



Jim Koewler <jameskoewler@gmail.com>

Seniors and Special Needs News - January 13, 2017

1 message

The Koewler Law Firm <Newsletter@protectingseniorsnews.com>
 Reply-To: The Koewler Law Firm <Newsletter@protectingseniorsnews.com>
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Fri, Jan 13, 2017 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 2016 Rule Change on Real Property may not Stick

I thought I had finished the discussion of the changes to Ohio Medicaid's Aged, Blind and Disabled program for 2016-2017 with my installment on [December 22, 2016](#). A recent ruling in an administrative appeal, however, might change reverse one of the August 1, 2016 rule changes.

This week's blog returns to the discussion of the changes to 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. The [December 15, 2016](#) installment discussed the use of short-term annuities to recover from a long term care Medicaid penalty period that results from giving away assets. The December 22, 2016 installment discussed the end of the monthly "spend-down" to achieve income eligibility for the type of Medicaid that substitutes for health insurance. Today's installment will follow up the [September 15, 2016](#) installment on a 2016 change to how Medicaid views real estate holdings with a discussion of a recent state hearing decision.

[Appeal number 3148728, in a decision dated December 30, 2016](#), resolved a conflict between one of the 2016 changes and a longstanding Medicaid eligibility concept regarding "availability" of the applicant's "resources." (Remember, Medicaid calls "resources" what most of the rest of the world calls "assets" or "life savings.")

The 2016 rule change at issue was the repeal of Ohio Administrative Code section 5160:1-3-05.15 which provided that real property was exempt from the resource calculation for a Medicaid recipient/applicant if the property was up for sale through a broker or agent. When that rule was rescinded, elder law attorneys concluded that the Ohio Department of Medicaid wanted to make the ownership of real estate a bar to eligibility to long term care Medicaid even if the applicant was trying to sell the real property.

The resource "availability" test for counting resources is set forth in Ohio Administrative Code 5160:1-3-05.1(B)(7), the definition of "resources." This rule defines "resources" as "cash, other liquid asset, personal property, and real property an individual and/or the individual's spouse has an ownership interest in, has the legal ability to access in order to convert to cash (if not already cash), and is not legally prohibited from using for support and maintenance." The language from this rule that is important to our discussion is "has the legal ability to access in order to convert to cash."

In the application that led to the December 30, 2016 state hearing decision, the applicant had listed three parcels of real property for sale in June 2016, two to three months before applying for Medicaid on August 29, 2016. The initial asking price for the real properties was the value as listed in the county's property tax records. After some time passed with no sales (but before the Medicaid application,) the seller reduced the asking price for each parcel. The state hearing decision ruled that, because the properties had not been sold despite the attempts to do so, they were not "available resources" because they could not be converted into cash.

As a result, the applicant was able to get Medicaid coverage for long term care despite continued ownership three parcels of real property. This result seems directly to contravene the apparent intent of rescinding Ohio Administrative Code section 5160:1-3-05.15.

Now, the state hearing decision is rather brief. It is not clear whether the same result would have been reached if the real properties would have been listed for sale for a time period shorter than the two to three months.

Likewise, it is not clear whether the same result would have been reached if the asking prices had not been reduced. (The initial asking prices set at the county appraised value was important because any higher asking price would be viewed as an attempt to avoid a sale.)

Similarly, Ohio Medicaid has a spotty history in recognizing the precedential value of state hearing decisions in later applications, so this individual decision may not lead to other similar decisions.

Nonetheless, the first case that looked at the conflict between the new real property rules and the "availability" requirement was decided in favor of the

Medicaid applicant. It's a good sign.

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

01-12-2017 Tips to #Discipline a #Child with #SpecialNeeds <http://ow.ly/C30i307qFPY>

01-11-2017 Keys to healthy #Lungs and #Breathing for #OlderAdults <http://ow.ly/f56v307dLM7>

01-10-2017 Suggestions for changing #LongTermCareInsurance and how to pay for #LongTermCare <http://ow.ly/Doaf307NgzB>

01-09-2017 Tips for screening a #NursingHome <http://ow.ly/PIQt307qUpV>

01-08-2016 How #ObamaCare supporters see the future fight over #HealthCare funding <http://ow.ly/sARI307qPf7>

01-07-2016 How #Journalists see the coming changes to #Medicaid under the new #President <http://ow.ly/UqCg307qLmO>

01-06-2017 #Ohio #Medicaid financial standards for #LongTermCare for 2017 <http://wp.me/p47F09-li>

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

1-17-2017 Jim Koewler will discuss how families can get help from Medicaid and/or the Veterans Administration to help pay for long term care as part of a series of seminars on long term care issues by Visiting Angels of Canton, Senior Mortgage Advisors, and The Koewler Law Firm at the offices of Visiting Angels in Canton, Ohio.

1-24-2017 Jim Koewler will discuss how families can get help from Medicaid and/or the Veterans Administration to help pay for long term care as part of a joint seminar with Christina Hronek of Hronek Law, LLC on planning ahead for long term care at The Heights in Broadview Heights, Ohio. There will be sessions of this program in the morning and in the evening.

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.

1-31-2016 Jim Koewler will discuss legal issues that people must consider after retirement to prepare for the possibility of long term care, and plan for end of life at Christ United Church in Berea, Ohio as part of Baldwin Wallace University's Institute for Learning in Retirement.

2-8-2016 Jim Koewler will discuss Legal Issues when someone has Dementia at a meeting of the Summit County, Ohio Chapter of Association of Medical Social Workers at Akron Family Restaurant, in Akron, Ohio. Continuing education credit is available for social workers, counselors, and nurses.

2-21-2017 Jim Koewler will discuss how families can get help from Medicaid and/or the Veterans Administration to help pay for long term care as part of a series of seminars on long term care issues by Visiting Angels of Canton, Senior Mortgage Advisors, and The Koewler Law Firm at the offices of Visiting Angels in Canton, Ohio.

2-23-2017 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 at the Family and Community Services Building, Ravenna, Ohio.

3-9-2017 Jim Koewler will discuss legal representation that can help people

who need long term care and people who have special needs at a meeting of the Medina County Senior Services Network at the Medina County Department of Developmental Disabilities.

3-21-2017 Jim Koewler will discuss how families can get help from Medicaid and/or the Veterans Administration to help pay for long term care as part of a series of seminars on long term care issues by Visiting Angels of Canton, Senior Mortgage Advisors, and The Koewler Law Firm at the offices of Visiting Angels in Canton, Ohio.

5-2-2017 Jim Koewler will discuss legal representation that can help people who need long term care and people who have special needs at a meeting of the Aging Services Network East at Euclid Hospital in Euclid, Ohio.

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 2016 changes to its Medicaid eligibility rules at a meeting of Eldercare Professionals of Ohio at Chippewa Place in Brecksville, Ohio.

6-19-2017 Jim Koewler will speak at a two-day Continuing Legal Education seminar in Akron, Ohio sponsored by the National Business Institute entitled "Elder Law and Medicaid Planning: Everything you Need to Know." Jim will make three presentations on the first day of the seminar covering Medicaid Benefits and Eligibility Rules, Preserving Family Assets when Qualifying for Medicaid, and Medicaid Application Procedure and Tactics.

6-21-2017 Jim Koewler will speak at a two-day Continuing Legal Education seminar in Cleveland, Ohio sponsored by the National Business Institute entitled "Elder Law and Medicaid Planning: Everything you Need to Know" (repeating the program from Akron.) Jim will make three presentations on the first day of the seminar covering Medicaid Benefits and Eligibility Rules, Preserving Family Assets when Qualifying for Medicaid, and Medicaid Application Procedure and Tactics.

11-21-2017 Jim Koewler will discuss changes in federal and state laws and rules affecting people who need long term care at a meeting of the University Hospitals Bedford Medical Center Senior Network at the Solon Senior Center in Solon, Ohio as part of the Network's Legislative Affairs Committee.

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

01-13-2017 Eldercare Professionals of Ohio, Crystal Waters, Strongsville, Ohio, 9:00 a.m.

01-17-2017 University Hospitals Bedford Medical Center Senior Network, Cornerstone of Hope, Independence, Ohio, 8:30 a.m.

01-18-2017 Professional Association Specializing in Seniors ("PASS"), Hamlet Village, Chagrin Falls, Ohio, 8:30 a.m.

01-24-2017 Summit County Senior Services Network, Anthony Kucko Kertesz Funeral Home, Akron, Ohio 8:00 a.m.

01-24-2017 Professional Networking Group, Walton Manor, Walton Hills, Ohio, 8:30 a.m.

01-24-2017 Wayne Holmes Senior Service Coalition, Wayne County Care Center, Wooster, Ohio, 8:30 a.m.

01-26-2017 Portage Senior Services Network, Family and Community Services Building, Ravenna, Ohio, 8:30 a.m.

01-26-2017 The Association of Specialists in Aging, Radisson Hotel, Eastlake, Ohio, 8:00 a.m.

01-26-2017 Summit Senior Sales, Administrators and Marketers Association, D'Agnes's Trattoria and Cafe, Akron, Ohio, 5:00 p.m.

01-27-2017 Eldercare Professionals of Ohio, Walton Manor, Walton Hills, Ohio, 9:00 a.m.

02-01-2017 Stark Senior Services Network, Meyer's Lake Ballroom, Canton, Ohio, 9:00 a.m.

02-01-2017 Richfield Chamber of Commerce luncheon, Days Inn and Suites, Richfield, Ohio, 11:45 a.m.

02-01-2017 Medina County Senior Services Network's Client Services Committee, Sully's, Medina, Ohio, 3:00 p.m.

02-07-2017 Aging Services Network East, Euclid Hospital's Waltz Auditorium, Euclid, Ohio, 8:30 a.m.

02-07-2017 Montrose SeniorCare Networking Group, Panera Montrose, Bath, Ohio 8:30 a.m.

02-07-2017 Stow ElderCare Networking Group, Corner Cup Coffee House, Stow, Ohio, 9:00 a.m.

02-08-2017 Medina County Senior Services Network, Life Care Center of Medina, Medina, Ohio, 8:00 a.m.

02-08-2017 Summit Senior Sales, Administration and Marketing Association, Bath Creek Estates, Cuyahoga Falls, Ohio 2:30 p.m.

02-09-2017 Lorain County Senior Services Network, Location TBA,
Ohio, 8:30 a.m.

02-10-2017 Eldercare Professionals of Ohio, Danbury Senior Living,
Broadview Heights, 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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