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## Seniors and Special Needs News - July 22, 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

## Ohio Medicaid changes "Aged Blind Disabled" Eligibility Changes to form Miller Trust

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. The [July 1, 2016](#) installment, discussed the need to empty the Miller Trust account every month. The [July 8, 2016](#) installment discussed the need to balance the Miller Trust with the desire to have health insurance. The [July 15, 2016](#) installment discussed installment discussed the confusing deposit rules for Miller Trusts. Today's installment will discuss the changes that the Ohio Department of Medicaid has made to the form Miller Trust document.

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](#). The first form Miller Trust from the Ohio Department of Medicaid can be found [here](#). The new version of the form Miller Trust from the Ohio Department of Medicaid can be found [here](#).

Because the rule calls them QITs and today's installment makes a number of references to the new rule, for this installment, I've started usually to call them QITs.

The Ohio Department of Medicaid had originally announced that the new rules would take effect on July 1, 2016. As that date approached, and the enormity of the changeover became more apparent, the effective date was delayed until August 1, 2016. I recently heard a rumor (and it is just that, only a rumor) that the implementation will be delayed again.

While the delays may seem frustrating, it is very hard to overstate the enormity of the changes that Ohio's Department of Medicaid is trying to make. Not only are there the rule changes for people who need long term care that I have been discussing (and will continue to discuss) in my blog and newsletter. There are bigger changes (affecting tens of thousands more people) in the eligibility rules for Medicaid for people who are disabled but do not need long term care. In addition, to oversee the new requirements for all affected people, the state and county Medicaid offices have to move to a new software system to manage the Medicaid program.

As discussed previously, someone in Ohio who needs Medicaid support to pay for long term care whose gross monthly income exceeds the Special Income Level (\$2,199.00 at this time) must use a QIT to make the income over the Special Income Level not "income" anymore in the eyes of Medicaid. (Yes, the process is as hard to follow in real life as it is to follow in that sentence.) In order to get the benefits of the QIT, the amount of income over the \$2,199 must be placed into the QIT each month so that the remaining "countable" income is \$2,199 or less each month. (It's not getting any more understandable, is it?)

As mentioned above, the Ohio Department of Medicaid already has changed the QIT template.

First, a sentence has been added to specify that the trust's taxpayer identification number will be the Social Security number of the Primary Beneficiary (i.e., the person receiving or applying for Medicaid for long term care.) This added sentence clarifies that the money handled by the trust, and the small amount of interest earned by the trust, belong to the Primary Beneficiary for tax purposes. (Few, if any, people receiving Medicaid's help to pay for long term care have to pay taxes, but the income (even the possibility of income) in a bank account must be assigned to a taxpayer ID

number or a Social Security number.) This added sentence takes away the question of the number to use. That added language will also, for some banks and credit unions, clarify what kind of account the QIT will need. (e.g., a personal checking account, or a business account, or a fiduciary account, etc.)

Second, language has been added regarding powers of the trustee. Like the language specifying the taxpayer ID number, this language alleviates some of the concerns that banks and credit unions had about their obligations to verify that the trustee was following the law and carrying out his/her/its duties.

Among the concerns was the issue whether the trustee has the power to open an account, for example. (Remember, there are no inherent powers of a trustee. The trustee has only the powers given to him/her/it by the trust agreement.) The new language makes it clear that the trustee can open an account.

Third, in the same part of the document describing the trustee's powers, language has been added to require the trustee to prepare a Certification of Trust. A Certification of Trust is a document that has existed under Ohio law (Revised Code section 5810.13) before the new QIT rules were written. The Certification is a verification by the trustee that he/she/it has the authority to act as trustee and to carry out the activities that he/she/it is asking the bank to help with (such as opening a trust account, accepting deposits into the trust account, and paying money out of the trust account.) Banks and credit unions have certain obligations to make sure that they aren't used to defraud anyone and aren't defrauded themselves. There are lots of legal obligations placed on banks and credit unions. A Certification of Trust relieves the bank or credit union from having to investigate the trustee to determine if he/she/it is legitimate and is performing his/her/its duties correctly. Because these QIT accounts will not have much money in them and because the accounts must be emptied each month, forcing the banks and credit unions to spend a great deal of time and money to investigate and oversee the QIT trustee would cause the banks and credit unions to lose money on these account. If these QIT accounts were money-losers to the banks and credit unions, they wouldn't take these accounts. If banks and credit unions didn't take these accounts, there would be no way to comply with the QIT requirements. In short, allowing banks and credit unions to accept QIT accounts without undertaking expensive oversight is better than not having QIT accounts in Ohio. We can't let people lose their Medicaid benefits because banks and credit unions don't want the QIT accounts.

To go along with this requirement that the trustee prepare a Certification of Trust, the new QIT template includes a template for a Certification of Trust as well.

Finally, the QIT template changes the terminology that describes the person

signing the trust declaration with the Trustee. In the first version of the QIT template, a Trustee and a Settlor signed the document. In the new version, a Trustee and a Grantor sign the document. This change may not mean much, or it may mean a great deal. I haven't figured it out yet.

Historically, in trust law, Grantor and Settlor meant the same thing. There was no reason to choose one term or the other. In fact, some trust documents (even some published form trust documents) used the terms interchangeably in the same document. But, someone at the Ohio Department of Medicaid consciously chose to change these terms. My distrust of the Ohio Department of Medicaid makes me think over and over that the change of terms has some significance that I haven't yet found.

This terminology change is even more puzzling coming at the same time that the requirement for a Certification of Trust was inserted into the document. The Ohio statute that created the Certification of Trust (Revised Code section 5810.13) uses the term Settlor and doesn't use the term Grantor. In fact, despite the use of the term Settlor in the Certification of Trust statute, the template Certification of Trust uses the term Grantor. One would think that whomever was looking at the statute would probably have used the same term (i.e., Settlor) in the template documents, especially when Settlor was already in the first version of the template QIT.

This change bothers me. I'm wondering what I'm missing. (I'm puzzling and puzzling 'til my puzzler is sore, like the Grinch did.) I've posed this question to a number of elder law colleagues but have not yet received any response. This one really gnaws at me.

Thanks go out to my friend Steve Caine, a Solon, Ohio estate planning attorney, for his help with in confirming that "Grantor" and "Settlor" usually mean the same thing.

## **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 since the last newsletter

07-21-2016 Camp for adults with #SpecialNeeds <http://ow.ly/8YBM302pmbk>

07-20-2016 Should child be #FamilyCaregiver and #Financial support for #AgingParent? <http://ow.ly/9Lr130264Gr>

07-19-2016 Sharp rise in #LongTermCareInsurance #Premiums for #FederalEmployees <http://ow.ly/9tj1302o6j4>

07-18-2016 Have an honest talk with #AgingParents about #LongTermCare <http://ow.ly/bSMG302665j>

07-17-2016 The impact of #FinancialFraud on #OlderAdults <http://ow.ly/NAe330269wN>

07-16-2016 Pairing #OlderAdults and #RescueAnimals <http://ow.ly/LEPk302639D>

07-15-2016 #Ohio #Medicaid changes rules for #Aged #Blind #Disabled program -#MillerTrust deposit rules confusing <http://wp.me/p47F09-kS>

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

7-27-2016 Jim Koewler will discuss STABLE accounts (What Ohio calls its "Achieving a Better Life Experience" (aka ABLE) accounts) at a meeting of the Public Policy Committee of the Western Reserve Area Agency on Aging's Board of Trustees.

7-27-2016 Jim Koewler will discuss Ethical Issues in Case Management and Discharge Planning at Southwest General Health Center in Middleburg Heights, Ohio. Continuing education credit is available for Certified Case Managers, social workers, counselors, and nurses.

8-8-2016 Jim Koewler will discuss Medicaid for long term care at Sutliff II Apartments in Cuyahoga Falls, Ohio.

10-6-2016 Jim Koewler will discuss Veterans Benefits that Help with Long Term Care at Fairview Hospital in Cleveland, Ohio. Continuing education credit is available for Certified Case Managers, social workers, counselors, and nurses.

10-26-2016 Jim Koewler, as Chair of the Education Committee for the Medina County Senior Services Network, will help host a Caregiver Lifeline panel discussion at the Rustic Hills Country Club in Medina, Ohio.

12-14-2016 Jim Koewler will discuss Medicaid Qualifying Asset Transfers as part of a National Business Institute Seminar on Medicaid Lookback Rules and Planning in Cleveland, Ohio. Continuing Legal Education credit will be available.

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**

- Changes in Ohio Medicaid eligibility rules for 2016
- ABLE accounts for people with Special Needs: Their Use and Misuse
- Ethical Issues in Case Management and Discharge Planning (Continuing Education credit and Ethics credit available for social workers, counselors, nurses, and Certified Case Managers)
- Veterans Benefits that Help with Long Term Care (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, and nurses)
- Preventing Senior Fraud (Continuing Education credit available for social workers, counselors, and nurses)
- My Care Ohio and Medicare/Medicaid "Dual Eligibles" (Continuing Education credit available for social workers, counselors, and nurses)
- Navigating Medicaid, Medicare, and the Affordable Care Act (Continuing Education credit available for social workers, counselors, and nurses)
- What people "Know" about Long Term Care that is Wrong (Continuing Education credit available for social workers, counselors, and nurses)
- Government Benefits that can help Pay for Long Term Care (Continuing Education credit available for social workers, counselors, and nurses)
- Legal Issues for People with Dementia (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 Final Arrangements (Continuing Education credit available for social workers, counselors, and nurses)
- Elder Law: A Primer (Continuing Legal Education credit available)
- Protecting your Money when you need Long Term Care and Essential Estate Planning Considerations (with free living wills for up to 20 audience members)
- Health Insurance for Families: The Affordable Care Act ("ObamaCare,") Medicaid, and Medicare
- Myths about Long Term Care Costs
- How to help your Parents Manage their Affairs
- Legal Lessons for Life

## **Upcoming meetings**

07-22-2016 Eldercare Professionals of Ohio, Shaker Gardens, Beachwood, Ohio, 9:00 a.m.

07-26-2016 Summit County Senior Services Network, Kucko Anthony Kertesz Funeral Home, Akron, Ohio, 8:00 a.m.

07-26-2016 Professional Networking Group Picnic, 1:00 p.m.

07-26-2016 Wayne Holmes Senior Service Coalition, Wayne County Care Center, Wooster, Ohio, 8:30 a.m.

07-24-2016 Richfield Chamber of Commerce, "Sweet Corn Challenge" Bicycle Rally and Health Walk, Richfield Green, Richfield, Ohio, 6:00 a.m.

07-28-2016 Portage Senior Services Network, Coleman Adult Day Services, Ravenna, Ohio, 8:30 a.m.

07-28-2016 The Association of Specialists in Aging, Mentor Senior Center, Mentor, Ohio, 8:30 a.m.

08-02-2016 Aging Services Network East, Euclid Hospital's Waltz Auditorium, Euclid, Ohio, 8:30 a.m.

08-02-2016 Montrose SeniorCare Networking Group, Panera Montrose, Bath, Ohio 8:30 a.m.

08-02-2016 Stow ElderCare Networking Group, Corner Cup Coffee House, Stow, Ohio, 9:00 a.m.

08-03-2016 Stark Senior Services Network, Myers Lake Ballroom, Canton, Ohio, 9:00 a.m.

08-03-2016 Richfield Chamber of Commerce luncheon, Days Inn and Suites,

Richfield, Ohio, 11:45 a.m.

08-03-2016 Medina County Senior Services Network's Client Services Committee, Sully's, Medina, Ohio, 3:00 p.m.

08-10-2016 Medina County Senior Services Network, Medina County Home, Medina, Ohio, 8:00 a.m.

08-10-2016 Summit Senior Sales, Administrators and Marketers Association, Fairlawn Nursing & Rehabilitation, Fairlawn, Ohio, 2:30 p.m.

08-11-2016 Lorain County Senior Services Network, Woods at French Creek, Avon, Ohio, 8:30 a.m.

08-12-2016 Eldercare Professionals of Ohio, The Heights Care and Rehabilitation Center, Broadview Heights, Ohio, 9:00 a.m.

08-15-2016 Medina County Senior Services Network's Education Committee, Yours Truly, Medina, Ohio, 11:30 a.m.

08-16-2016 UH Bedford Medical Center Senior Network Mixer, Seven Hills Health and Rehab, Seven Hills, Ohio, 4:00 p.m.

08-17-2016 Professional Association Specializing in Seniors ("PASS"), Maplewood Senior Living, Chesterland, 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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