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Seniors and Special Needs News - April 17, 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 ABLÉ Account 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 ABLÉ 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. The newsletter of April 10, 2015 discussed how a Pooled Trust can help someone with special needs qualify for SSI and Medicaid.

Today's newsletter discusses how an ABLÉ (Achieving a Better Life Experience) account 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.

I first discussed ABLE accounts in my newsletter of February 6, 2015 shortly after the law creating them was passed. That newsletter focused on the need to control the amount of money that goes into an ABLE account from other people, like the parents or grandparents of the person with special needs, for example (so-called "third-party money.") Today's newsletter will focus on the usefulness of an ABLE account as a place to put first-party money (i.e., money that belongs to the person with special needs.)

NOTE: ABLE accounts are not yet available. The necessary law has passed Congress and received President Obama's signature. The U.S. Treasury Department must still issue implementing regulations, and the various states must approve them in each state. (The state's do most of the work on Medicaid, so their cooperation on the interface between ABLE accounts and Medicaid is necessary.) Despite their not being available at this time, I am discussing ABLE accounts this week because, for editorial purposes, this topic fits in with the series currently underway about qualifying for SSI and Medicaid for people with special needs.

For purposes of placing "excess money" somewhere that it won't make a person with special needs too "rich" to receive Supplemental Security Income (SSI) and/or Medicaid for long term care, an ABLE account has the same effect as a stand-alone Special Needs Trust (discussed in the newsletter of April 3, 2015) and a Pooled Trust (discussed in the newsletter of April 10, 2015.)

A person with special needs who has excess resources will be able to place assets into an ABLE account without being penalized by the Social Security Administration or Medicaid for giving away assets. An ABLE account can only received \$14,000 in any one year. A person with special needs who has limited assets may need only to make an ABLE account deposit to remove excess resources from being counted against them for SSI and Medicaid eligibility. For someone with more assets, an ABLE account may be part of the plan but probably not the only answer. (A person can have only one ABLE account, so there's no gaming the system to protect more money by creating multiple accounts.)

BIG LIMITATION: Under the recently passed law, ABLE accounts are available only to people with special needs whose disability started before the age of 26.

Background: To understand the importance of ABLE accounts, just like the importance of individual Special Needs Trusts and Pooled Trusts, one must remember how Social Security and Medicaid treat someone who has given away money to become financially eligible. (If you read my newsletters every week, this next part will seem very repetitive because the background info is the same for individual Special Needs Trusts, Pooled Trusts, and ABLE accounts. I am repeating it here because I don't want a

first time reader or someone looking at this newsletter in the archive to have to go find the background reasoning in a prior newsletter. Also, if you read my newsletter every week, you must have insomnia badly.)

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.

An ABLE account, like a Special Needs Trust or a Pooled 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 up to \$14,000 of the excess money into an ABLE account without getting a penalty of ineligibility or restricted coverage.

The differences between an ABLE account (as I expect or hope them to be implemented) and an individual Special Needs Trust or a Pooled is the apparent ease of use of the ABLE account as compared to the trusts.

Money from an ABLE account can be used for education, and/or medical prevention and wellness services. (Expenditures from a stand-alone Special Needs Trust or a Pooled Trust for such services effectively reduce government benefits, but these expenditures from an ABLE account should not impact government benefits.) In addition, the ABLE account can pay for transportation, assistive technologies, personal support services, financial management and administration, oversight, monitoring, funeral and burial expenses, and legal fees. So, the contents in an ABLE account cannot be used for as many different types of purchases as the contents of an individual Special Needs Trust or a Pooled Trust.

Also, at least at this point, it's possible that an ABLE account won't need a

person to act as go-between for the cash in the account and the actual expenditure. ABLE accounts may give the person with special needs more direct control over the assets in the account than the person has over the assets in a Special Needs Trust or a Pooled Trust. The limitations on the types of allowed expenditures may allow some more direct involvement by the account holder (*i.e.*, the person with special needs.) Of course, the implementing regulations might create a go-between mechanism to prevent the account holder's receipt of cash which could then cause an problem with SSI eligibility for having excess income.

Like an individual Special Needs Trust and a Pooled Trust, an ABLE account has a payback requirement. When the ABLE account holder (the person with special needs) dies, the account must repay Medicaid for the costs of care that Medicaid had previously paid for the beneficiary up to the amount left in the account. (If the contents of the account 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 ABLE account balance, then Medicaid gets it all.) If the account holder uses the entire contents of his or her ABLE account, then Medicaid gets nothing. That's okay. The person with special needs was were able to make maximum use of his or her SSI benefits, his or her Medicaid benefits, and his or her own assets.

As mentioned above, an ABLE account can accept up to \$14,000 per year. (That amount may go up with inflation just like the gift tax exemption goes up every few years.) For the purpose of having few enough assets to qualify for SSI and Medicaid, the annual limitation isn't an issue. Someone with special needs is trying to qualify for SSI and Medicaid right now. Once that person qualifies, annual income must be controlled to keep eligibility. That control on income probably prevents the person from accumulating enough money in any later year to make any new deposit into an ABLE account or at least from making a large deposit. Unless someone with special needs has an unexpected influx of money (like an inheritance, or an accident settlement, or a lottery win,) only the initial ABLE account deposit is likely to be important to SSI or Medicaid eligibility.

While an ABLE account can legally accept deposits from anyone (like a parent or grandparent, for example,) the payback requirement creates a disincentive for any deposits of third-party money. (Remember, money that never belonged to the person with special needs isn't subject to a payback requirement. So, putting any third-party at risk of being paid to Medicaid upon the death of the intended beneficiary seems like a waste of money.)

Also, because the ABLE account will be a bank account or a brokerage/investment account and because of the annual \$14,000 limitation on deposits, the ABLE account cannot accept real estate. This is not a place to protect a home for the person with special needs.

In conclusion, if a person with special needs must shed some assets to qualify for SSI or Medicaid, an ABLÉ account (at least as set up in the law) can help shield a certain amount of money from being counted. The ABLÉ account may be only part of the asset-protection strategy, but its apparent ease of use may prove valuable for expenditures over many years - in addition to the benefit of helping the account holder achieve SSI and Medicaid eligibility.

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

04-16-2015 Documentary #Film about #Autism and #Romance <http://ow.ly/K3n7N>

04-15-2015 #FamilyCaregivers need to find time for themselves <http://ow.ly/K3t1Z>

04-14-2015 Another perspective on #LongTermCareInsurance <http://ow.ly/K3xKG>

04-13-2015 Risks of hiring a private #Caregiver for #SeniorCare <http://ow.ly/K3t1E>

04-12-2015 Difficult to assess #Pain felt by people with #Dementia <http://ow.ly/K3vEx>

04-11-2015 #GlenCampbell's #Family shows how families can fight over #SeniorCare for an #AgingParent <http://ow.ly/K3wBH>

04-10-2015 How a #PooledTrust can help someone with #SpecialNeeds qualify for #SSI and #Medicaid <http://wp.me/p47F09-ar>

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

4-23-2015 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

4-20-2015 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.

5-13-2015 Medina County Senior Services Network, Waite and Sons Funeral Home, Medina, Ohio, 8:00 a.m.

5-13-2015 Summit Senior Sales, Administrators and Marketers Association, Canal Pointe, Akron, Ohio, 2:30 p.m.

5-14-2015 Lorain County Senior Services Network, Life Care Center of Elyria, Elyria, Ohio, 8:30 a.m.

Newsletter Archive

Past issues of this newsletter can be found in the [newsletter archive](#) on the firm's website, 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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