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1634 Transition and Miller trusts: Additional Information

Implementation Questions

What is the status of the 1634 State Plan Amendment?

The SPA was approved by the Centers for Medicare and Medicaid Services, which became effective June 1, 2014.

What is the status of the 1634 Rule?

The 1634 final rule was promulgated and effective May 8, 2014.

Miller trust template

Questions on the state's Miller trust template have pointed out two phrases that were unclear. To address these concerns modifications were made to the template to clarify the language.

- The sentence that read: "The trust may receive any or all of the primary beneficiary's income, but the entire amount of income from each income source shall be deposited directly in the trust account or deposited in the trust account in the same month the income is received by the beneficiary", now reads "The trust may receive any or all of the primary beneficiary's income, but the entire amount of the income allocated to the trust from each income source shall be deposited directly in the trust account or deposited in the trust account in the same month the income is received by the primary beneficiary."
- The sentence that read: "If there is no named trustee eligible or willing to serve as Trustee, any interested person may apply to be appointed Trustee", now reads "If there is no named trustee eligible or willing to serve as Trustee, any interested person may apply to the primary beneficiary of the trust in order to be appointed Trustee."



Follow-up questions

Why are legal fees and administrative fees not allowable post-eligibility deductions for Miller trusts?

As has previously been indicated, legal and administrative fees for establishing a Miller trust are not currently allowable post-eligibility deductions. In researching possibly allowing this as a post-eligibility deduction, there was no precedent found for this deduction. Conversations with two other 1634 states indicated that they did not allow this deduction. Further, a policy change of this scope would impact the State Plan and require approval from the federal government. The state has developed a Miller trust template to cut down on time and expense associated with potential legal fees.

Will the state send members a notice of the amount of funds that need to be deposited into the Miller trust?

The state will not issue notices to members of the specific amount they need to deposit into the Miller trust each month. The State issued notices to all members and authorized representatives who may need a Miller trust to remain eligible for Medicaid coverage of institutional care on March 14, 2014. This notice included several resources, including the State-approved Miller trust template, instructions for establishing the trust, and resources for free or reduced cost legal assistance. The instructions listed how income is calculated to assist the beneficiary and his or her authorized representative. If a member's total monthly income from any of the applicable sources (gross unearned, gross earned, net self-employment, and net rental income) is greater than the annual Special Income limit, then the member needs to establish a Miller trust and divert funds equal to or greater than the difference between the person's calculated income and the Special Income limit. **The Special Income Limit is updated on an annual basis and the most current information can be found at <https://www.in.gov/fssa/ompp/forms-documents-and-tools2/medicaid-eligibility-policy-manual/>, section 3010.20.15.** On an annual basis near the end of the calendar year, the state will consider issuing notice to members and authorized representatives of the updated Special Income Limit.

Miller trusts questions

What if I have difficulty setting up the Miller trust account with a bank or credit union?

FSSA has developed a one-page document available at <https://www.in.gov/fssa/ompp/home/miller-trust/> members and member caretakers can use to help facilitate the process with financial institutions. If members have difficulties establishing the trust account with the bank, the state requests that the members report these difficulties to office.communications@fssa.in.gov along with the name of the bank and the reason(s) the bank stated for its inability to establish the trust. Caretakers that do not have a Power of Attorney that grants authority to handle the financial or health affairs of the individual may need to establish this authority prior to establishing the trust account with the bank.

Some nursing facilities use the Resident Funds Management System to manage member funds. Could this system be used for the Miller trust account?

Yes, nursing facilities may use the Resident Funds Management System to establish a Miller trust account. The trust account still must meet all requirements for a Miller trust such as it must be for a single individual, only hold monthly deposits of income, and only be used to pay for allowable deductions and health care expenses. Members may also establish Miller trust accounts with a financial institution not affiliated with the nursing facility.

If a member's income is not deposited until the middle of the month, will the recipient remain eligible?

Income does not have to be deposited into Miller trusts on the first of the month. As long as at least the amount of income that exceeds the Special Income Limit is deposited into the trust account in the month that it was received, the member is in compliance with eligibility requirements for that month.

How will court guardianship be funded?

There is a maximum \$35 per month allowable deduction for court guardianship expenses to lower a member's liability payment to a nursing home. The \$35 deduction only applies if it is ordered by the court.

Who can serve as the settlor of the Miller trust?

The person who establishes the trust (termed the “settlor” in any Miller Trust) is typically the Medicaid applicant/recipient. However, the applicant/recipient’s legal guardian, attorney-in-fact (Power of Attorney), or Medicaid Authorized Representative may serve as the Settlor instead.

What if members or their families cannot afford to pay for trust establishment?

The instructions on how to establish a Miller trust provide a list of legal resources that may provide free or reduced cost legal services for individuals that need to establish a Miller trust. There is also a trust template that is available on-line for members, which should help alleviate some of the legal expenses if free or reduced cost legal services are not available. It is still recommended by FSSA that a member using the template to establish the Miller Trust consult with legal counsel, but it is not a requirement.

Establishing the Miller trust is not the only requirement for individuals with income above the Special Income Limit to be considered categorically eligible for Medicaid. The member must also divert a minimum amount of funds to the Miller trust each month. The minimum amount is the difference between the person’s monthly income and the Special Income Limit.

What if there is a third-party deposit error in the Miller trust? Will the member lose eligibility?

Members are determined eligible for Medicaid at point-of-application and go through a re-determination process every 12 months. To be considered categorically eligible for each month, the correct amount of income must be deposited into the trust account each month. If the correct amount is not deposited and is not corrected before the end of a particular month, then that would be a reportable change the member is responsible to make to the Division of Family Resources because it would have an effect on the member’s eligibility for that month. As an example, if a member has \$3,163 in monthly income and delivers \$1,000 every month to a Miller trust on the 4th day of every month but instead of diverting \$1,000 only diverts \$500 on the 4th day, the member and trustee have until the end of that month to divert another \$500 to the trust to remain categorically eligible. If the additional \$500 is not deposited prior to the end of that particular month when the initial \$500 was deposited on the 4th through an error, the member is responsible to report this change to the DFR. If the additional \$500 is deposited prior to the end of that particular month to correct the error, the member is not required to report the instance to the DFR because the change did not have an effect on the person’s eligibility.