

Terminating First Party SNTs

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MATERIALS BY SCOTT STEBLER AND CHRISTOPHER D. JONES

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History of Medicaid Payback Requirement

Before OBRA '93

1. Transferring Countable Resources to a Revocable Trust:
Remained a Countable Resource
2. Transferring Countable Resources to an Irrevocable Trust:
Resulted in Transfer Penalty
3. No Effective Option for Disabled Individual to Create Trust to
Protect Benefits

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History of Medicaid Payback Requirement

After OBRA '93

1. Permitted Establishment of (d)(4)(A) Trust
2. Disabled Individual Immediately Qualifies for SSI and Medicaid When Trust Established and Funded
3. ***BUT, with an Important Trade-Off: Medicaid Gets Reimbursed on Death of the Beneficiary***
4. *Caveat – a Pooled Trust can retain funds BEFORE reimbursing Medicaid, up to the total amount in the Trust sub-account.

The Basics of Medicaid Payback

Post-Death Reimbursement from SNT

Reimbursement is owed to **Medicaid**

Reimbursement is **NOT** owed to **Social Security**

Reimbursement is **NOT** owed to **Medicare**

Reimbursement is only owed from **First Party SNT**

Federal Statutory Language

Under 42 U.S.C. 1396p(d)(4)(A) . . .

A First Party SNT is defined as a trust established with the assets of a disabled individual under age 65 . . .

“if the State will receive all amounts remaining in the trust upon the death of such individual up to an amount equal to the total medical assistance paid on behalf of the individual under a State plan under this subchapter.”

POMS Guidance

POMS SI 01120.203.B.10 provides . . .

“To qualify for the special needs trust exception, the trust must contain specific language that provides that, upon the death of the individual, the State(s) will receive all amounts remaining in the trust, up to an amount equal to the total amount of medical assistance paid on behalf of the individual under the State Medicaid plan(s).”

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