



Jim Koewler <jameskoewler@gmail.com>

Seniors and Special Needs News - December 2, 2016

1 message

The Koewler Law Firm <Newsletter@protectingseniorsnews.com>
 Reply-To: The Koewler Law Firm <Newsletter@protectingseniorsnews.com>
 To: protectingseniorsnewsarchive@gmail.com

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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 Penalty Recovery through a Promissory Note

Friends, I didn't write a newsletter last week. I was celebrating Thanksgiving with my family. I hope you enjoyed your Thanksgiving weekend as well.

This week's newsletter continues the discussion of the changes to Ohio Medicaid's Aged, Blind and Disabled program 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 5, 2016](#) installment discussed the new income rules that will go into effect with the new eligibility system. The [May 12, 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 16, 2016](#) installment discussed the Ohio rules that describe how to use the Miller Trust each month. The [June 23, 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 7, 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 21, 2016](#) installment discussed the changes that the Ohio

Department of Medicaid made to the form Miller Trust document. The [July 28, 2016](#) installment discussed whether income is supposed to go directly into the Miller Trust. The [August 4, 2016](#) installment discussed Medicaid's insistence that the transfers (or deposits) into the Miller Trust account be automatic. The [August 11, 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 18, 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 25, 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. The [September 29, 2016](#) installment discussed keeping the house while a dependent family member lives there. The [October 6, 2016](#) installment discussed the home that is co-owned by someone else (other than the spouse.) The [October 27, 2015](#) installment discussed real property that is "essential for self-support." The [November 10, 2017](#) installment discussed the retirement funds belonging to the spouse who does not seek Medicaid's help with long term care costs. The [November 17, 2016](#) installment discussed the 2016 changes in how Ohio Medicaid will allow applicants to give away some of their assets cover the resulting penalty period through a return of part of the assets. Today's installment will discuss Ohio Medicaid's new prohibition on using promissory notes to recover from an applicant giving away assets.

Note: What I am calling "assets" Medicaid calls "resources." In Medicaid's terminology, "assets" includes both "resources" and "income." Because most of the public thinks of "resources" as human resources or natural resources, and thinks of money in the bank as "assets," I will use the term "assets" in this installment to refer to money in the bank and other similar things of value (like real estate, life insurance, etc.) that may be included in the applicant's life savings.

Generally, when an applicant for Medicaid for long term care services gives away something of value (aka "assets,") Medicaid will not pay for services for the amount of time that the given-away assets would have covered. This "penalty" is found within the "transfer of assets" rule in Medicaid's regulations.

Despite the penalty, some Medicaid applicants wish to give away some of their assets. Usually, the applicants wish to give assets to their children. The giving of these assets to the applicant's children often gives the applicants a great deal of emotional relief because it allows some of their money (the results of their working lives) to outlive them. Most parents want to leave something to their children and grandchildren. Finding a way to allow these applicants to give some of their assets is what most elder law attorneys try to do.

The trick is finding a way to cover the applicant's long term care costs during the time that Medicaid will not (i.e., during the "penalty period" aka the "Restricted Medicaid Coverage Period.") There used to be 4 different ways to cover such a penalty period. During 2016, Ohio Medicaid changed the rules on covering this penalty period. Today's installment will discuss the use of a promissory note between the Medicaid applicant and a family member.

First, let's explain a promissory note. A promissory note is a legal document that contains a promise to repay a loan. For example, anyone who has mortgaged a home has probably signed a promissory note as an agreement to pay back the borrowed money.

In the context of Medicaid for long term care context, the person needing care can give away some of his/her assets. Then, to pay for care during the penalty period that results from the give-away of assets, the person who needs care must set up a flow of income to pay the monthly care costs. (The assets given away are protected from long term care costs and from Medicaid as long as the flow of income to pay for the penalty period is calculated correctly. It really is a big math problem.)

Monthly installments to repay a loan can be just the flow of income to appropriately cover such a penalty period. So, the person who needs long term care can lend money to someone (usually a family member, but it can be someone else.) Then, the family member (as the borrower) would repay the loan in installments of an appropriate size to cover the monthly care costs during the penalty period. To document the repayment terms (and to ensure that the "loan" wasn't actually given away, which would result in a longer penalty period,) the lender (the person needing care) and the borrower (the family member or friend who offering to make the monthly payments) would have to sign a promissory note.

Remember, there's no need for a promissory note if it isn't used to cover a penalty period.

Before Ohio Medicaid's August 1, 2016 rule changes, the acceptability of promissory notes was a bit unpredictable. Some county Medicaid offices

would accept promissory notes. Some county offices would not accept them. And then, even within some county Medicaid offices, some caseworkers would accept promissory notes and some would not accept them.

Now, after the August 2016 rule changes, Ohio Medicaid has (supposedly) prohibited the use of promissory notes for penalty recovery.

So, if promissory notes are prohibited, why would I even write about them?

I'm not sure that Ohio's prohibition on promissory notes in Medicaid cases is permanent.

The federal Social Security law allows promissory notes to be used as described here, and the Medicaid program (at both the federal and state level) are part of the Social Security law. One would think, that something allowed by the Social Security law would be allowed by the Medicaid rules that exist only because of the Social Security law. So, at some point, some elder law attorney will probably challenge Ohio's prohibition of promissory notes as a violation of the Social Security law.

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

12-01-2016 Video shows what #JobInterview is like for someone on #AutismSpectrum <http://ow.ly/SYF6306IKkz>

11-30-2016 Signs of #NursingHome #Negligence or #ElderAbuse <http://ow.ly/4Kbo306mzIK>

11-29-2016 Demand for #LongTermCareInsurance expected to rise <http://ow.ly/lvGj306mxYE>

11-28-2016 When looking at a #NursingHome, watch how the #Managers treat #Residents <http://ow.ly/WV52306mpOs>

11-27-2016 Efforts to get #BrainCancer in #GulfWar #Veterans covered under #VACompensation <http://ow.ly/GD3V306IZaV>

11-26-2016 Signs of different forms of #ElderAbuse <http://ow.ly/vPVA306IY2Q>

11-25-2016 Dispute about #Kidney #Dialysis charges to #MedicalInsurance <http://ow.ly/QsdP306IVlp>

11-24-2016 #ToysRUs offers special shopping times for children with #Autism <http://ow.ly/v5tO306IKWF>

11-23-2016 #GivingThanks for #FamilyCaregivers and hoping they take care of themselves <http://ow.ly/Zyov306kUD>

11-22-2016 Comparing #DisabilityInsurance and #LongTermCareInsurance <http://ow.ly/d0IS306kZDe>

11-21-2016 What #AdultDayCare can provide <http://ow.ly/3rWa3066etg>

11-20-2016 New service provides guidance to #Financial institutions about #ElderAbuse <http://ow.ly/OBy23066dX1>

11-19-2016 Record sharing to speed up #SocialSecurity #Disability claims for #Veterans <http://ow.ly/nxfY3066dxL>

11-18-2016 #Ohio #Medicaid changes rules for #Aged #Blind #Disabled program - End of Partial Give-Back <http://wp.me/p47F09-id>

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

12-9-2016 Jim Koewler will participate in a panel discussion on paying for post-acute care at a meeting of the CARE Coalition of Stark County at Mercy Health Center of Jackson, in Massillon, 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.

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.

5-16-2017 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 the University Hospitals Bedford Medical Center Senior Network at Light of Hearts Villa in Bedford, Ohio.

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, nurses, and 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, and nurses)
- 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

12-06-2016 Aging Services Network East, Euclid Hospital's
Waltz Auditorium, Euclid, Ohio, 8:30 a.m.

12-06-2016 Montrose SeniorCare Networking Group, Panera Montrose,
Bath, Ohio 8:30 a.m.

12-06-2016 Stow ElderCare Networking Group, Corner Cup Coffee House,
Stow, Ohio, 9:00 a.m.

12-07-2016 Stark Senior Services Network, Canton Regency, Canton, Ohio,
3:00 p.m.

12-07-2016 Richfield Chamber of Commerce luncheon, Days Inn and Suites,
Richfield, Ohio, 11:45 a.m.

12-07-2016 Summit Senior Sales, Administration and Marketing
Association Holiday Party

12-07-2016 Medina County Senior Services Network's Client Services
Committee, Sully's, Medina, Ohio, 3:00 p.m.

12-09-2016 CARE Coalition of Stark County, Mercy Health Center of Jackson, Massillon, Ohio 8:00 a.m.

12-13-2016 Professional Networking Group Holiday Luncheon, Grande Villlage, Twinsburg, Ohio, 12:30 a.m.

12-14-2016 Medina County Senior Services Network, Pearlview Care Center, Brunswick, Ohio, 8:00 a.m.

12-14-2016 Professional Association Specializing in Seniors ("PASS"), Care Corp, Chardon, Ohio, 8:30 a.m.

12-21-2016 Medina County Senior Services Network's Education Committee, Yours Truly, Medina, Ohio, 11:30 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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