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Seniors and Special Needs News - September 30, 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 Dependent Family Member in the Home

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. The [September 9, 2016](#) installment discussed how Ohio's Medicaid rules appear to count income tax refunds twice. The [September 15, 2016](#) installment discussed the Ohio Department of Medicaid's change in policy regarding real estate (other than the residence.) The [September 22, 2016](#) installment discussed keeping the house with an intent to return to home. Today's installment will discuss keeping the house while a dependent family member lives there.

Before July 31, 2016, a single person who asked for Medicaid's help to pay for long term care costs and who owned a home had 13 months after the beginning of Medicaid coverage during which to put the home up for sale. (If the Medicaid applicant were married and the spouse still lived in the home, there was no obligation to sell.) That 13-month time period is gone. As part of the big August 1, 2016 change in rules, Ohio Medicaid rescinded the 13-month rule. Now, the person must decide to keep the house or to sell the house before applying for Medicaid.

If the person decides to sell, then the rules regarding real estate discussed in the [September 15, 2016](#) installment apply.

If the person decides not to sell, then one of a number of certain conditions must apply. Under the new rules, if a dependent family member lives in the home, the person may keep it and still receive Medicaid coverage for long term care.

The new rule that describes whether and how to count the house as an asset of the Medicaid applicant/recipient (Ohio Administrative Code section 5160:1-3-05.13) creates a new way for someone to live in a nursing home or assisted living facility AND receive Medicaid's help with the nursing home/assisted living costs AND to keep his/her home. Subsection (C)(4)(a) allows the person to keep the home and excludes the value of the home from the count of the person's assets if a spouse or dependent relative lives there.

Now, protection of the house while the spouse lives there is not new. This is a long-standing rule in Medicaid. (Imagine the news headlines and the

political fallout if Medicaid evicted spouses from their homes.)

The dependent relative exclusion is largely new. (A blind or disabled child living in the home made it excludable under the old rules, but that was a more limited exclusion than this new one.)

The new rule defines "relative" to include children, stepchildren, grandchildren, parents, stepparents, grandparents (Remember, some people who need long term care are not elderly.), aunts, uncles, nieces, nephews, brothers, sisters, stepbrothers, stepsisters, half brothers, half sisters, cousins, and in-laws. Look at the list. "Relative" includes lots of people.

The new rule states that "dependency may be of any kind" and lists as examples, "financial, medical, etc." Look at how wide open "dependency" is. It can be of "any kind." I assume that future rulemaking and possibly litigation will provide more details, but for now, "dependency" is enormously broad. A so-called boomerang child (one who comes back home after having previously moved out) can be described as "dependent" because it's less expensive to live in a house where Mom and Dad don't charge rent.

But, THERE'S A CATCH. And, it's not in the rule regarding the house.

If the Medicaid recipient dies while still owning the house, Medicaid estate recovery will lead to a lien being placed on the property. Medicaid estate recovery (as discussed in previous installments) is the federally-mandated effort to recover from Medicaid-covered people who have died whatever assets can be recovered as a way to replenish (perhaps even a little bit) the Medicaid fund. If Medicaid spent a great deal of money on the deceased homeowner's care, the lien could easily surpass the value of the property. (The rule is so new that no cases of Medicaid estate recovery have yet occurred under the new system. We'll have to wait to see if a Medicaid lien results in an eviction of the "dependent family member" from the house.)

If, in an attempt to avoid Medicaid estate recovery, the Medicaid applicant/recipient gives away the house, Medicaid will call the gift an "improper transfer" and will not pay for the person's care for the amount of time that the value of the house would have paid.

Thus, the "dependent relative" rule on the house is a wide open opportunity to keep the house for a while. It is not, though, a way to keep the house forever.

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

09-29-2016 #Television characters with #SpecialNeeds (leading up to this year's #Speechless) <http://ow.ly/X9W4304w7Cy>

09-28-2016 Getting ready to bring an #OlderAdult #Home from the #Hospital <http://ow.ly/PNRx302wl5H>

09-27-2016 #BadNews about #LongTermCareInsurance <http://ow.ly/Ckdo304k5Et>

09-26-2016 #Technology to improve #HomeCare <http://ow.ly/MO16304w6BX>

09-25-2016 #EstatePlanning - a #Trust isn't just for #Probate avoidance <http://ow.ly/xOgy304k6DN>

09-24-2016 What makes a #City good for #Seniors <http://ow.ly/L4gD304jZ0N>

09-23-2016 #Ohio #Medicaid changes rules for #Aged #Blind #Disabled program - Intent to return #Home <http://wp.me/p47F09-mp>

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

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.

10-5-2016 Jim Koewler will discuss estate planning and wills at Wellness Day for Midview Schools at Midview High School in Grafton, 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.

1-25-2017 Jim Koewler will discuss the new requirements for Medicaid in Ohio to the Mandel Jewish Community Center lunch group at Warrensville Center Apartments in Warrensville Heights, Ohio.

3-23-2017 Jim Koewler will discuss what must be done at the time someone retires to prepare for the future at a meeting of the Portage County (Ohio) Senior Services Network.

5-26-2017 Jim Koewler will discuss Ohio's rules on Qualified Income Trusts (aka Miller Trusts) for people who need Medicaid to pay for long term care at a meeting of Eldercare Professionals of Ohio at Chippewa Place in Brecksville, 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

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.

10-12-2016 Medina County Senior Services Network, Avenue at Medina, Medina, Ohio, 8:00 a.m.

10-12-2016 Summit Senior Sales, Administrators and Marketers Association, Arbors of Stow (formerly Maison Aine), Stow, Ohio, 2:30 p.m.

10-13-2016 Lorain County Senior Services Network, Richard E. Jacobs Healthcenter, Avon, Ohio, 8:30 a.m.

10-14-2016 Eldercare Professionals of Ohio, Busch Funeral Home, Parma, Ohio, 9:00 a.m.

10-17-2016 Medina County Senior Services Network's Education Committee, Yours Truly, Medina, Ohio, 11:30 a.m.

10-18-2016 UH Bedford Medical Center Senior Network, Woodside Village, Bedford, Ohio, 8:30 a.m.

10-19-2016 Professional Association Specializing in Seniors ("PASS"), Brooks House Assisted Living, Hiram, Ohio, 8:30 a.m.

10-21-2016 Professional Networking Group of Cleveland, Highland Heights Senior Center Health Fair, Highland Heights, Ohio, 11:00 a.m.

10-25-2016 Summit County Senior Services Network, Kucko Anthony Kertesz Funeral Home, Akron, Ohio, 8:00 a.m.

10-25-2016 Professional Networking Group, Home Instead Senior Care, Oakwood, Ohio, 9:00 a.m.

10-25-2016 Wayne Holmes Senior Service Coalition, Wayne County Care Center, Wooster, Ohio, 8:30 a.m.

10-27-2016 Portage Senior Services Network, Family and Community Services Building, Ravenna, Ohio, 8:30 a.m.

10-27-2016 The Association of Specialists in Aging, Mentor Senior Center, Mentor, Ohio, 8:30 a.m.

10-28-2016 Eldercare Professionals of Ohio, Crossroad Hospice, Valley View, 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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