

CHANGES AND TRENDS AFFECTING SPECIAL NEEDS TRUSTS

UPDATE ON SOCIAL SECURITY ADMINISTRATION TREATMENT OF SPECIAL NEEDS TRUSTS

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OVERVIEW

- ▶ History of SSA focus on sole benefit for self-settled trusts
- ▶ Recent activities and advocacy relationship with SSA
- ▶ POMS changes in 2014 – 2015
- ▶ Outstanding issues: Draper and ABLE
- ▶ What's ahead with SSA
- ▶ Practice tips

BACKGROUND OF “SOLE BENEFIT” IN FEDERAL SNT STATUTE

- ▶ OBRA '93, 42 U.S.C. §1396p(d)(4)
- ▶ The word “sole” (actually “solely”) only occurs once in the (d)(4) portion of the statute in context of pooled trusts.

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CMS POLICY: SNTS FOR “SOLE BENEFIT” OF BENEFICIARY

- ▶ HCFA 64 – State program transmittal letter issued in November 1994 by federal Medicaid policy office.
- ▶ Broadly defined “sole benefit”
- ▶ As to *transfer* of assets taking place in such a way that no individual or entity except the beneficiary can benefit from the assets transferred in any way, whether at the time of the transfer or at any time in the future. (3257B.6)

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- ▶ As to *the trust itself*, sole benefit means the trust benefits no one but the individual, whether at the time the trust is established or any time in the future. (3257B.6) *Exception for reasonable administrative expenses.*
- ▶ **Inserted** the word “sole” into (d)(4)(A) description at 3259.7A.

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SSI ADOPTS “SOLE BENEFIT”

- ▶ Eligibility protections for self-settled trusts expanded to SSI under Foster Care Independence Act, January 2000.
- ▶ First POMS reference to “sole benefit” in 2001.

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