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Seniors and Special Needs News - July 1, 2016
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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

Ohio Medicaid changes "Aged Blind Disabled" Eligibility

The Trustee must empty the Miller Trust each month

This week's newsletter continues the discussion of the changes to Ohio Medicaid’s Aged, Blind and Disabled (ABD) program for people who need long term care coming in 2016-2017. The initial installment (April 28, 2016) provided an overview of the transition from the old system (following section 209(b) of the federal Medicaid law) to the new system (that will follow section 1634 of the federal Medicaid law.) The May 6, 2016 installment discussed the new income rules that will go into effect with the new eligibility system. The May 13, 2016 installment discussed setting up a Qualified Income Trust (aka Miller Trust) that will be necessary for people who need ABD Medicaid to help pay for long term care. The June 17, 2016 installment discussed the Ohio rules that describe how to use the Miller Trust each month. The June 24, 2016 installment discussed the difficulty in understanding the need for a Miller Trust. Today's installment will discuss the need to empty the Miller Trust account every month.

The Ohio Department of Medicaid has finalized its new rule on Miller Trusts (aka Qualified Income Trusts or QITs.) A copy of the final rule is available here. Because the rule calls them QITs and today's installment makes a number of references to the new rule, for this installment, I'll usually call them QITs.

The final version of the rule, consistent with the original draft version and proposed versions of the rule, requires that the trustee spend all of the money contained in the trust each month, month in and month out. Unfortunately for the trustees, the rule doesn't state this requirement in English but instead states it in Bureaucrat-ese. Section M of the final rule provides "When income placed into the QIT exceeds the amount paid out of the QIT . . ., the excess income may be subject to penalties . . . ."

Translating into English (to the extent possible):

First, one must understand that, in Medicaid's rules, money is "income" only during the month in which it arrives in the account or in the hands of the Medicaid-covered person. If the money is still in the person's account or in the person's possession at the end of the month, that money is now considered as part of "assets" (often called "resources") belonging to that person. (Assets/Resources are controlled by a different set of Medicaid rules. Assets/Resources are just as important as Income for the person's Medicaid eligibility. They just have different rules that apply to them. During this change of Medicaid rules, the Asset/Resource rules are not changing significantly except for an increase in the amount of Assets/Resources that a Medicaid-covered person can keep from $1,500 to $2,000.) So, because the QIT can accept only "income," money must be placed into the QIT during the month that the money arrived and only during that month.

Second, section H of the new rule requires that "excess income" (meaning the amount above $2,199 per month (Note: That amount will be adjusted for inflation from time to time.)) must be placed into the QIT. Section J of the new rule provides that income that should have placed into the QIT but was not "will be considered available for purposes of determining the individual's medicaid eligibility for that month." When money is "available" to a person, it is counted as that person's money. When a person has income "available" to him or her that exceeds $2,199, that person is not eligible for Medicaid for long term care. The purpose of the QIT is to make the income above $2,199 "unavailable" to the person. (I know, your starting to think that I'm talking gibberish. I warned you in the last installment that this Miller Trust (aka QIT) requirement isn't logical in the real world. It's not even close. "Them's the rules" is the only explanation I can provide.) So, putting sections H and J together means that a person whose income over $2,199 doesn't go into the QIT is not eligible for long term care Medicaid.

This leads us to section M's language "when income placed into the QIT exceeds the amount paid out of the QIT . . ., the excess income may be subject to penalties . . . ." The language "income placed into the QIT exceeds the amount paid out" means that more money went into the trust that came out of the trust in a particular month. The "excess income" is