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 to 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

1. Member/legal representative establishes Miller Trust (legal document & account)
2. Member income compared to the SIL to determine required Miller trust deposit
3. Post eligibility deductions applied to income over the SIL and monthly deposit calculated
4. Required deposit made
5. Trustee pays funds* to institution or providers
6. Medicaid pays remaining cost of services for the month
7. Process repeats monthly
8. Upon member’s death, all funds in the trust reimburse cost of care

*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

1. Is the resident a Medicaid Member?
   - Yes
     - Does the resident’s income* exceed the SIL? ($2,163/month)
       - Yes
         - Miller trust needed
       - No
         - Miller trust not needed
   - No
     - Miller trust not needed

*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
  o State recommends that member seek legal assistance to create a valid trust document
    o The Indiana Chapter of the National Academy of Elder Law Attorneys (NAELA) will provide limited free or low-cost legal assistance to indigent applicants
    o Referrals available through the local Area Agency on Aging and the nursing facility trade associations
  o 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](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

<table>
<thead>
<tr>
<th>Required Items for Submission</th>
<th>Before June 1, 2014</th>
<th>June 1, 2014-June 30, 2014</th>
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<tbody>
<tr>
<td></td>
<td>• Valid Miller trust document</td>
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<tr>
<td></td>
<td>• Trust account information</td>
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<tr>
<td></td>
<td>• Proof that member’s monthly income has been deposited into the trust account in</td>
<td>• Proof that the correct amount of the member’s monthly income has</td>
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<td>April/May* OR signed self-attestation that deposit of income will be made</td>
<td>been deposited into the trust account in June</td>
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<td>monthly starting in June</td>
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*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.

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

- Stakeholders have reported two major challenges associated with establishing 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
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 instruction 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](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](mailto:Office.communications@fssa.IN.gov)