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Rulemaking Hearing Rule(s) Filing Form

Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing. TCA Section 4-5-205

Agency/Board/Commission:	Department of Human Services
Division:	Medical Services Division
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Revision Type (check all that apply):

X Amendment
___ New
___ Repeal

Rule(s) Revised (for additional chapters, copy and paste table)

Chapter Number	Chapter Title
1240-03-03	Technical and Financial Eligibility Requirements for Medicaid
Rule Number	**Rule Title**
1240-03-03-.03	Resource Limitations for Categorically Needy

Chapter 1240-03-03
Technical And Financial Eligibility
Requirements For Medicaid

Amendments

Rule 1240-03-03-.03 Resource Limitations for Categorically Needy, is amended by deleting paragraphs (8), (9) and (10) in their entirety and by substituting the following language, so that, as amended, paragraphs (8) and (9) shall read as follows:

(8) 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 (8) 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 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.

1. The amount of income that an applicant/recipient places in a QIT cannot be limited nor can it be counted when testing income against the Medicaid Income Cap (MIC). If the applicant/recipient's income that is not placed in a QIT is over the MIC, the individual is not financially eligible for nursing home Medicaid.

2. This Department of Human Services State Rule 1240-03-03-.03(8) shall apply to an income trust established on or after July 1, 2005 and with the undue hardship provision in Section 1613(e) of the Social Security Act. Hardship may be considered to exist when the institutionalized spouse and/or his/her spouse would have resources in excess of the resource limit, is otherwise eligible and for whom Medicaid ineligibility would result in loss of essential nursing care, which is not available.

(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 1240-03-03-.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.

(9) Assessment of Resources and Community Spouse Resource Allowance.

(a) Resources owned by either spouse, or by both spouses together, are considered equally available to both spouses at the beginning of a continuous period of institutionalization (i.e., 30 consecutive days in nursing care) for persons institutionalized after September 30, 1989. If an assessment of resources is requested by the institutionalized or community spouse or by either spouse's authorized representative, an assessment will be made within thirty (30) days of receipt of all relevant documentation from the requesting party(ies). If either spouse is dissatisfied with the Department's assessment of

the community spouse's resource allowance at the point an application for Medicaid has been filed, either spouse has a right to a fair hearing with respect to the determination, which shall be held within thirty (30) days of the date a request for hearing is made.

(b) The community spouse resource allowance is equal to the greater of:

1. Effective January 1, 2008 one-half (1/2) of the total resources owned by both spouses not to be less than twenty thousand eight hundred eighty dollars ($20,880) nor greater than one hundred four thousand four hundred dollars ($104,400) and adjusted annually per federal law;

2. The amount established after a fair hearing by the Department of Human Services; or

3. The amount transferred under a court order against the institutionalized spouse for the support of the community spouse, using Tennessee's Medicaid eligibility standards, regardless of any other state laws relating to community property or the division of marital property.

(c) The maximum amount of income of the institutionalized spouse must be allocated to the community spouse before increasing the resource allocation.

(d) Spouses must be legally married pursuant to the laws of the State of Tennessee; and

(e) The community spouse resource allowance determined by the assessment will be deducted from the value of all available resources owned by both spouses as of the first month for which assistance is requested. After the initial month of eligibility, no resources of the community spouse will be considered available to the institutionalized spouse.

Authority: T.C.A. §§ 4-5-201 et seq., 71-1-105(11) and (12), 71-5-102, 71-5-106, 71-5-111, and 71-5-121; 26 U.S.C. §§ 408 and 408A, 42 U.S.C. §§ 1396 et seq., 42 U.S.C. § 1396d(p) and (s), 42 U.S.C. § 1396p, 42 U.S.C. § 1396p(c)(1)(A), (B), (C), (D),(E), (E)(iv), (F), (G), (H), (I) and (J), 42 U.S.C. § 1396p(c)(2)(D), 42 U.S.C. § 1396p(d)(4)(B), 42 U.S.C. § 1396p(d)(5), 42 U.S.C. § 1396p(e)(1),(2),(3) and (4), 42 U.S.C. § 1396p(f)(1), (2), (3) and (4), 42 U.S.C. § 1396p(g), 42 U.S.C. § 1396r-5(b), (c), (d), (f) and (g), and 42 U.S.C. § 1396r-5(d)(6) and (e); 20 C.F.R. §§ 416.1205(c), 416.1212, 416.1220, 416.1222 and 416.1224; 42 C.F.R. § 435.601 and 435.602, 42 C.F.R. §§ 435.700, 435.721(b), 435.725, 435.735, 435.831, 435.832, 435.840, 435.845, and 435.914 (b) and (c); 45 C.F.R. § 233.20; PL 97-248, PL 98-369 § 2611, PL 99-509 § 9401(a)(3), PL 100-93 § 9; PL 101-239 Omnibus Reconciliation Act (OBRA) 1989 § 8014 and OBRA 1993, PL 104-193, and PL 109-171 §§ 6011, 6012, 6013, 6014, 6015, and 6016.

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Department of Human Services on 10/01/2008, and is in compliance with the provisions of TCA 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 07/29/08

Notice published in the Tennessee Administrative Register on: 08/15/08

Rulemaking Hearing(s) Conducted on: (add more dates. 09/16/08

Date: October 1, 2008

Signature: Phyllis A. Simpson

Name of Officer: Phyllis A. Simpson

Title of Officer: Assistant General Counsel
Tennessee Department of Human Services

DEBRA E. BATTS
STATE OF TENNESSEE NOTARY PUBLIC
DAVIDSON COUNTY
My Commission Expires May 22, 2010

Subscribed and sworn to before me on: October 1, 2008

Notary Public Signature: Debra E. Batts

My commission expires on: May 22, 2010

All rulemaking hearing rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

R E Cooper Jr

Robert E. Cooper, Jr.
Attorney General

10-29-08

Date

Department of State Use Only

Filed with the Department of State on: 10/31/08

Effective on: 1/14/09

Riley C Darnell

Riley C. Darnell
Secretary of State

Regulatory Flexibility Addendum

Pursuant to Public Chapter 464 of the 105th General Assembly, prior to initiating the rule making process as described in § 4-5-202(a)(3) and § 4-5-202(a), all agencies shall conduct a review of whether a proposed rule or rule affects small businesses.

The amendments are clerical corrections. The amendments are correcting a clerical error that inadvertently deleted the Qualified Income Trust (QIT) rule provision 1240-03-03-.03(8) from the Department of Human Services' rules on July 6, 2008 when the Department promulgated other unrelated rules. The amendment restores the QIT rule provision as provided at federal statute 42 USC § 1396p(d)(4)(B) to the Department's rules. Further, the amendment is deleting 1240-03-03-.03(10) Assessment of Resources and Community Spouse Resource Allowance provision so the Department's rules only reflect 1240-03-03-.03(9) as the Assessment of Resources and Community Spouse Resource Allowance provision, provided at federal statute 42 USC § 1396r-5.

For purposes of Acts 2007, Chapter 464, the Regulatory Flexibility Act, the Department of Human Services certifies that these rulemaking hearing rules substantially codify existing federal law at 42 U.S.C. § 1396p(d)(4)(B) and 42 U.S.C. § 1396r-5 of Title XIX of the Social Security Act, such that, pursuant to Section 6 of the Regulatory Flexibility Act, the Regulatory Flexibility Act's provisions do not apply to these rules. In addition, these rulemaking hearing rules do not appear to affect small businesses as defined in the Act because these rules will only affect Tennessee's long-term care population who are not employable.