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Seniors and Special Needs News - August 12, 2016

1 message

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Fri, Aug 12, 2016 at 9:00 AM

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 "Invisible" Gross Income

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 the confusing deposit rules for Miller Trusts. The [July 22, 2016](#) installment discussed the changes that the Ohio Department of Medicaid has made to the form Miller Trust document. The [July 29, 2016](#) installment discussed whether income is supposed to go directly into the Miller Trust. The [August 5, 2016](#) installment discussed Medicaid's insistence that the transfers (or deposits) into the Miller Trust account be automatic. Today's installment will discuss money that doesn't actually reach the Medicaid-recipient that, nonetheless, counts as "income" for purposes of using a Miller Trust.

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 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, I'll usually 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.

While the delay 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 (or more than just that excess income) must be placed into the QIT each month so that the remaining "countable" income is

\$2,199 or less each month. (I know, it's not getting any more understandable.)

Last week's installment described the lack of clarity in Ohio Medicaid's new rule whether money is supposed to get deposited into the QIT account directly from the income source or it is supposed to be transferred into the QIT account from another account belonging to the Medicaid recipient. This lack of clarity is compounded by indications in the new rule that the Ohio Medicaid wants the deposits/transfers to go into the QIT account automatically.

Section H of the QIT rule tries to describe the requirement(s) to have money transferred into the QIT automatically. If money that needs to go into the QIT can't go into it automatically, the manual transfers into the QIT must be documented. I hope that the monthly QIT statements that must be provided to the Medicaid caseworker with each annual Medicaid renewal will provide adequate documentation that the manual transfers into the QIT actually took place.

In addition, the reason(s) why the transfers can't be automatic must be documented. Unfortunately, there is no explanation what documentation will suffice. Perhaps a letter stating that the bank or credit union can't transfer money automatically will suffice. With luck, only a few people will have trouble arranging automatic transfers into the QIT. (People who disagree with what I wrote last week about "deposits" versus "transfers" into the QIT should arrange automatic "deposits" into the QIT directly from one or more of the Medicaid-recipient's income sources.)

But wait. There's more (as the TV infomercials say.)

The second sentence of Section H states, "Every effort should be made to have the individual's EXCESS income deposited directly into the QIT on a monthly basis." (emphasis added.) It is possible to read that sentence as requiring that the amount of the person's income above the Special Income Limit (currently \$2,199) must go into the QIT and any additional income that goes into the QIT (i.e., any deposit/transfer into the QIT that leaves less than \$2,199 outside the QIT) must go into the QIT manually.

I do not believe the better, more logical, (or certainly more practical) reading of the second sentence of Section H requires a part automatic/part manual placement of money into the QIT (for people who will have less than \$2,199 outside the QIT.) BUT, some Medicaid caseworkers somewhere in Ohio will eventually read it that way. Some representative of some Medicaid recipient will eventually have this discussion with the county Medicaid office. I fear that this little, stupid sentence is going to require a revision of the rule, the issuance of a policy letter (known as an Action Transmittal,) or a hearing. I hope that none of my clients becomes the guinea pig for this issue.

The Ohio Department of Medicaid rule on Miller Trusts (aka Qualified Income Trusts or QITs) took effect on August 1, 2016. A copy of the final rule is available [here](#). The latest version of the form Miller Trust from the Ohio Department of Medicaid can be found [here](#).

Ohio's county offices that oversee Medicaid are going to be able to implement this rule (and the other rule changes that occurred at the same time) very slowly. While the pace at which the counties get up to speed 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 (or more than just that excess income) must be placed into the QIT each month so that the remaining "countable" income is \$2,199 or less each month. (I know, it's not getting any more understandable.) Please realize that there is no real-world logic in this requirement. These are just the rules. There are many requirements in the rules that could have been made easier or more logical, but, still, the underlying requirement to put money into a Miller Trust and spend it out of the Miller Trust all in the same month is not logical.

To add to the confusion that the Medicaid recipient use a Miller Trust (or his/her family or guardian or long term care provider that is actually handling the income) is already suffering, people will not always realize that some

money that counts as "income" does not actually arrive in the Medicaid recipient's bank account. Unfortunately, counting everything that constitutes gross is important in determining whether someone needs a Miller Trust at all. It is also important in the monthly management of the Miller Trust.

Counting gross income incorrectly can make someone ineligible for Medicaid at the time of application and, later, can temporarily suspend Medicaid benefits when a mistake in QIT management is found.

The Miller Trust requirements are triggered by GROSS income over the Special Income Level (\$2,199 per month at this time.) Medicare Part B premiums (\$104.90 per month for most Medicare recipients) is part of gross income. For the vast majority of Medicare-covered people, the Part B premium is deducted from Social Security retirement payments before the monthly Social Security income arrives in the person's account (via direct deposit.) Because the Part B premium doesn't actually arrive, it is easy to overlook when counting up gross income. Some people on Medicaid for long term care in Ohio whose gross income is approximately \$2,300 per month will probably fail to set up Miller Trusts because they overlook the Part B premium and don't realize that they must comply with this requirement. Others, even after setting up the Miller Trust, are likely to put too little money into the Miller Trust because they overlook the Part B premium that must be counted in the \$2,199 that can stay out of the Miller Trust.

Tax withholding on monthly payments, most often pension payments, will cause the same problems. Because the withheld money doesn't arrive, it will often get overlooked in deciding whether to set up a Miller Trust and then again will get overlooked in determining how much money to put into the

Miller Trust each month.

"Invisible" income will add to the difficulties that confront Ohioans who need Medicaid for long term care.

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

08-11-2016 Efforts to link people with similar manifestations of

#Autism <http://ow.ly/zrLd302qGS2>

08-10-2016 Dealing with #Financial surprise, including learning that #AgingParent needs #LongTermCare <http://ow.ly/J2wc302pLsH>

08-09-2016 #Inflation & #LifeExpectancy not the only causes of #LongTermCareInsurance #Premium hikes <http://ow.ly/yGVz302qzKF>

08-08-2016 Designing a #Community for people with #Dementia <http://ow.ly/gXle302qv8u>

08-07-2016 Different approach to #Guardianship <http://ow.ly/YGwN302qtk8>

08-06-2016 #OlderAdults need to stay up to date on #Vaccines and #Immunizations <http://ow.ly/AtUg302qn3L>

08-05-2016 #Ohio #Medicaid changes rules for #Aged #Blind #Disabled program - Automatic Transfers into #MillerTrust <http://wp.me/p47F09-lp>

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

8-12-2016 Jim Koewler will discuss the changes in Ohio's system of Medicaid for long term care at a meeting of the leadership team of Bath Manor Special Care Centre in Akron, 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.

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

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.

08-23-2016 Summit County Senior Services Network, Kucko Anthony Kertesz Funeral Home, Akron, Ohio, 8:00 a.m.

08-23-2016 Wayne Holmes Senior Service Coalition, Wayne County Care Center, Wooster, Ohio, 8:30 a.m.

08-25-2016 Portage Senior Services Network, Family and Community Services Building, Ravenna, Ohio, 8:30 a.m.

08-25-2016 The Association of Specialists in Aging, Mentor Senior Center, Mentor, Ohio, 8:30 a.m.

08-26-2016 Eldercare Professionals of Ohio, Kemper House, Highland Heights, Ohio, 9:00 a.m.

09-06-2016 Montrose SeniorCare Networking Group, Panera Montrose, Bath, Ohio 8:30 a.m.

09-06-2016 Stow ElderCare Networking Group, Corner Cup Coffee House, Stow, Ohio, 9:00 a.m.

09-07-2016 Stark Senior Services Network, Myers Lake Ballroom, Canton, Ohio, 9:00 a.m.

09-07-2016 Richfield Chamber of Commerce luncheon, Days Inn and Suites, Richfield, Ohio, 11:45 a.m.

09-07-2016 Medina County Senior Services Network's Client Services Committee, Sully's, Medina, Ohio, 3:00 p.m.

09-08-2016 Lorain County Senior Services Network, The AbbeWood, Elyria, Ohio, 8:30 a.m.

09-08-2016 Professional Networking Group of Cleveland, Hillcrest Hospital Health Fair, Mayfield Heights, Ohio, 11:00 a.m.

09-09-2016 Eldercare Professionals of Ohio, Westlake Village, Westlake, Ohio, 9:00 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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