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Seniors and Special Needs News - April 10, 2015

1 message

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With help, seniors and people with special needs can keep some of their assets in the family rather than lose their entire life savings to the costs of long term care. They can use these protected assets to enhance their quality of life beyond what long term care alone will provide.

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The Koewler Law Firm
 JAMES L. KOEWLER, JR.



Seniors and Special Needs News

The Pooled Trust and Qualifying for SSI and Medicaid

Today's newsletter continues the series about Special Needs Law.

The newsletter on February 19, 2015 gave an overview of the legal issues facing people with special needs. The newsletter on February 5, 2015 discussed the new ABLE accounts. The newsletter on February 26, 2015 discussed sources of income for people with special needs.

The newsletter on March 6, 2015 discussed medical insurance for people with special needs. The newsletter on March 13, 2015 discussed how the Social Security Administration requires people with special needs to prove a disability to qualify for Supplemental Security Income (SSI.) The newsletter on March 20, 2015 discussed how the Social Security Administration requires people with special needs to prove that they have low enough income and assets to qualify for SSI. The newsletter on March 27, 2015 gave an overview of how someone with too many assets can lower those assets to qualify for SSI. The newsletter of April 3, 2015 discussed how a self-settled Special Needs Trust can help someone with special needs qualify for SSI and Medicaid.

Today's newsletter discusses how a Pooled Trust can help a person with special needs go from having too many assets to having few enough assets to qualify for (and maintain eligibility) for Supplemental Security Income (SSI) and, if necessary, for Medicaid.

A Pooled Trust is very similar in operation to a Special Needs Trust discussed in the newsletter of April 3, 2015 (last week.)

A person with special needs who has excess resources can place assets into a Pooled Trust without being penalized by the Social Security Administration or Medicaid for giving away assets. Chapter 42, Section 1396p(d)(4)(c) of the United States Code authorizes Pooled Trusts. (Special Needs Trusts are covered by subsection (d)(4)(a) of the same section of the U.S. Code.) (As I mentioned last week, the U.S. Code is the set of laws created by Congress, the set of laws that “Bill” from School House Rock joins after he’s passed by Congress and signed by the President.) Because of the subsection of the law that allows these trusts, they often are called d4c trusts.

As a technical matter, these d4c trusts are self-settled because the assets that are going into the trust belong to the person with special needs. They are not often called "self-settled," however, because the person with special needs is not setting up the trust (and no one is setting it up on behalf of the special needs person, like a parent, spouse, or a court.) These pooled trusts are already set up.

These Pooled Trusts are not third-party trusts because the money that is going into a pooled trust is from the special needs person. (A third party can contribute to a Pooled Trust, but that is simply a gift. A third person's contributions to a Pooled Trust, even for the benefit of a person with special needs, has no impact on Supplemental Security Income or Medicaid eligibility for the person with special needs.) A future installment will discuss third-party trusts in more detail.

To understand the importance of the Pooled Trusts, just like the importance of individual Special Needs Trusts, one must remember how Social Security and Medicaid treat someone who has given away money to become financially eligible.

As we’ve discussed in prior installments, both the Supplemental Security Income program (the Social Security program for people who are disabled but don’t have sufficient work history to qualify for Social Security Disability Income) and the Medicaid program (health insurance for poor people) are “means tested.” Accordingly, people who have the financial means to pay for themselves are not eligible for SSI or Medicaid. Because, for many people, there is a very high emotional cost (and sometimes a care cost) in allowing all of their life savings to be spent away, people look for a way to protect some of their assets while still qualifying for SSI and Medicaid. Giving money (or other assets) to a relative, a trusted friend, or a trust helps protect the assets given away, but the gifts can make the applicant ineligible for SSI and Medicaid or trigger limited Medicaid coverage for a time.

That ineligibility for, or restrictions on, SSI and/or Medicaid would create a problem for many people with special needs. They often need the SSI

income and the Medicaid health insurance right away. At the same time, they want the ability to get some personal items or entertainment that they wouldn't be able to afford if all they had were SSI income and Medicaid coverage, so they would like to find a way to "keep" some of their savings.

A Pooled Trust (i.e., d4c trust,) like a d4a Special Needs Trust can help fix the collision of the need for SSI and Medicaid and the desire to preserve some assets. Someone who needs SSI and Medicaid but who has too much money to qualify can put the excess money into a Pooled Trust trust without getting a penalty of ineligibility or restricted coverage. Then, the money is available, under certain restrictions, for the benefit of the person.

The difference between a Pooled Trust and an individual Special Needs Trust is a difference in the costs and in the administrative hassles of running the trust.

A Pooled Trust is kind of like a mutual fund. A mutual fund is a pool of money from many people lumped together to make investments that benefit all of the investors. The individual investors don't have to pick the stocks in which to invest or the time to buy and sell. The individual investors don't have to track the times of sales and purchases and dividend payouts for the stocks in the fund. The fund managers have those duties.

A Pooled Trust accepts cash from someone with special needs and puts it together with all of the other money put into the trust by other people with special needs and invests that money to benefit all of the participants. Each participant's share of the trust assets are proportional to their cash invested in the trust. (The trust manager tracks the participants' value in the trust.)

The trust contents that belong to a particular participant can be withdrawn from the trust (usually in small amounts) to pay for something for the person with special needs (i.e., the participant in the Pooled Trust.) Usually, the person with special needs has an intermediary or a spokesperson who communicates with the Pooled Trust managers to arrange specific purchases. (Direct contact between the person with special needs and the trust managers would look too much like the person with special needs had direct control over the trust contents. Such direct control would probably cause SSI and Medicaid to count the participant's share of the Pooled Trust as assets available to the person with special needs, resulting in that person having too many assets to qualify for SSI and/or Medicaid.)

Like with an individual Special Needs Trust, a Pooled Trust cannot give the beneficiary cash (except for \$20 per month spending money as discussed in an earlier installment) without causing a reduction of the beneficiary's SSI income. Similarly, the Pooled Trust can't spend money on food or shelter for the person with special needs without causing a reduction in SSI.

Also like with the individual Special Needs Trust, a Pooled Trust has a payback provision. When the Pooled Trust participant (the person with special needs who put the assets into the trust in the first place) dies, the trust must repay Medicaid for the costs of care that Medicaid had previously paid for the beneficiary up to the amount of that beneficiary's remaining assets in the Pooled Trust. (If the contents of the trust are worth more, then the excess assets can be given out to remainder beneficiaries, like how a will operates. If the Medicaid "debt" is equal to or greater than the participant's balance in the Pooled Trust, then the Medicaid gets it all.)

There is a twist on the repayment requirement common in Pooled Trusts. Pooled Trust contents may be given to charity rather than paid to Medicaid. Because Pooled Trusts are usually operated by charities, the Pooled Trust might encourage that its operating charity be designated as the remainder beneficiary.

Even though the family of the special needs person won't receive the contents of the Pooled Trust, an investment in a Pooled Trust still benefits the person with special needs. By placing excess assets into a Pooled Trust, the person with special needs can get SSI and/or Medicaid. The person with special needs can also get "extra" stuff while on SSI and Medicaid. SSI and Medicaid are necessary for some people with special needs, but they provide a bare minimum of income and health insurance. They don't provide entertainment or clothing or anything else above the bare minimum. SSI and Medicaid don't provide any "spice" to life. They are safety net programs. They aren't supposed to provide "spice."

A d4c Pooled Trust can provide some spice. It can buy baseball tickets, a TV, a vacation, a magazine subscription, a computer and internet access to name just a few examples. A Pooled Trust, like a special needs trust, can provide just about anything (anything that is legal, anyway) for the beneficiary to allow the beneficiary to have something more than the bare minimum to survive.

If the beneficiary uses the entire contents of his or her share of the Pooled Trust, then Medicaid gets nothing and the charity gets nothing. That's okay. They were able to make maximum use of their SSI benefits, their Medicaid benefits, and their own assets.

Unfortunately, in many states, the person with special needs can place assets in the trust only if he or she is younger than age 65. So, this kind of trust isn't available for most seniors. In Ohio, where I practice, people over 65 can place assets into a Pooled Trust. (It's one of several Ohio quirks in the public benefits programs. Those quirks might go away if a proposal by the governor is adopted.)

So, what are the differences between a Pooled Trust and an individual

Special Needs Trust?

- As mentioned above, in some states, a person over 65 can use a Pooled Trust.
- A Pooled Trust cannot accept non-cash assets. The Pooled Trust chooses its own investments and must maintain a certain amount of ready cash to pay requests for payouts. Any incoming non-cash assets probably won't fit with the trust's investment strategy and also might screw up the cash on hand.
- Because a Pooled Trust is investing in the stock and bond market, it can't take real estate. An individual Special Needs Trust can own a house in which the person with special needs can live. A Pooled Trust can't own that house because it can't be commingled in with the trust contributions of the other participants.
- A Pooled Trust has lower costs to each participant (by spreading those costs over all participants and/or getting support for administrative costs from the money left over from deceased participants who designated the operating charity as the remainder beneficiary.) An individual Special Needs Trust pays all of its own administrative costs. My rule of thumb (when the age 65 restriction isn't a factor and a house isn't involved) is that I recommend an individual Special Needs Trust for a pile of assets over \$50,000. I recommend a Pooled Trust for lower amounts.

A d4c Pooled Trust allows someone with special needs (who has some assets) to continue to enjoy those assets during his or her lifetime and still get SSI and/or Medicaid. It allows the beneficiary to avoid the empty feeling that can come from watching his or her life savings escape while trying to qualify for SSI and Medicaid.

Suggest a Newsletter Topic

I try to write something new (and useful) in my newsletter every week. So, I know that I will sometimes have writer's block. I'd like your help, please.

If you have a topic for my newsletter that you'd kindly suggest, I promise to consider it. (I don't promise to pursue it. I just promise to consider it.) I try to write about issues concerning seniors, health care, long term care, special needs, Veterans Pension (aka Aid and Attendance) benefits, and Veterans Compensation benefits. Please keep your suggestions within or near to those topics.

Please submit your suggestion [here](#). If I use your topic suggestion, I'll put the content in both my blog and newsletter.

Thank you for your help.

Social Media Posts from the past week

04-09-2015 New #AndroidApps for #Children with #Autism <http://ow.ly/K3mLy>

04-08-2015 How #Employers can support #FamilyCaregivers of #AgingParents <http://ow.ly/K3s1Z>

04-07-2015 #LongTermCareInsurance giant #Genworth struggles with policyholders' care costs <http://ow.ly/K3p2t>

04-06-2015 What to ask about when looking at #NursingHomes for #AgingParent <http://ow.ly/K1J6p>

04-05-2015 Looking at #Seniors and #SeniorCare differently <http://ow.ly/K3wl3>

04-04-2015 Gracefully managing #Incontinence in #SeniorCare <http://ow.ly/K3vqc>

04-03-2015 How a #SpecialNeedsTrust helps someone qualify for #SSI and #Medicaid <http://wp.me/p47F09-ak>

Older social media posts can be found in the [social media post archive](#) on the firm's website, ProtectingSeniors.com.

The Koewler Law Firm News

4-15-2015 Jim Koewler will talk about long term care and its costs at a caregiver support group at HMC Hospice of Medina County.

4-16-2015 In honor of National Health Care Decision Day, Jim Koewler will speak on Health Care Powers of Attorney, Living Wills, and other advance directives at the Active Adults Center in Barberton, Ohio. Free help preparing Living Wills for 20 audience members will be provided.

4-16-2015 In honor of National Health Care Decision Day, Jim Koewler will discuss Powers of Attorney, Living Wills, and other advance directives as part of a panel discussion at Liberty Residence I in Wadsworth, Ohio.

4-23-2015 Jim Koewler will speak on Powers of Attorney, Living Wills, and other advance directives to the Portage County Senior Services Network in Ravenna, Ohio.

4-23-2015 Jim Koewler will present Overcoming Seniors' Resistance to Long Term Care at the Holiday Inn in Mansfield, Ohio. Continuing education credit is available for Certified Case Managers, social workers, counselors, and nurses.

4-29-2015 Jim Koewler will present Navigating Medicaid, Medicare, and the Affordable Care Act at Kemper House in Highland Heights, Ohio. Continuing education credit is available for Certified Case Managers, social workers, counselors, and nurses.

5-26-2015 Jim Koewler will discuss the legal issues that seniors face, especially focusing on long term care, at HCR ManorCare in Parma, Ohio.

6-9-2015 Jim Koewler will discuss Preventing Senior Fraud at The AbbeWood in Elyria, Ohio. Continuing education credit is available for Certified Case Managers, social workers, counselors, and nurses.

6-16-2015 Jim Koewler will speak on planning ahead to protect your life savings against long term care costs at a meeting of the University Hospitals Bedford Medical Center SeniorNet at the Atrium of Anna Maria in Aurora, Ohio.

Older items of firm news can be found in the [news archive](#) on the firm's website, ProtectingSeniors.com.

Jim's available presentations

- Navigating Medicaid, Medicare, and the Affordable Care Act (Continuing Education credit available for social workers, counselors, nurses, and Certified Case Managers)
- Overcoming Seniors' Resistance to Long Term Care (Continuing Education credit available for social workers, counselors, nurses and Certified Case Managers)
- Preventing Senior Fraud (Continuing Education credit available for social workers, counselors, nurses and Certified Case Managers)
- My Care Ohio and Medicare/Medicaid “Dual Eligibles” (Continuing Education credit available for social workers, counselors, nurses, and seeking approval for Certified Case Managers)
- Government Benefits that can help Pay for Long Term Care (Continuing Education credit available for social workers, counselors, nurses, and seeking approval for Certified Case Managers)
- Legal Issues for People with Dementia (Continuing Education credit available for social workers, counselors, and nurses)
- Protect your Life Savings from the Costs of Long Term Care (Continuing Education credit available for social workers, counselors, and nurses)
- Veterans Benefits for Long Term Care (Continuing Education credit available for social workers, counselors, and nurses)
- Advance Directives – Powers of Attorney, Living Wills, etc. (Continuing Education credit available for social workers, counselors, and nurses)
- Buying Long Term Care Insurance Wisely (Continuing Education credit available for social workers, counselors, and nurses)

- Planning Ahead to Protect against Long Term Care Costs (Continuing Education credit available for social workers, counselors, and nurses)
- Organizing for Long Term Care (Continuing Education credit available for social workers, counselors, and nurses)
- Pre-planning your Funeral (Continuing Education credit available for social workers, counselors, and nurses)
- Protecting your Money when you need Long Term Care and Essential Estate Planning Considerations (with free living wills for the audience)
- Myths about Long Term Care Costs
- How to help your Parents Manage their Affairs

Upcoming meetings

- 4-10-2015 Eldercare Professionals of Ohio, O'Neill Healthcare, Lakewood, Ohio, 9:00 a.m.
- 4-15-2015 Geauga Professional Association Specializing in Seniors ("PASS"), 8:30 a.m.
- 4-20-2015 Medina County Senior Services Network's Education Committee, Tres Potrillos, Medina, Ohio, 11:30 a.m.
- 4-23-2015 Portage Senior Services Network, Coleman Adult Day Services, Ravenna, Ohio, 8:30 a.m.
- 4-23-2015 Parma Hospital Senior Resource Network, Broadview MultiCare, Parma, Ohio, 8:30 a.m.
- 4-24-2015 Eldercare Professionals of Ohio, Shaker Gardens, Shaker Heights, Ohio, 9:00 a.m.
- 4-28-2015 Summit County Senior Services Network, Anthony Kucko Kertesz Funeral Home, Akron, Ohio, 8:00 a.m.
- 4-21-2015 Professional Networking Group, The Atrium of Anna Maria, Aurora, Ohio, 8:30 a.m.
- 4-28-2015 Wayne Holmes Senior Service Coalition, Wayne County Care Center, Wooster, Ohio, 8:30 a.m.
- 4-29-2015 UH Bedford Senior Network's Spring Fling, Hilton Garden Inn, Twinsburg, Ohio
- 4-30-2015 The Association of Specialists in Aging, Mentor Senior Center, Mentor, Ohio, 8:30 a.m.
- 5-5-2015 Aging Services Network of Euclid, Euclid Hospital's Waltz Auditorium, Euclid, Ohio, 8:30 a.m.
- 5-6-2015 Stark Senior Services Network, Canton Baptist Temple, Canton, Ohio, 9:00 a.m.
- 5-6-2015 Richfield Chamber of Commerce luncheon, The Taverne of Richfield, Richfield, Ohio, 11:45 a.m.
- 5-6-2015 Medina County Senior Services Network's Client Services Committee, Sully's, Medina, Ohio, 3:00 p.m.
- 5-8-2015 Eldercare Professionals of Ohio, Century Oak Care Center, Middleburg Heights, Ohio, 9:00 a.m.

Newsletter Archive

Past issues of this newsletter can be found in the [newsletter archive](#) on the firm's blog site, ProtectingSeniors.com.

Contact Jim Koewler

If you'd like to contact Jim, this newsletter has a dedicated [contact page](#) on the firm's blog site, ProtectingSeniorsNews.com.

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