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## Seniors and Special Needs News - September 9, 2016

1 message

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Fri, Sep 9, 2016 at 9:02 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 Tax Refunds may be counted Twice

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 29, 2016](#) installment discussed the impact of tax withholding on certain income sources and the difficulty that the tax withholding creates for the Miller Trust. The [September 2, 2016](#) installment discussed the limit placed on monthly costs of the Miller Trust. Today's installment will discuss how Ohio's Medicaid rules appear to count income tax refunds twice.

In determining eligibility for any of Ohio's Medicaid programs, a Medicaid caseworker must see if the applicant's income fits within the Medicaid program's income requirements as set forth in the Ohio Administrative Code (OAC.). In the general rules of Medicaid eligibility, "'Income' means any benefit in cash or in-kind, received by an individual during a calendar month." (OAC 5160:1-1-01(B)(31) entitled "Medicaid: definitions") So, income is anything that the person receives that month. That's the general understanding of "income," the arrival of money that wasn't here before.

Then, the rules for processing of applications shows that Medicaid looks at GROSS income. The rules explain that "the amount of gross monthly non-exempt income must be established first. (OAC 5160:1-2-01.9(C) entitled "Medicaid: income, exemptions, and disregards") This provision means that Medicaid looks at all income, even if that income doesn't arrive, such as Medicare Part B premiums and money withheld for taxes. (This is the same sort of income described as "invisible" in the [August 11, 2016](#) installment.)

The rules go on to state that income tax refunds are exempted from income (OAC 5160:1-2-01.9(D)(3) in the same "Medicaid: income, exemptions, and disregards" section discussed in the previous paragraph.)

The rules for Ohio's Medicaid for people who are Aged, Blind, or Disabled agrees, stating that "any amount refunded on income taxes already paid" is not income (OAC 5160:1-3-03.1(J)(8) entitled Medicaid: income) An exemption for income tax refunds make sense. Tax withholding was included in "income" because "gross income" is where Medicaid starts its analysis. An income tax refund is simply a return of money previously withheld that is above the amount of the tax liability.

BUT, what counts as "income" changes in the calculation of patient liability for someone in the Aged, Blind, or Disabled program who needs long term care. "Patient liability" is the amount of money that the person receiving long term care must pay each month as his/her share of costs. (Medicaid

makes up the difference between the patient liability and the monthly payment for care to which the care provider is entitled.)

To receive Medicaid coverage for long term care services, the person must first be eligible for Medicaid. The examination of income for that eligibility determination does not, though, carry through to the calculation of patient liability.

To calculate patient liability for long term care services, the administrative agency must "total all income, earned and unearned, of the individual, without applying any exemptions or disregards" (OAC 5160:1-3-04.3(C)(2) entitled Medicaid: determining patient liability) Remember: Income tax refunds were "exempt" from income in the eligibility determination.

Because the patient liability calculation must total ALL income, it is looking at gross income, and gross income includes tax withholding. However, because the calculation does not apply any exemptions, the patient liability calculation also includes tax refunds. That's a problem.

Money withheld for taxes and money returned as a tax refund are the same money. A tax refund is the money that didn't arrive last year actually arriving this year. The tax withholding amount was counted in "gross income" even when it didn't actually arrive in the first place. That same money should not be counted when it it actually arrives as a tax refund. It's the same money.

The inclusion of tax refunds in patient liability calculations (assuming it doesn't get corrected in the near future) means that the person won't have all of the money that the Medicaid caseworker calculates as the amount that the person is supposed to pay as patient liability. Someone (perhaps the Medicaid recipient, perhaps the spouse, or perhaps the care provider) is going to receive less money than the amount to which he/she is entitled.

This double-counting of the tax refund may have been a mistake in drafting the Medicaid rule, or it may have been intentional as a way to shave a few bucks off of the state's Medicaid costs. Either way, this needs to be fixed.

## **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

09-08-2016 #Sensory sensitive seating for #Sports fans with #Autism <http://ow.ly/5EDD303SOYx>

09-07-2016 #Organization tips for the #FamilyCaregiver <http://ow.ly/weBH302wHqg>

09-06-2016 First new insurer in 10 years offering #LongTermCareInsurance <http://ow.ly/ejir302wPp1>

09-05-2016 How #IndependentLiving differs from #AssistedLiving for #OlderAdults <http://ow.ly/qNco302wP2d>

09-04-2016 Watch out for the #IRS #Scam <http://ow.ly/AgTD302wPVU>

09-03-2016 A suggestion, other than #Privitizing, to fix #VACompensation (aka #VADisability) <http://ow.ly/U2Os302wPGB>

09-02-2016 #Ohio #Medicaid changes rules for #Aged #Blind #Disabled program - Limit on monthly #MillerTrust fees <http://wp.me/p47F09-IY>

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

9-2-2016 The Koewler Law Firm had a table display at the Medina Senior Walk on the Square in Medina, Ohio.

9-6-2016 Jim Koewler discussed the August 1, 2016 changes to Ohio's rules on long term care Medicaid regarding retirement funds and real estate holdings at a meeting of the Fairlawn/Montrose chapter of the International Referral Network in Akron, Ohio.

9-8-2016 Jim Koewler discussed the August 1, 2016 changes to Ohio's rules on long term care Medicaid regarding Qualified Income Trusts (aka Miller Trusts) and the services offered by Miller Trust Services Company LLC at a meeting of the Lorain County Senior Network in Elyria, Ohio.

9-8-2016 Jim Koewler discussed the August 1, 2016 changes to Ohio's rules on long term care Medicaid regarding Qualified Income Trusts (aka Miller Trusts) and the services offered by Miller Trust Services Company LLC at a meeting of the Elyria chapter of the International Referral Network in Elyria, Ohio.

9-14-2016 The Koewler Law Firm will have a table display at the Expo4Seniors at the Holiday Inn in Independence, 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.

9-15-2016 Jim Koewler will discuss "Overcoming Seniors' Resistance to the Benefits of Long Term Care" at Kozmo's Grille in Massillon, Ohio.  
Continuing education credit is available for social workers, counselors, and nurses.

9-17-2016 The Koewler Law Firm will have a table display at the Walk to End Alzheimer's organized by the Alzheimer's Association at the Medina County Community Recreation Center in Medina, Ohio.

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.

10-2-2016 The Koewler Law Firm will have a table display at the Walk to End Alzheimer's organized by the Alzheimer's Association at the University

of Akron's Stile Athletics Field House 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.

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.

11-15-2016 Jim Koewler will discuss Veterans Benefits that Help with Long Term Care at University Hospitals Elyria Medical Center in Elyria, Ohio. Continuing education credit is available for Certified Case Managers, social workers, counselors, and nurses.

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](http://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**

09-09-2016 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.

10-04-2016 Aging Services Network East, Euclid Hospital's Waltz Auditorium, Euclid, Ohio, 8:30 a.m.

10-04-2016 Montrose SeniorCare Networking Group, Panera Montrose, Bath, Ohio 8:30 a.m.

10-04-2016 Stow ElderCare Networking Group, Corner Cup Coffee House, Stow, Ohio, 9:00 a.m.

10-05-2016 Stark Senior Services Network, Myers Lake Ballroom, Canton, Ohio, 9:00 a.m.

10-05-2016 Richfield Chamber of Commerce luncheon, Days Inn and Suites, Richfield, Ohio, 11:45 a.m.

10-05-2016 Medina County Senior Services Network's Client Services Committee, Sully's, Medina, Ohio, 3:00 p.m.

10-06-2016 Professional Networking Group of Cleveland, Medina General



Hospital Health Fair, Medina, Ohio, 11:00 a.m.

## Newsletter Archive

Past issues of this newsletter can be found in the [newsletter archive](#) on the firm's website, [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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