



The Indiana Family and Social Services Administration

1634 Transition Miller Trust Requirement and Resources

Webinar for Nursing Facilities
April 21, 2014





Introduction

- This webinar addresses:
 - Why it is necessary for some nursing facility residents establish a Miller trust
 - Instructions and resources for establishing a Miller trust
 - Strategies for addressing challenges that may arise when seeking to establish a Miller trust

Background
& Basics

Instructions
&
Resources

Addressing
Challenges



Why Do Some Nursing Facility Residents Need Miller Trusts?

Indiana Medicaid spend down program is ending June 1, 2014

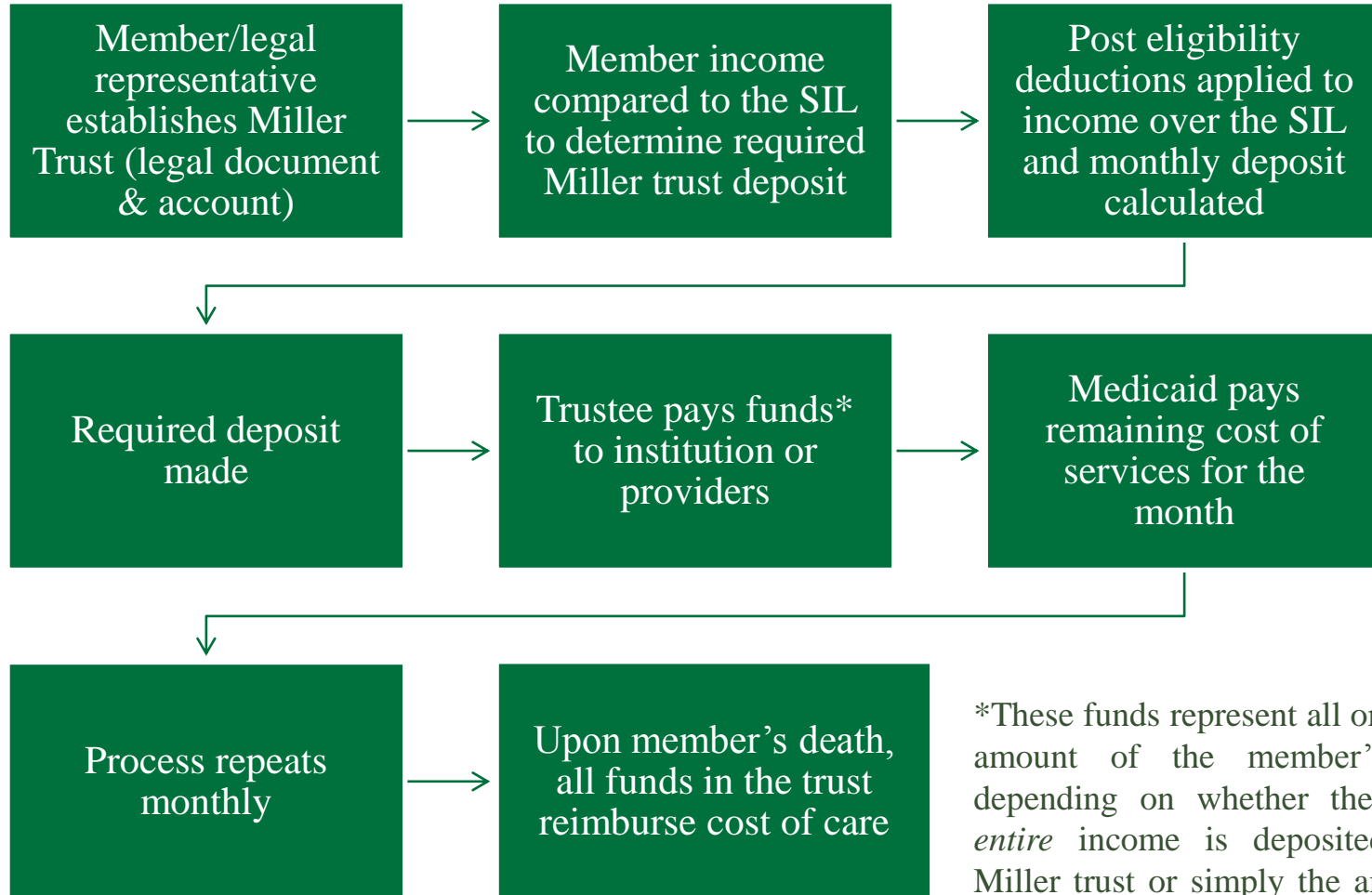
- Members living in nursing facilities with income greater than 300% of the maximum Supplemental Security Income (SSI) federal benefit rate (\$2,163 a month in 2014) also referred to as the special income limit (SIL) can currently qualify for coverage if other eligibility requirements are met
 - When the state transitions to 1634 status, these members will not be eligible unless they establish a Miller trust

A Miller trust allows members with income over the SIL to maintain eligibility

- Income placed in a Miller trust can be disregarded for eligibility purposes
 - Members' income can be reduced to a level to qualify them for coverage
 - Income placed in the trust is used to pay for health care services and allowable deductions
- To receive eligibility in June members with monthly income over \$2,163 must:
 - Establish a valid Miller trust
 - Make a deposit of income to the Miller trust account that reduces monthly income to less than \$2,163
 - Members may establish the trust and make the deposit anytime in June



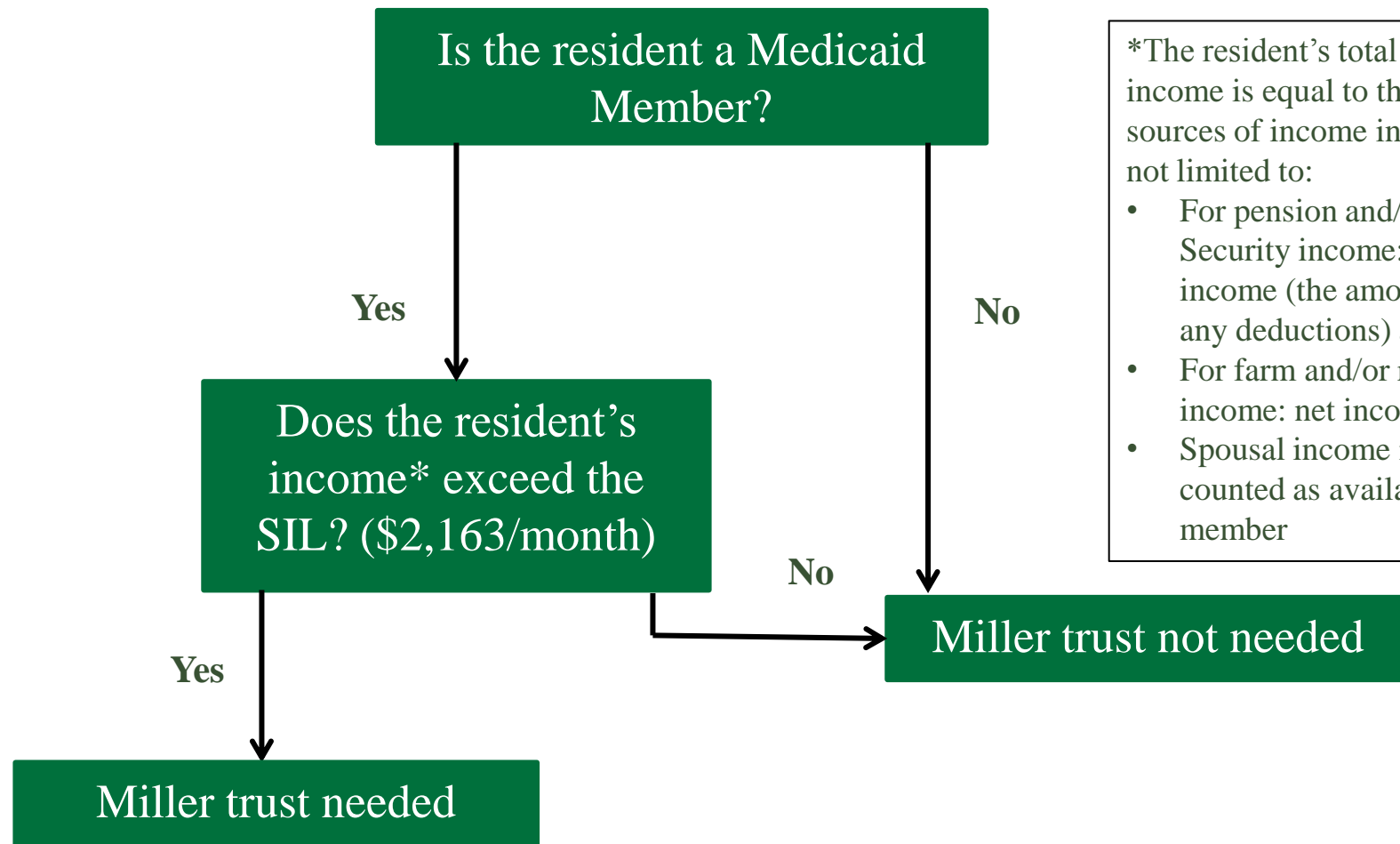
How a Miller Trust Works



*These funds represent all or part of the amount of the member's liability, depending on whether the member's *entire* income is deposited into the Miller trust or simply the amount over the SIL. Either approach is acceptable.



How to determine if a member needs a Miller trust

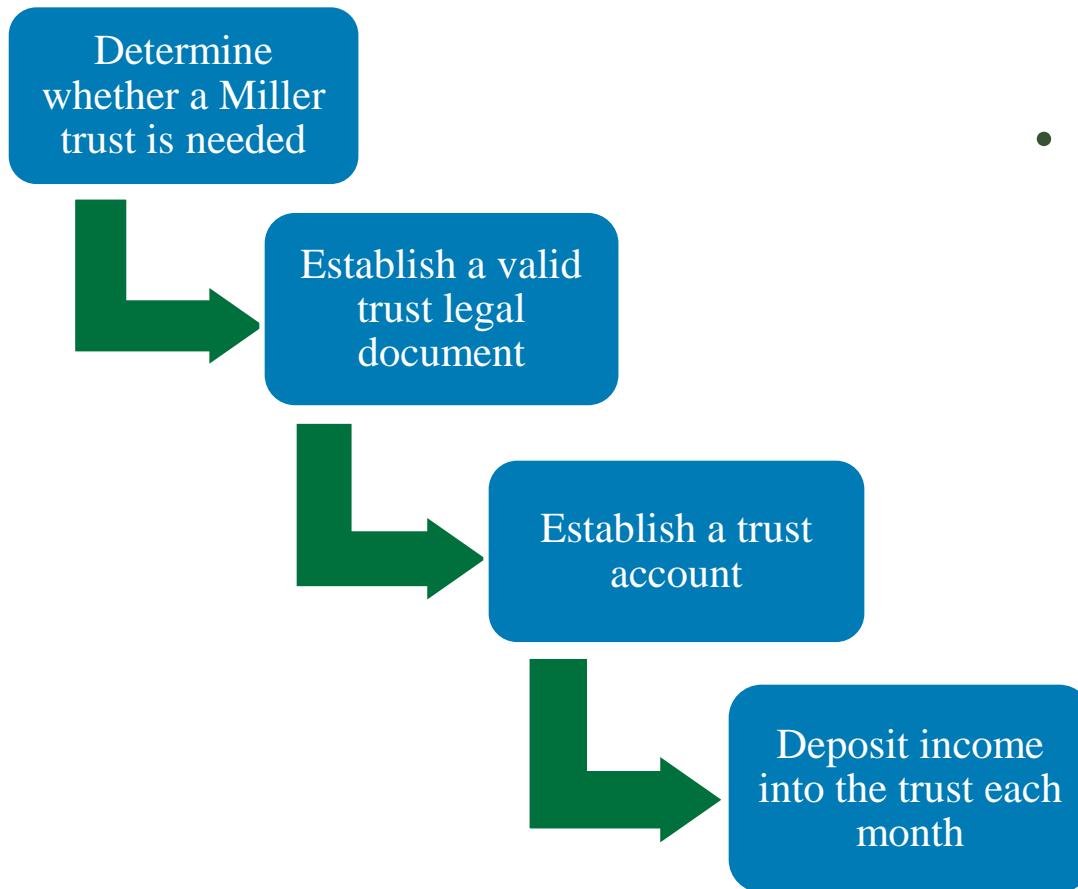


*The resident's total countable income is equal to the sum all sources of income including but not limited to:

- For pension and/or Social Security income: gross income (the amount *before* any deductions) and
- For farm and/or rental income: net income
- Spousal income is NOT counted as available to the member



How Does a Member Establish a Miller Trust?



- Who can establish a Miller trust on behalf of the beneficiary (serve as the settlor)?
 - The beneficiary
 - The beneficiary’s legal guardian
 - The beneficiary’s Power of Attorney agent
 - The beneficiary’s authorized representative (AR)



Miller trust legal document

- ❑ A valid Miller trust legal document must be established
 - State recommends that member seek legal assistance to create a valid trust document
 - The Indiana Chapter of the National Academy of Elder Law Attorneys (NAELA) will provide limited free or low-cost legal assistance to indigent applicants
 - Referrals available through the local Area Agency on Aging and the nursing facility trade associations
 - State has created a Miller trust legal document template:
 - Available at http://www.in.gov/fssa/files/Qualified_Income_Trust_Miller_Trust_template.pdf



The State Template

- Required inputs on the state template:
 - Beneficiary name
 - This is the Member
 - Settlor name
 - This is the person setting up the trust
 - Settlor can be the beneficiary; the beneficiary's legal guardian, attorney-in-fact (Power of Attorney), or Medicaid authorized representative
 - Sources of income to be placed in the trust
 - Trustee name and successor trustee name
 - This is the person managing the funds in the trust and their named successor
 - Distributee name
 - This is the person or persons that would receive any balance in the trust upon death of the primary beneficiary and reimbursement to the state for the costs of care
 - Date and signature of settlor



What counts as income?

- Income that must be included when calculating how much income needs to be deposited in the trust:
 - Gross unearned income
 - Gross earned income
 - Net self-employment income or farm income
 - Net rental income.
- If the sum of these income types is more than \$2,163 the member needs a Miller trust
- The member must deposit at least the amount of income that exceeds \$2,163 into the trust each month
 - Members with variable income may have different deposit amounts each month



Miller Trust account

- ❑ Set up a Miller trust account with a financial institution or the nursing facility's Resident Funds Management System
 - State has created a document to educate financial institutions on Miller trusts and associated accounts:
 - Available at <http://www.in.gov/fssa/ddrs/4860.htm>
 - State recommends that members/Power of Attorney agents/legal guardians/ARs/Family Members take this document to the financial institution when setting up the trust
 - Miller trust accounts must meet certain criteria:
 - Must be established with the member's Social Security number—not an EIN (Employer Identification Number)
 - **Only** the member's income may be deposited into the trust
 - No commingling of member's income with any other funds in the account:
 - No resources or assets
 - No spousal income



Depositing Income and Submitting Trust Materials

- ❑ Arrange to deposit member's income into the trust account
 - At a minimum, the member's income that exceeds the SIL must be deposited in the trust account each month
 - To maintain Medicaid eligibility for June 2014, the income over the SIL that the member receives in June must be deposited in the trust account
 - Member's income may also be deposited into the account prior to June 2014, and used to pay the liability for prior month(s)
- ❑ When trust document is complete, account is established, and deposit has been arranged, submit the following to the Division of Family Resources:
 - Valid Miller trust legal document
 - Miller trust account information
 - Proof that arrangements have been made to deposit income into the trust account in June 2014 and beyond:
 - For nursing facility members, self-attestation that income will be deposited beginning in June is acceptable if materials are submitted before June 1
 - Documents may be submitted by fax, mail or in person
 - Instructions for submission are available at: <http://www.in.gov/fssa/ddrs/4860.htm>



Trust Submission Requirements by Submission Timing

| | Before June 1, 2014 | June 1, 2014-June 30, 2014 |
|-------------------------------|---|--|
| Required Items for Submission | <ul style="list-style-type: none">• Valid Miller trust document• Trust account information• Proof that member's monthly income has been deposited into the trust account in April/May* OR signed self-attestation that deposit of income will be made monthly starting in June | <ul style="list-style-type: none">• Valid Miller trust document• Trust account information• Proof that the correct amount of the member's monthly income has been deposited into the trust account in June |

*If member's income is deposited into the trust account in April or May, it can be used to pay the member's liability for those months.



Member Impacts by Submission Timing

- Member will continue to be eligible for the month of June and beyond as long as all Miller trust materials are submitted by June 30, 2014.

| | Before May 1, 2014 | May 1 to June 1 | June 1, 2014-June 30, 2014 | After June 30, 2014 |
|--------------------------------|---|--|--|---|
| Member Impacts Post-Submission | <p>-Member is eligible for the month of June and beyond as long as the correct amount of income continues to be diverted to the trust account monthly</p> | <p>-Member may receive a discontinuation notice effective June 1</p> <p>-If member submits trust documents member will remain eligible while materials are under review</p> <p>-If documents are valid member is eligible as long as they continue to make their monthly deposit of income</p> | <p>-Member eligibility will be terminated in June</p> <p>-If member submits Miller trust documents eligibility termination will be rescinded</p> <p>-Member will be eligible while materials are under review</p> <p>-Provided that Miller trust is valid member will be eligible as long as they continue to make their monthly deposit of income</p> | <p>-Member will be ineligible for coverage in June 2014 and any following months in which they do not have a Miller trust</p> <p>-Members with income over the SIL are not eligible and no retroactive eligibility will be granted for the months prior to trust establishment</p> <p>-Member must reapply for coverage</p> |



Challenges with establishing a Miller trust

- Stakeholders have reported two major challenges associated with established a Miller trust
 - Some members have no one to serve as the trustee for the Miller trust
 - These members must obtain a legal guardian to serve as trustee
 - Court process to obtain legal guardianship can take a long time and may extend beyond the June 30 deadline for submitting Miller trust materials
 - Some financial institutions refuse to allow individuals to establish a Miller trust account on behalf of the member
 - Members' legal guardians or Power of Attorney agents may establish an account on the member's behalf provided they have legal authority to manage the member's health or financial affairs
 - However, some financial institutions have an internal policy that the Power of Attorney must grant specific authority to establish trusts



Legal Guardianship Challenge

Problem

- Member has no one to serve as trustee and must obtain a legal guardian
- Legal guardianship process cannot be completed in time to establish the Miller trust before June 30



Solution

- If a court petition to obtain a legal guardianship and establish a Miller trust has been submitted for the member by June 30, 2014, the member remains eligible during the process
- There is an allowable \$35 post eligibility that may be included in the court order for a legal guardianship



Action Required

- Evidence of a court petition requesting court ordered legal guardianship and Miller trust establishment must be submitted to the DFR by June 30, 2014 to maintain eligibility for June
- Valid Miller trust materials must be submitted soon after court order is obtained



Account Establishment Challenge

Problem

- Member's financial institution has a policy that only allows the Power of Attorney agent to establish a trust account on member's behalf if specific authority is granted to establish a trust



Solution

- **Option 1:** Provide State Miller trust educational document to the financial institution representative
- **Option 2:** Try a different financial institution or establish the Miller trust account with the facility's Resident Funds Management System (RFMS), if available
- **Option 3:** Modify Power of Attorney to allow for establishment of trusts



Miller Trust Questions

- Can administrative fees associated with the trust and its establishment be deducted to lower a person's liability payment to the nursing home?
 - While the trust itself may allow for funds to be used for legal and administrative fees, those fees are not currently allowable post-eligibility deductions to lower the person's liability payment to the nursing home. Research has not shown that other states that need Miller trusts to maintain eligibility allow this deduction.
- Will members and their authorized representatives receive a notice of how much they need to deposit in the trust?
 - No, all members and authorized representatives who may need a Miller trust to remain eligible for Medicaid coverage of institutional care were issued a notice on March 14, 2014. On an annual basis, the state will consider issuing notice to members and authorized representatives of the updated Special Income Limit.



Conclusion

- All state Miller trust resources are available online:
 - <http://www.in.gov/fssa/ddrs/4860.htm>
 - List of NAELA attorneys available to provide free or low-cost legal assistance available through:
 - Local Area Agency on Aging (1-800-986-3505)
 - Nursing facility trade association
 - Additional Miller trust questions may be submitted to:
 - Office.communications@fssa.IN.gov