

# **Medicaid Eligibility and Income-Qualifying (aka “Miller”) Trusts**

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# Medicaid Income Cap Rules

- Medicaid applicant can have no more than \$1,869/month in **gross income**
- Figure changes January 1<sup>st</sup>.
- Name on the check rule

# Pay Attention to Gross Income

- Calculate in Medicare deduction (\$93.50/mo.)
- Health insurance or tax deductions from pension payments
- Do not rely on direct deposit or net income figures

# Remember: The Community Property Method of Income Qualification

- If the combined gross income of a married couple is added together and divided by two (2) and the result is less than \$1,869/month, applicant is income eligible.
- No Miller Trust is needed
- *May* want to put one in place to plan for possibility that community spouse dies.
- *Does not work for single applicants.*

# Situations requiring trust planning

- Single applicant in a long-term care situation, seeking Medicaid, and has gross income over the income cap
- Married applicant whose gross income, combined with spouse and divided by 2, is still more than the income cap

# Current Rules Require Advance Planning

- Current rules are confusing, fraught with traps for the unwary, and result in periods of ineligibility that are expensive for either the family or the care provider.

# First Step: Put Trust in Place

- Establishment of the Trust
- Trust must comply with IDAPA 16.03.05.872.02
  - Trust must be irrevocable
  - Applicant must be the sole beneficiary
  - Trust must contain estate recovery language
  - Only money from participant's income must flow into trust
  - Trust money must be managed properly
  - Income transferred into the trust and used for something other than patient liability or client participation is subject to the asset transfer penalty.

# Department Legal Counsel Now Reviews All Trusts

- Legal counsel for applicant advised
- Deputy attorney general is reviewing all of these trusts for the Department
- Document I'd used for years was recently reviewed. Although it passed muster I was surprised at the issue I had to work through with Department counsel. That apparently resulted in a proposed rule change (see below).

## Second Step: Banking Arrangements

Two choices:

1) Instruct the bank to rename the account which is receiving the applicant's direct deposit income in the name of the trustee of the trust.

OR

2) Set up new account at the bank in the name of the trustee of the trust and have the applicant's direct deposits *re-directed* to the new account.

# First Choice: Change name on existing account to the trustee of trust

## Issues:

1. Bank may not cooperate
2. Timing – Can this be completed the month prior to the month of the application? Some banks easier to work with than others.
3. Benefit: No redirecting of direct deposit income is necessary – avoids HUGE problems

**KEY: Empty the account to zero before the account name is changed. Any money in the account when the account is changed to the Miller Trust will be subject to an asset transfer penalty.**

# Penalty Commencement Date Quick Refresher

- 1) the first day of the month after the month the transfer took place, **or**
- 2) the date the individual would have been eligible for long-term care services, *if not for the transfer*, **whichever date is later in time.**

42 U.S.C. § 1396p(c)(1)(D)

IDAPA 16.03.05.835.02

## Example of penalty period application

- Applicant establishes Miller Trust account but fails to empty account prior to establishment.
- Account has \$1,700 in it at time name is changed by bank
- $\$1,700 / \$4,910$  (avg. SNF private pay rate) = .35
- $.35 \times 30 \text{ days/month} = 10.50 \text{ days penalty}$

# What if bank refuses to change name on existing account?

- Be Prepared For Big Delays – Plan Ahead!!
- Setting up a new account for the Miller Trust then requires that enough of the applicant's income be redirected into that new account
- Communicating with pension administrators difficult – can take months to redirect income.
- Applicant remains ineligible until *month* income is actually received into the account

# Caseworker Documentation

- **The trust document verifying that the trust meets the criteria of IDAPA 16.03.05.872.02**
- **The bank account statement verifying the name on the account and that the income is paid directly to the trust account from the payment source, bypassing the participant**

# Everything must occur prior to the month Applicant is seeking eligibility

- Until the trust is established and funded by enough of the applicant's income to put him below the income cap, the income continues to cause ineligibility.
- Everything must be accomplished by *at least* the month prior to the month of application.

## Example:

- Sue signs Miller trust for her mom, who is in a SNF
- Mom's income = \$2,000/month
- Separate trust account set up in July, 2007
- SSA and PERSI contacted and request made to deposit income into trust account
- Checks flow into regular checking account in July, 2007
- Sue applies for Medicaid for Mom in July.

## Example Continued:

- Mom is ineligible for July, 2007
- Income still being received in her personal account
- She is over income for July, 2007
- Sue provides verification that income received into trust account for August, 2007
- Mom qualifies from an income standpoint for Medicaid as of August 1, 2007

## Another scenario:

- Same as before but Sue makes the mistake of transferring \$1,700 in Mom's personal account into the trust account in July when she sets up the new account
- Lack of access due to trust account = asset transfer
- 10 day penalty applied starting on August 1<sup>st</sup>, when Mom would otherwise be eligible.

# Current Proposed Rule Change

- Change would allow the Department to disregard an income payment for Medicaid eligibility if it was received by the participant **and then deposited into a Miller trust account in the same calendar month the payment was received.**
- Also allows the trust to designate funds for the benefit of the spouse

# Lawyer's Disclaimer/Wiggle Out

- This is **NOT** now the law.
- You **MUST** play by the old rules until the new rules are actually in place.

# Planning After Rule Change

- Establish Miller Trust
- Create separate Miller Trust account at bank
- Don't change direct deposits
- Every month move income received in regular account into the Miller Trust account
- Manage money pursuant to Miller Trust restrictions (patient liability, trustee's fee, payment of participant's health insurance, diversion of income to community spouse as much as possible)

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