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## Seniors and Special Needs News - April 3, 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 Special Needs 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 ABLER 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.

Today's newsletter discusses how a self-settled Special Needs 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.

Someone with excess resources can set up a Special Needs Trust according to the Chapter 42, Section 1396p(d)(4)(a) of the United States Code. (The United States Code is the set of laws created by Congress, *i.e.*, 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 d4a trusts.

These d4a trusts are self-settled. That means that the person with special needs is putting his or her own money (or other assets) into the trust. That is an important distinction with third-party trusts into which someone other than the person with special needs places assets. (A future installment will discuss third-party trusts in more detail.) To understand the importance of the first-party nature of d4a trusts, we should review 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 Supplement 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 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 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 d4a 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 contents of the trust can be used only for the benefit of the person who put the assets into it (while that person is alive.) The trustee (the person who is the fiduciary in charge of the trust) can spend money from the trust for the benefit of the beneficiary (who MUST BE the special needs person who put the assets into it in the first place.) The trustee 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 trustee can't spend money from the trust on food or shelter for the beneficiary without causing a reduction in SSI.

Perhaps the biggest restriction on the d4a trust is the requirement for a payback provision. When the beneficiary (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. (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 contents of the trust, then the Medicaid gets it all.

So, if Medicaid is going to get it all anyway, why put anything into a d4a trust? To get "extra" stuff while on SSI and Medicaid, that's why. 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 d4a special needs 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 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 the trust, then Medicaid gets nothing. That's okay.

Unfortunately, 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 seniors.

Also, a trust into which other people place money for the special needs person (a third-party or d4c trust) is often called a special needs trust, but I usually call them something different. I will discuss these third-party trusts in a future installment.

A d4a 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**

04-02-2015 Teach #SocialSkills to #Children with #Autism  
<http://ow.ly/K3IUq>

04-01-2015 Bi-Partisan Congressional caucus formed to support  
 #FamilyCaregivers <http://ow.ly/K3pRj>

03-31-2015 New #LongTermCareInsurance policies from United Security  
 show wide variety of choices available <http://ow.ly/K3ow3>

03-30-2015 #LongTermCare #Ombudsman looks out for #NursingHome  
 residents <http://ow.ly/K1HRn>

03-29-2015 #Veterans need to be cautious when offered quick access to  
 #Pension (aka #Aid&Attendance) <http://ow.ly/K3ulH>

03-28-2015 #Fiduciary obligations of #Guardians, #Conservators, and  
 #PowersOfAttorney <http://ow.ly/K3sLn>

03-27-2015 How someone with #SpecialNeeds can become poor enough to  
 get income from #SocialSecurity <http://wp.me/p47F09-ae>

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

## The Koewler Law Firm News

4-8-2015 Jim Koewler will present a 3-hour continuing education program  
 entitled "Legal Issues for Older Adults and their Loved Ones" at a seminar  
 for Direction Home, the Akron Canton Area Agency on Aging at the Akron  
 General Wellness Center in Uniontown, Ohio. The program will discuss  
 Powers of Attorney, Health Care Powers of Attorney, Living Wills, and other  
 advance directives; Legal Issues when someone has Dementia; and What  
 Seniors know about Long Term Care Costs that is Wrong. Continuing  
 education credit is available for social workers, counselors, and nurses.

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](http://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

- 4-7-2015 Aging Services Network of Euclid, Euclid Senior Center Health Fair, 10:00 a.m.
- 4-8-2015 Medina County Senior Services Network, Magnolia Village, Wadsworth, Ohio, 8:00 a.m.
- 4-8-2015 Summit Senior Sales, Administrators and Marketers Association, Visiting Nurse Service, Akron, Ohio, 2:30 p.m.
- 4-9-2015 Lorain County Senior Services Network, Kingston of Vermilion, Vermilion, Ohio, 8:30 a.m.
- 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.

## Newsletter Archive

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

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