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## Seniors and Special Needs News - December 16, 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 Annuities

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. The [December 8, 2016](#) installment discussed the possibility of using a Special Needs Trust to recover from assets given away creating a Medicaid penalty period. Today's installment will discuss the use of an annuity to recover from the Medicaid penalty period that results from 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 short-term annuities to cover a penalty period in long term care Medicaid benefits.

Medicaid rules allow a person who gave away assets to use an annuity to cover his/her long term care costs during the associated penalty period. The annuities must meet a number of criteria:

- The annuity remainder beneficiary must be the state of Ohio. (Ohio may be named after the spouse or a dependent child.);
- The annuity must be Irrevocable and non-assignable;
- The annuity must be "actuarially sound" by paying out over a time period equal to or shorter than the annuitant's life expectancy as determined by the Social Security Administration (usually found via a certain online calculator); and
- The annuity must pay out in equal monthly payments with no anticipated lump sum (except, potentially, to a remainder beneficiary.)

An annuity that meets these requirements is often called a Medicaid-Compliant Annuity.

Satisfying these requirements is relatively easy. They can all be set at the time of the purchase of the annuity. The trickiest part is determining the monthly payment and the number of monthly payments from the annuity. The annuity payments should be large enough to almost cover the monthly difference between the client's monthly income and monthly costs. The number of months should be long enough to cover the penalty period.

Short term annuities are available (to my knowledge) from two sources, Krause Financial Services (MedicaidAnnuity.com) and Safe Harbor Annuity (SafeHarborAnnuity.com.) I have used Krause for such annuities. I became aware of Safe Harbor's participation in this market in August 2016 and have not yet used Safe Harbor.

Until recently, Cuyahoga County's Medicaid office had espoused the position that "actuarially sound" meant that the annuity must pay out for the ENTIRE life expectancy of the annuitant rather than for a period of time equal or less than the annuitant's life expectancy. This position posited that any designed payout shorter than the life expectancy set forth in the Social Security tables referenced in the rule made the purchase of the annuity an improper transfer. (I do not know whether any other counties or individual caseworkers did so.)

Two appeals of this position ruled against the county's policy. Then, in November 2016, Cuyahoga County announced that it would accept annuities that were as long as or shorter than the person's life expectancy.

## 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

12-15-2016 Possible link between #VitaminD and #AutismSpectrumDisorder <http://ow.ly/ZGZb30788G4>

12-14-2016 Minimizing #FamilyCaregiver #Stress during the #Holidays <http://ow.ly/FB2C3076c9Z>

12-13-2016 When to look at #LongTermCareInsurance <http://ow.ly/KeHY306mAAS>

12-12-2016 Planning ahead for #LongTermCare by looking at #NursingHomes before it's necessary <http://ow.ly/eWYh306mz3m>

12-11-2016 A look at #Aging through the eyes of a daughter of an #OlderAdult <http://ow.ly/ITPn306mBcg>

12-10-2016 #NursingHome residents find purpose helping #Orphan #Kittens <http://ow.ly/hlff306myrD>

12-09-2016 #Ohio #Medicaid changes rules for #Aged #Blind #Disabled program - Penalty Recovery through a #SpecialNeedsTrust <http://wp.me/p47F09-og>

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**

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](http://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

12-21-2016 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](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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