- The state is proposing a “holiday” on redeterminations from August 1 to December 31, 2016
- The state plans to require a QIT for anyone applying for Medicaid payment of their LTSS on or after August 1, 2016
- ODM says they and the counties will not disclose redetermination dates directly to providers unless the provider is an authorized representative, but they are streamlining notice to beneficiaries
Pending Medicaid Applicants

- ODM proposes that anyone with a pending LTSS Medicaid application as of July 31, 2016, who ultimately is determined financially eligible will not need a QIT until their redetermination date in 2017.

- Under this plan, the county caseworker would review a pending application under the “209(b) criteria” (that is, the old rules).
Eligibility Timing Under the QIT Requirement

- Currently, because of the ability to spend down, Medicaid LTSS eligibility can be retroactive to the date of application and up to three months before.

- Under 1634, a person who is over income is simply not eligible unless a QIT is in place and excess income is deposited into it.

- As a result, eligibility cannot be backdated before the QIT is created and funded.

- Because Medicaid eligibility operates in whole months, ODM does allow eligibility to be backdated to the first of the month in which the QIT is both created and funded.
Preserving Payment

- The QIT should be signed and income deposited into the QIT account at the same time as the Medicaid application is submitted.

- Provide both the Medicaid application and the trust template to the individual/family and emphasize that the QIT is mandatory for Medicaid eligibility.

- You may even wish to consider providing the template upon admission - nothing prohibits creating a person from having QIT before they need Medicaid, and it does not need to be funded.

- Explain and assist the Individual/family, but don’t practice law.
Significance of This Point

- Starting August 1, 2016, timely completion of the QIT will be critically important to avoid a gap in payment for over-income beneficiaries.

- For instance:
  - Medicaid application filed September 25, QIT executed/funded September 27, applicant eligible starting September 1.
  - Medicaid application filed September 25, QIT executed/funded October 4, applicant eligible starting October 1.

- If a person does not get the QIT in place and deposit income into it in time, ODM confirms that the unpaid days may be deducted from future patient liability as past medical expenses.

- The proposed QIT rule lists “incurred medical expenses of the primary beneficiary” as a permissible expense to be paid from the QIT.

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OHCA OCAL OCID

Ohio Health Care Association
Ohio Centers for Assisted Living
Ohio Centers for Independent Living
Changes in Income

- If a Medicaid beneficiary’s income increases to more than the SIL (e.g., $2,150 to $2,250), ODM suggests that they will need a QIT immediately - no grace period applies.

- Process for this:
  - County caseworker notified of income change.
  - Caseworker determines individual is over the SIL.
  - Caseworker provides notice of proposed Medicaid termination.
  - Beneficiary has opportunity to appeal this decision.

- If a QIT is created/funded during the appeal period, eligibility for Medicaid LTSS payment continues.

- A person under the SIL who has a timing issue with income that inadvertently puts them over (e.g., two Social Security payments received in the same month) is not required to have a QIT.
ODM Guidance on QITs

- Proposed rule 5160:1-6-03.2 (May 16, 2016, draft, not yet finalized): [https://www.ohca.org/docs/documents/5153/5160$1-6-03$2_RV_N_RU_20160516_1413.pdf](https://www.ohca.org/docs/documents/5153/5160$1-6-03$2_RV_N_RU_20160516_1413.pdf)

- This rule is the most definitive direction available from ODM on the topics it covers

- ODM also published a template for the QIT, a verification form, and a high-level FAQ document

- ODM promises a more in-depth FAQ by the end of next week

- OHCA constantly talks with ODM about unresolved questions; we developed a “living” FAQ document as a substitute for state guidance

- ODM’s reticence to provide more in writing stems from lack of federal approval for the 1634 conversion

- ODM training counties - current level of knowledge varies
Creating the QIT

- A QIT is a legal document by which the settlor (the person creating the trust) gives the trustee authority to receive some or all of an individual’s income and to disburse the income for permissible expenses.

- The ODM rule establishes requirements that all QITs must meet.

- There is no mandated form, but ODM’s trust template is available on their website (http://medicaid.ohio.gov/Portals/0/Initiatives/DDR/QIT-template.pdf) and on ours (https://www.ohca.org/docs/documents/5153/QIT-template.pdf).

- The template is the easiest way to meet the QIT requirement, and it is approved by the state.
QUALIFIED INCOME TRUST

This declaration of trust made this ____ day of ________, 20__, by __________________________ (Settlor-name of person establishing the Trust), is to be known as the ______________________ (name of the Primary Beneficiary) Qualified Income Trust, and is to be governed by the terms set forth below.

Article I

Trust Purpose. This is an irrevocable Qualified Income Trust, sometimes referred to as a “Miller Trust”, and is authorized by 42 U.S.C. §1396p(d)(4)(B). The purpose of this Trust is to enable the Primary Beneficiary to qualify for medical assistance ("Medicaid"). The Primary Beneficiary of the trust is ________________________________.

Article II

Trust Funding. The property to be placed in the Trust is monthly income received by the Primary Beneficiary including income from the following source(s):
No property other than the Primary Beneficiary’s income may be placed in the Trust. Income must be deposited into the trust account during the same month in which the income is received by the Primary Beneficiary.

**Article III**

**Trust Distributions.** No expenditures shall be made from the Trust except in accordance with this paragraph. The trustee shall make distributions from the trust only in amount and for the purposes necessary to maintain income eligibility of the Primary Beneficiary for Medicaid. Consistent with the requirements of the Medicaid program that require all income including any income that is not placed in the Trust be used for post eligibility expenses, the Trustee shall make payments from the Trust in the following priority, no later than the last day of the calendar month in which the income is received by the Trust:

1. A monthly personal or maintenance needs allowance for the Primary Beneficiary;

2. A maintenance allowance for the spouse, if any, of the Primary Beneficiary and, if applicable, a maintenance allowance for family dependents;

3. Incurred medical expenses of the Primary Beneficiary. In accordance with rule 5160:1-3-04.3 of the Administrative Code, when income is used to help pay for long
term care services or other medical care provided to the individual, the individual is considered to have received fair market value for the income placed in the trust, up to the amount actually paid for other medical care provided to the individual and to the extent that the payments purchased care at fair market value;

4. The Trustee may also make payments from the Trust for bank fees, attorney fees, and other expenses required to establish and administer the trust in a reasonable amount up to fifteen dollars per month or as otherwise authorized under Rule 5160:1-6-03.2 of the Ohio Administrative Code.

**Article IV**

**Trustee.** The Trustee shall administer this Trust in good faith to effectuate its purpose, and shall act in accordance with the terms of the Trust and with all applicable laws including, but not limited to Chapters 5801. to 5811. of the Ohio Revised Code. The initial Trustee hereunder is ________________. If the initial Trustee resigns, becomes deceased or is otherwise unable or unwilling to serve, then ________________ shall serve as successor Trustee. Any Trustee may, while serving as Trustee, appoint one or more successor trustees.

**Article V**

No Transfers or Assignments. The Trust’s assets, income and distributions shall not be
anticipated, assigned, transferred or encumbered in any manner. The Primary Beneficiary shall not have the power to anticipate, assign, transfer or encumber the Primary Beneficiary’s interest in the Trust, 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.

Article VI

Termination. This Trust shall terminate upon the death of the Primary Beneficiary, at which point the remaining Trust property shall be distributed to the Ohio Department of Medicaid or its successor up to an amount equal to the total medical assistance paid on behalf of the Primary Beneficiary; the Trustee is prohibited from repaying other persons or creditors prior to this distribution. Any remaining Trust property after the Ohio Department of Medicaid (or its successor)’s claim has been paid shall be distributed to ________________________.

Signed this _________________ day of ________________________20______.

_________________________    __________________________
Settlor                      Initial Trustee
Who Can Sign the QIT?

- The Medicaid applicant
- ODM: “We consider a person who has not been declared incompetent by a court of law to be competent”
- The individual’s legal guardian
- Their attorney in fact (“power of attorney”) ONLY if the POA specifically authorizes them to create trusts
- Not the authorized representative or representative payee
- Not a family member without other legal status
- No definitive guidance from the state for signing a QIT when the Medicaid applicant is not capable and does not have a guardian
Who Can be the Trustee?

- The person who creates the trust
- A family member, friend, or other individual
- A trust company or other financial institution
- A SNF, RCF, or DODD-licensed residential facility (per amendment to HB 229 secured by OHCA)
Responsibilities of Trustee

- If considering whether facility should serve as trustee, weigh convenience/efficiency against potential risk

- Must comply with requirements of QIT rule, particularly relative to disbursements

- Also must comply with general Ohio trust laws
  - Act in good faith and in beneficiary’s interest, protect trust property
  - Track receipts and disbursements
  - Obtain an EIN
  - File an annual fiduciary tax return (IRS 1041)

- Should designate successor trustee if individual transfers to a new facility
What Must be Deposited into the QIT Account?

- Gross monthly income in excess of the SIL ($2,199 for 2016) must be deposited into a special QIT account.
- Per rule, can deposit all or a portion of the income, but not less than the amount above $2,199.
- Example: individual with income of $3,000
  - Must deposit at least $801
  - Can deposit $3,000
  - Can deposit an amount between $801-3,000
- Cannot deposit assets or anything else other than individual’s income into the QIT account.
- ODM strongly prefers direct deposit of income into the QIT account, but the money can be paid in by whoever receives it.
Where Must the QIT Account be Housed?

- The ODM rule does not specify where the account is to be housed, only requirements that apply to the account
- An individual can choose to have their QIT account in a bank (ODM trying to help with this)
- But the easiest approach is to set up the QIT account at the center similarly to the “resident trust account” (PNA account)
- The QIT account must be separate from the PNA account and must meet the other requirements of the rule
- ODM confirmed its intent to allow centers to hold the QIT account by removing language from the proposed rule that would have required a financial institution to hold it
- Make the QIT account part of facility’s resident funds management system - contact your software vendor
Disbursements from the QIT Account

- Only expenses listed in the rule can be paid out of the QIT account - anything else leads to penalties
  - PNA
  - Spousal or dependent allowance
  - Incurred medical expenses of the individual (could include both patient liability and past medical expenses)
  - Up to $15/month for bank fees and other costs of administering the trust (can request ODM’s approval of a higher amount)
  - ODM says they are instructing the counties to deduct the fees before determining patient liability

- Consider blanket trustee authorizations for recurring disbursements
Requirements for QIT Account Documentation

- Must be provided to county caseworker for eligibility

- ODM QIT “Bank” Verification Form
  - Applies to whoever holds the QIT account, not just banks
  - Documents information about the trust, where it is held, and income deposited into it

QIT Account Status

- Normally, after income is deposited and disbursements are made, there will be a zero balance in the QIT account for most of the month.

- It is unclear what must be done with any money that does happen to remain in a QIT account for any reason while the individual is still alive (i.e., does it need to be deposited into an interest-bearing account).

- Any money remaining in the QIT account at death must be paid to Medicaid.

- Funeral expenses cannot be paid out of the QIT (although they still can be paid out of the PNA account).
Role of Automated Health Systems (AHS)

- AHS is a state vendor hired specifically to assist people in creating QITs.
- In that role, they reach out to and take inquiries from Medicaid beneficiaries who need QITs and their families/authorized representatives.
- AHS also is contracted to help people create trusts and QIT accounts.
- ODM gave AHS a list of current Medicaid beneficiaries with income over the special income level.
- The list may or may not be accurate - email AHS (OhioQIT@automated-health.com) to report discrepancies.
- More importantly, the list is focused on the wrong group of individuals (they don’t need QITs until 2017).
- AHS probably will not know about the priority cases: new Medicaid applicants on/after August 1, 2016.
- AHS toll-free number: 844-265-4722.
Assistance in Creating QIT

- No one is required to use AHS to set up the trust - they are one option

- Individuals can use AHS (who has legal counsel available), their own attorney, or legal aid

- While the QIT is a legal document, there is no requirement for involving an attorney

- ODM’s template was reviewed by their legal counsel

- The state expects that providers and families will help beneficiaries create QITs
Special Circumstances

- Skilled stay: even if there is no patient liability, excess income still must be deposited into the QIT if the person wants to be eligible for Medicaid
- Month of expiration: the pro-rated portion of the patient liability goes into the QIT, the remainder goes to the person’s estate
- Lump sum: must be deposited into the QIT account when received
- Restricted Medicaid: a QIT still required if the SIL is applied for base Medicaid eligibility
- Short-term Medicaid admission: if eligibility is based on the SIL, the individual needs a QIT
- STABLE account: ODM says individual’s income over the SIL must be deposited into a QIT
Some Remaining Questions

- Does a person who has income over the SIL for one month need a QIT?

- What is the impact of “non-allowable” expenses such as court-ordered spousal or child support?

- In the event of a transfer to another facility, can the QIT account held by the first center be transferred?

- Can permissible expenses be paid out of the QIT account before the budget is determined? After death?

- Can Medicare/insurance premiums be paid out of the QIT account?
QIT (Miller Trust) Resources

- OHCA QIT FAQs
- ODM QIT FAQs
- Sample of ODM Letter to SNFs
- Sample of ODM Letter to Beneficiaries
- ODM Trust Instrument Template
- ODM Draft QIT Rule

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