2615.75.15 CERTAIN TRUSTS RECEIVING SPECIAL CONSIDERATION

The trust provisions explained in the preceding Section 2615.75.10 do not apply to certain special needs trusts and pooled trusts as well as Miller trusts defined below. The following trusts should not be considered countable resources.

Special Needs Trust: This is a trust containing the assets of a disabled applicant/recipient under age 65, which is set up by the applicant's/recipient's parent, grandparent, legal guardian or by a court, and is established for the sole benefit of the applicant/recipient. A trust established on or after December 13, 2016, by an individual with a disability under age 65 for his or her own benefit can qualify as a special needs trust, conferring the same benefits as a special needs trust set up by a parent, grandparent, legal guardian, or court.[41] The individual must be disabled according to SSI criteria. Such a trust must contain a provision specifying that, upon the death of the individual, the State will receive all amounts remaining in the trust up to the total amount of Medicaid benefits paid on the individual's behalf.[42]

Pooled Trusts: A pooled trust is a trust containing the assets of a disabled applicant/recipient (disabled according to SSI criteria) which meets the following conditions:[43]

- The trust is established and maintained by a non-profit association
- A separate account is maintained for each of the beneficiaries, but for investment and management purposes the funds are commingled
- The trust account is established by the applicant/recipient or their parent, grandparent, legal guardian or by a court for the sole benefit of the applicant/recipient
- There is a provision which specifies that upon the death of the beneficiary, any funds not retained by the trust will be paid to the State up to the total amount of Medicaid benefits paid on the individual's behalf.

Miller (Qualified Income Trusts): A Miller Trust (or Qualified Income Trust (QIT)) is a unique trust that allows persons residing in long-term care facilities or receiving home-and-community-based-services through a 1915(c) waiver (see IHCPPM sections 3305.00.00 and 3320.10.00) who have personal income above the Special Income Level (SIL) (see IHCPPM sections 3455.14.00 and 3010.20.15) to be considered Medicaid eligible. A Miller Trust may be established for a Medicaid applicant/recipient who is a beneficiary of the trust by the applicant/recipient's Authorized Representative for Medicaid eligibility purposes, legal guardian, power-of-attorney (POA), or family member if the applicant/recipient is incapacitated as shown with documentation from a licensed physician.[44]

A Miller Trust is one that:

- Is funded only by the income of the beneficiary including accumulated interest on that income. The trust will not be funded with the beneficiary's resources, nor income or resources of other persons
- Upon the death of the beneficiary, the State of Indiana will receive all remaining funds in the trust up to the amount of Medicaid expenditures paid on the individual's behalf.

A transfer of resource penalty does not apply to a Miller trust if the trust is:

- Established for the benefit of an individual; and
- Funded solely by the income of an individual, including accumulated interest.

The Miller trust described in this subsection can be revocable or irrevocable.

Under 42 U.S.C. 1396p(d)(4)(B)(ii), upon the death of a beneficiary, the state of Indiana receives the remaining funds in a Miller trust up to the amount of Medicaid expenditures paid on the member's behalf.

Allowable distributions from a Miller trust may include the following:

- A monthly personal needs allowance for a primary beneficiary if they are depositing their entire income into the trust.
- A monthly amount to the spouse of a primary beneficiary 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.
- Incurred medical expenses of a primary beneficiary.
- The cost of medical assistance provided to a primary beneficiary, such as the patient liability.

A Miller trust must be funded at least each month in the amount of the beneficiary's monthly income exceeding the SIL.

Funds in a Miller trust must:

- Be maintained in a separate account from any other account; and
- Not be commingled with other accounts.[45]

With the exception of funeral trusts and Miller trusts, trusts should be sent to OMPP through the PAL system to make a determination of validity and exemption.

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[41] 405 IAC 2-3-14 (b) (4)
[42] 405 IAC 2-3-14 (b) (4)
[43] 405 IAC 2-3-14
[44] 405 IAC 2-3-14(f)
[45] 405 IAC 2-3-29