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Seniors and Special Needs News - December 9, 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 Penalty Recovery through a Special Needs Trust

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. The [December 1, 2016](#) installment discussed Ohio Medicaid's new prohibition on using promissory notes to recover from an applicant giving away assets. Today's installment will discuss the possibility of using a Special Needs Trust to recover from assets given away creating a Medicaid penalty period.

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 Special Needs Trust to cover a penalty period in long term care Medicaid benefits.

Prior installments have introduced the Special Needs Trust. The [April 2, 2015](#) installment discussed Special Needs Trusts as part of the series on qualifying for Supplemental Security Income (SSI) and Medicaid. The [April 9, 2015](#) installment introduced the Pooled Trusts, a Special Needs Trust for a number of people simultaneously, also as part of the series on qualifying for SSI and Medicaid. Either of these kinds of trusts, a stand-alone Special Needs Trust and a Pooled Trust, are possible vehicles for helping to cover a penalty period.

Special Needs Trusts can be useful for covering a penalty period because a deposit into a Special Needs Trust is not an "improper transfer" triggering a penalty period. Likewise, the contents of a Special Needs Trusts do not count as "resources" or "assets" for someone who is trying to qualify for long term care Medicaid. These two rules concerning Special Needs Trusts make the trusts useful for "riding out" a penalty period during which Medicaid won't pay for long term care.

To make an improper transfer (i.e., to shelter part of one's assets from the costs of long term care,) someone who needs long term care would give away some of his/her assets and then place enough money into a Special Needs Trust to cover the monthly costs during the penalty period that results from the assets given away. Then, enough money could come out of the Special Needs Trust each month to cover that month's costs.

The bringing money back each month from the Special Needs Trust is just like getting money back each month from a family member in Partial Give-Back method described in the [November 17, 2016](#) installment. There is a big difference between the Partial Give-Back method and the Special Needs Trust method, though. The money given away in the Partial Give-Back

method (part of which money came back each month) is part of an "improper transfer" that creates a penalty period. (The penalty period got reduced each month because of the partial give-back in that method (until the January 2016 rule change.)) Depositing money into a Special Needs Trust is not considered an "improper transfer," so it does not increase the penalty period for Medicaid coverage.

If the plan to give away assets when applying for Medicaid includes leaving a large amount in the Special Needs Trust after the penalty period has ended, the applicant might wish to use a stand-alone Special Needs Trust (as discussed in the [April 2, 2015](#) installment.) If the plan to give away assets includes leaving nothing or leaving a small amount in the Special Needs Trust after the penalty period has ended, the applicant might wish to use a Pooled Trust (as discussed in the [April 9, 2015](#) installment.)

HOWEVER, I would prefer that Special Needs Trust not be used in this manner. A Special Needs Trust is a very important shelter for assets to benefit people with special needs. As discussed in prior installments, a Special Needs Trust can give a great deal of life enjoyment to someone who might otherwise be able to have nothing because of the financial limitations of government income and health programs for people with disabilities. That enabling of life enjoyment is what a Special Needs Trust should, in my opinion, be used for.

Unfortunately, government policy makers who do not like to spend money on people with special needs repeatedly launch attacks on the Special Needs Trust law and rules, especially focusing on Pooled Trusts. The use of Special Needs Trusts to counterbalance an improper transfer of assets when applying for Medicaid gives such hard-hearted government officials another reason to attack Special Needs Trusts. Because other methods are available to cover a penalty period that accompanies an improper transfer of assets, I urge you NOT to use Special Needs Trusts for that purpose.

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

12-08-2016 Preparing for #Wandering or #Eloping by children with #AutismSpectrumDisorder <http://ow.ly/NQUX306IKD1>

12-07-2016 #FamilyCaregiver must look out for themselves too <http://ow.ly/8jLh306mAQj>

12-06-2016 How #LongTermCareInsurance fits into an #Investment plan <http://ow.ly/wC5G306mAeJ>

12-05-2016 Criteria for comparing #NursingHomes <http://ow.ly/aU6m306mrYs>

12-04-2016 Talking with #AgingParents about moving out of the #House <http://ow.ly/tslz306mwnE>

12-03-2016 Study shows value of #PalliativeCare for #NursingHome residents near #EndOfLife <http://ow.ly/u6UQ306msFM>

12-02-2016 #Ohio #Medicaid changes rules for #Aged #Blind #Disabled program - Penalty Recovery through a Promissory Note <http://wp.me/p47F09-od>

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 Jim Koewler will discuss the 2016 changes to Ohio's Medicaid program for long term care at Marymount Hospital in Garfield Heights, Ohio. Continuing Education credit will be available for social workers, counselors, and nurses.

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)
- ABLER 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

12-09-2016 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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