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Seniors and Special Needs News - September 2, 2016

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 Limit on monthly Miller Trust fees

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. 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. The [August 12, 2016](#) installment discussed money that doesn't actually reach the Medicaid-recipient that, nonetheless, counts as "income" for purposes of using a Miller Trust. The [August 19, 2016](#) installment discussed the appearance that a person on long term care Medicaid has an increase in income when he/she stops paying Medicare premiums. The [August 26, 2016](#) installment discussed the impact of tax withholding on certain income sources and the difficulty that the tax withholding creates for the Miller Trust. Today's installment will discuss the limit placed on monthly costs of the Miller Trust.

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.

Miller Trusts accounts will probably not be free accounts. Banks and credit unions sometimes offer free accounts if certain conditions are met. Often, free accounts are available to a customer who keeps a certain minimum balance in an account or combination of accounts. Because a person on Medicaid for long term care cannot have assets above \$2,000, no one on Medicaid will be able to meet the minimum balance requirements. Similarly, if a customer has a direct deposit into an account, there will be no fee. As discussed in the July 15, 2016 installment, it does not appear that the Miller Trust account can accept direct deposits. As a result, banks and credit unions will usually charge a monthly fee for Miller Trust accounts.

The new [Miller Trust rule](#) has provided for such fees. Section E(4) of the rule (bottom of page 2 on the [linked pdf](#)) allows the Miller Trust (aka QIT, short for Qualified Income Trust) to pay up to \$15 each month for “bank fees, attorney fees, and other expenses required to establish and administer the trust.” A separate policy statement ([MEPL 117](#)) from the Ohio Department of Medicaid explains that the fee will be deducted from the Medicaid recipient’s patient liability (i.e., the amount that the person must pay toward his/her care costs each month.) So, the Medicaid fund will, in the end, absorb the fees of the Miller Trusts.

Section E(4) of the Miller Trust rule also provides that, if \$15 is “insufficient to cover the cost to administer the [Miller] trust,” the Medicaid recipient (sometimes the person would be an applicant at this point) can request that the Ohio Department of Medicaid allow a higher fee. However, MEPL 117 states that a request for such a fee increase that is denied cannot be appealed (there are no hearing rights.) MEPL 117 goes on to explain that, if higher fees are not allowed, the Medicaid recipient/applicant can move the Miller Trust account to a different bank or credit union. This lack of hearing rights (aka appeal rights) isn’t fair, but the amount of money at stake is not likely to justify the time and expense of a hearing. (Man, I feel really uncomfortable agreeing that a lack of fairness makes sense.)

In practice, \$15 might be an appropriate amount to cover bank and credit union fees. I’ve heard the fees of a number of different banks and credit unions, and the fees generally fall between \$9 and \$14. So, \$15 should be enough to cover “bank fees,” as the rule calls them.

That bank and credit union fees will leave \$1 to \$6 per month for the other allowable costs, “attorney fees, and other expenses required to establish and administer the trust.” During the first few months of using the Miller Trust account, that amount will probably not be sufficient.

First, most people who need a Miller Trust will probably need paper checks. Most people who need a Miller Trust will be older than 80 years old. The Miller Trust trustee will probably be an adult child with an age in the high

50s or the 60s. The Medicaid recipients and many (perhaps a large majority) of the adult children will probably not be people who use online banking. As a result, most Miller Trust accounts will need paper checks. The cost of paper checks is usually more than \$15 and, depending on the delivery date, the cost of checks is likely to fall in the same month as the first account fee.

In such months, the \$15 dollar allowance is not enough. Check fees fall under “other expenses required to establish and administer the trust.”

Unfortunately, the form that the Ohio Department of Medicaid has created for the Miller Trusts does not look at any fee that isn't a monthly bank fee (to use the language from the rule.)

Second, while the Miller Trust trustee (and, if a separate person, whomever is managing the Medicaid recipient's income before some of it gets to the Miller Trust account) have difficulty understanding his/her obligations, legal fees for an elder law attorney may be necessary to help make sure the requirements are met. The \$1 to \$6 dollars available isn't going to be enough. The trustee (and anyone else managing the Medicaid recipient's money) are likely to forego help from an elder law attorney and, as a result, fail to comply with the Miller Trust rule. When a non-compliance occurs, the Medicaid recipient is not eligible for Medicaid money for the month of the non-compliance. His/her nursing home or assisted living facility won't get its Medicaid payment for a month.

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

09-01-2016 #BirthdayParty venue for #Children on the #AutismSpectrum <http://ow.ly/Rwh8302qLVK>

08-31-2016 One #Family's struggle with the #EndOfLife decision <http://ow.ly/naKp302r8qv>

08-30-2016 Trouble for #LongTermCareInsurance providers? <http://ow.ly/AN3S302wGnr>

08-29-2016 Personal story on choosing a #NursingHome for #AgingParent's <http://ow.ly/6HOd302wL91>

08-28-2016 #OlderAdults who #Fall indoors have different results than those who Fall outdoors <http://ow.ly/8G6I302wNpq>

08-27-2016 #Diabetes prevention for #OlderAdults <http://ow.ly/GG2J302wKbZ>

08-26-2016 #Ohio #Medicaid changes rules for #Aged #Blind #Disabled program - Problems with #Tax #Withholding <http://wp.me/p47F09-lg>

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

9-8-2016 The Koewler Law Firm will have a table display at the Health Fair at Hillcrest Hospital organized by the Professional Networking Group of Cleveland in Mayfield Heights, Ohio.

9-14-2016 Jim Koewler will discuss Legal Issues when someone has Dementia at University Hospitals Parma Medical Center in Parma, Ohio. Continuing education credit is available for social workers, counselors, and nurses.

9-21-2016 The Koewler Law Firm will have a table display at the Senior Health Fair organized by the University Hospitals Elyria Medical Center and the Lorain County Senior Network at the University Hospitals Fitness Center in Avon, Ohio.

9-22-2016 Jim Koewler will discuss "Changes in Ohio Medicaid Eligibility Rules for 2016" at Bath Manor Special Care Centre in Akron, Ohio. Continuing education credit will be available for social workers, counselors, and nurses.

9-28-2016 The Koewler Law Firm will have a table display at the Wellness Expo organized by the University Hospitals Bedford Medical Center Senior Net at the Senior Center in Solon, 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.

10-28-2015 The Koewler Law Firm will have a table display at the Wadsworth Community Center Field House & Soprema Senior Center in Wadsworth, Ohio for a Senior/Care Partner Expo and, as part of the event, will make a free chair massage available to care partners.

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.

12-14-2016 The Koewler Law Firm will participate in the Senior Holiday Party organized by the Summit County Senior Sales, Administration, and Marketing Association at Saferstein Towers in Akron, Ohio.

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 (Continuing Education credit available for social workers, counselors, and nurses and has been requested for Certified Case Managers)
- 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

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.

09-14-2016 Medina County Senior Services Network, Brookdale Medina, South, Medina, Ohio, 8:00 a.m.

09-14-2016 Summit Senior Sales, Administrators and Marketers Association, The Merriman, Akron, Ohio, 2:30 p.m.

09-17-2016 Walk to End Alzheimer's, Community Recreation Center, Medina, Ohio

09-19-2016 Medina County Senior Services Network's Education Committee, Yours Truly, Medina, Ohio, 11:30 a.m.

09-20-2016 UH Bedford Medical Center Senior Network, Kindred-Stratford Commons, Solon, Ohio, 8:30 a.m.

09-21-2016 Professional Association Specializing in Seniors ("PASS"), The Atrium at Anna Maria, Aurora, Ohio, 8:30 a.m.

09-22-2016 Portage Senior Services Network, Brooks House, Hiram, Ohio, 8:30 a.m.

09-23-2016 Eldercare Professionals of Ohio, Stratford Commons, Solon, Ohio, 9:00 a.m.

09-27-2016 Summit County Senior Services Network, Kucko Anthony Kertesz Funeral Home, Akron, Ohio, 8:00 a.m.

09-27-2016 Professional Networking Group, Village of Marymount, Garfield Heights, Ohio, 9:00 a.m.

09-27-2016 Wayne Holmes Senior Service Coalition, Wayne County Care Center, Wooster, Ohio, 8:30 a.m.

09-28-2016 UH Bedford Senior Network's Wellness Expo and Cookoff, Solon Senior and Community Center, Solon, Ohio

09-29-2016 The Association of Specialists in Aging, Mentor Senior Center, Mentor, Ohio, 8:30 a.m.

10-02-2016 Walk to End Alzheimer's, Stile Athletics Fieldhouse, University of Akron, Akron, Ohio.

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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