**Farr Law Firm Newsletter**
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# Too "Rich" for Medicaid, but Too "Poor" for Long Term or Monthly Care.

## The Qualified Income Trust Solution.

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It is becoming more common that people are coming to my office with the notion that they make too much money to qualify for Medicaid's long term care services. The problem arises from the fact that Medicaid places, as one of many restrictions on applicants, an individual gross income cap of $2,130 per month. Gross income includes both earned and unearned income and the cap is updated annually. This places those with income above the cap in a tough spot. They are ineligible for Medicaid because their income exceeds the cap, but they lack the income needed to pay for long term care–where the costs can top $10,000 per month. Here is where a Qualified Income Trust ("QIT") can be of help.

A QIT is an irrevocable, self-settled trust that allows an individual whose income exceeds the income cap to qualify for Medicaid. The QIT consists of the written agreement and needs to be accompanied by a bank account established specifically for the QIT. In order to be effective, the QIT must be properly drafted and administered.

An individual applying for Medicaid benefits can establish a QIT. If an individual does not have the capacity to create a trust, their spouse, an agent pursuant to a power of attorney that includes the authority to create irrevocable trusts, or a court appointed guardian who has been granted the proper authority may establish a QIT. The trust must meet specific requirements and be approved by the Department of Children and Families legal offices.

The timing of the QIT's execution is important. The QIT should be established so that it can receive payments in the month the individual becomes eligible for Medicaid. Therefore, the trust must be properly executed and a bank account in the name of the trust must be established before applying for Medicaid benefits. If the individual plans on having their income directly deposited into their QIT's bank account, the financial institution must be informed in advance. If income payments are not deposited into the QIT, the individual could be declared ineligible for Medicaid.

In administration of the QIT, distributions are specifically limited. The trust is required to make distributions for "patient responsibility." A patient's responsibility is the amount the patient is required to pay each month to the nursing home. It is calculated by taking the individual's gross monthly income reduced by specific deductions. The patient's responsibility should be adjusted if there is a change in income or health insurance premiums. The trustee is allowed to distribute $35 per month for the personal needs of the individual and to pay for special health insurance costs. Finally, if the individual has a spouse (or certain dependents), there is a detailed calculation to determine what amount of the individual's income can be used to provide for maintenance of their spouse.

A QIT can be terminated when the individual's need for Medicaid assistance has been exhausted, such as when the individual passes away. Please note that, in most cases, the balance remaining in the QIT after the trust has been terminated will be paid to the State.

Medicaid and other elder law related issues are highly complex. Consulting an attorney is the best avenue to make sure your interests are protected.

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