1634 Transition and Miller trusts: Additional Information

Implementation Questions

What is the status of the 1634 State Plan Amendment (SPA)?

The SPA was approved by CMS, 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 $2,199 (amount effective January 1, 2015), 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 $2,199. 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 http://www.in.gov/fssa/ddrs/4860.htm that 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.

What is the process if a member does not get a trust established by May 1, 2014?

Members that do not have a trust established by May 1, 2014, may receive a discontinuance notice. However, if these members provide proof by June 30 to the Family and Social Services Administration's Division of Family Resources (DFR) that they have established a trust and funded the trust with the correct deposit of income, their eligibility will be reinstated for the entire month of June and they will not need to reapply for benefits. The trust will be reviewed by FSSA to determine its validity, but during the review process the person will have eligibility.

What proof needs to be provided prior to June 1 that funds have been deposited into the Miller trust account?

Prior to June 1, 2014, members residing in nursing homes who need to establish a Miller trust to maintain eligibility may submit the finalized trust, evidence that a separate account at a financial institution or with the facility's Resident Funds Management System has been established for the Miller trust, and a self-attestation as to the monthly amount of income that will be diverted to the Miller trust.

For trusts submitted on or after June 1, documentation of the deposit for June will be required.

Self-attestation as to the monthly amount of income that will be diverted to the Miller trust shall only be allowed for people residing in institutional facilities. Home and Community Based Services waiver recipients can currently receive a benefit of having lower cost-sharing requirements with a Miller Trust, and waiver recipients must show proof of actual diverted funds to a Miller Trust account.

If a member submits a trust to review prior to June 1, but it is not approved until after June 1 will the member lose eligibility in June?

The member will not lose eligibility in June if the trust is under review. The member will receive continued eligibility during the trust review process.

What is the last day a member can establish a trust to ensure he or she is eligible for the month of June?

A Medicaid recipient who received notice that eligibility is set to end on June 1 due to not having a Miller trust can have the Medicaid discontinuance rescinded by submitting the following to the Division of Family Resources (DFR) by June 30: 1) a copy of the trust, 2) evidence that a separate account at a financial institution or with the facility's Resident Funds Management System has been established for the Miller trust, and 3) proof of funds deposited to the trust. The member will be eligible for services while the trust documents are under review.

What if a member needs to obtain a court guardian to serve as the trustee or settlor of the Miller trust?

If a member submits to the DFR a copy of a court petition requesting guardianship and the petition includes a Miller Trust that will be established for the member by June 30, 2014, continued eligibility would be allowed in these circumstances. Once the court order is approved, it must be reported to the DFR.

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.

What if individuals cannot complete the process to establish a Miller trust by June 1 because of the need for a court-appointed legal guardian to serve as the trustee or settlor?

If a member needs a court appointed guardian to serve as the trustee or settlor of the Miller trust and this process cannot be completed by June 1 the State will not discontinue the member's eligibility due to this reason alone. Members in this circumstance should provide information and any relevant documentation to the Division of Family Resources (DFR) as soon as possible so that coverage is not interrupted. In the case that the member needs a court-appointed guardianship, a court petition requesting legal guardianship and Miller trust establishment must be submitted to DFR. If there is interrupted coverage, a copy of the petition with the Miller trust would need to be given to the DFR in the month of June so that coverage can be reinstated while the petition awaits the final court order.

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 $2,199 (amount effective January 1, 2015) 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 $2,199.

With the short deadline not every member that needs free or reduced legal fees to establish the trust

may be accommodated by Indiana Legal Services, what should members do if they cannot afford to pay for trust establishment?

A member has until June 30th to establish and deposit monthly income into a Miller trust to receive coverage for the month of June. Members do not have to go to Indiana Legal Services to request help in establishing the Miller trust. The state recommends that individuals consult an attorney in establishing a Miller trust, and the state template provides a resource that will help to reduce the time and cost associated with trust establishment.

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 DFR 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.