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Checklist for Qualified Income "Miller" Trusts under 42 U.S.C. § 1396(d)(4)(B)

Use this checklist to see if a Qualified Income "Miller" Trust qualifies for consideration by the Family Support Division when they determine a participant's eligibility for MO HealthNet (Medicaid in Missouri). To qualify, each of the following questions must be answered "yes":

- ☐ Is the trust **irrevocable**? (see 1396p(d)(3) for guidance)
- ☐ Was the trust **established by** a parent, grandparent, guardian, court, or by the participant themselves (1396p(d)(2)(A))?
- ☐ Is the trust composed ONLY of **pension, Social Security, or other income** to the participant? (1396p(d)(4)(B)(i))
- ☐ Is there a **Medicaid payback** provision in the trust? (1396p(d)(4)(B)(ii))
  - Can be second only to wrapping-up costs of the trust, taxes, and administrative fees for terminating (ending) the trust (exact language is at SI 01120.203B.3.a)
  - Preneed burial contracts are acceptable; paying for the beneficiary's funeral BEFORE Medicaid payback is not acceptable
  - Must include multi-state language to address the possibility of a participant having received benefits in multiple states
- ☐ Is the trust for the **sole benefit** of the participant? (1396p(d)(4)(B)) Common issues to watch for:
  - It must not allow the purchase of life insurance. If the trust language mentions insurance, be careful of open-ended phrasing such as "Trustee may purchase insurance, *including but not limited to*, automobile, health, or property." This means the trust will not meet federal requirements because it allows for the purchase of life insurance. Acceptable language has included phrasing that is updated to include "except life insurance," or that directly lists the allowable insurance types without the open-ended phrase "including but not limited to."
  - **Travel for 3rd parties** (people other than the participant) must be for the benefit of the participant. There are 3 allowable scenarios for the trustee to fund 3rd party travel:
    - For the benefit of the participant, such as a caretaker or personal assistant. This CAN be a family member, but the arrangement must meet the requirements of 208.213RSMo (written contract).
    - To help the participant seek medical care (exact language is at SI 01120.201F.2.b)
    - To check on the welfare of the participant who lives in a supported living arrangement (exact language is at SI 01120.201F.2.b)