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Medicaid's Right to Reimbursement and SNTs

**2025 National Conference on Special Needs Planning
and Special Needs Trusts**

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Why Begin at the End?

- Most discussions focus on creation and lifetime administration, not termination
- Medicaid reimbursement is central but often not given the attention it's due
- Clients must understand consequences at termination

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Agenda

- Federal Law and regulations
- 1st party SNT termination provisions
- Nuances of Medicaid's right to reimbursement

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Historical Background

- First party SNTs codified > 30 years ago
- Origin: OBRA '93
- Later developments: HCFA Transmittal No. 64, Foster Care Independence Act (1999), POMS

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OBRA '93 Exceptions

- (d)(4)(A) – Disabled Under 65 Trust: Most likely to have “amounts remaining”
- (d)(4)(B) – Income-Only or Miller Trust: Unique to income-cap states and least likely to have “amounts remaining”
- (d)(4)(C) – Pooled Trust: Only to extent amounts are not retained

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Early Termination Provisions

- Federal Medicaid law and regulation limit payback to time of death
- Some states (AZ) require reimbursement on lifetime termination
- SSA (POMS) requires payback if terminated early
- Remaining assets: First Medicaid, then beneficiary

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Termination at Death Provisions: Limitations

- Limited admin expenses prior to reimbursement
- Expenses of last illness, funeral and burial AFTER reimbursement

Note: Important to pre-arrange funeral and burial!

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Termination at Death Provisions: Residual Beneficiary

- Medicaid as creditor v. beneficiary
- Laws of intestacy may render trust revocable, i.e., countable for SSI purposes

Drafting tip: Name residual beneficiary of nominal interest mimicking laws of intestacy!

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Power to Amend... Just in Case

The SNT that passes muster today, will not tomorrow.

- Limited not broad or general power to amend
- Give power to amend to someone other than beneficiary
- Limit power to amend so trust assets not considered available for maintenance and support

Drafting tip: Provide for amendments that ensure the SNT complies with the provisions of 42 U.S.C. § 1396p(d)(4), the POMS, and applicable state laws and regulations.

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Third Party SNT – Short ‘n’ Sweet

Unless charitably inclined, do NOT provide for reimbursement as it is NOT required!

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Paying the Piper: Medicaid Estate Recovery

OBRA '93 mandated states institute estate recovery program:

- Limited to estates of Medicaid enrollees aged 55 or older
- No recovery if Medicaid enrollee survived by spouse, child < 21, blind or disabled child
- Undue hardship waiver

None of the above limitations or waiver apply to SNTs!

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Paying the Piper: Scope of Payback

- Includes all assistance paid since eligibility, not just post-trust
- Avoid double recovery when liens satisfied prior to trust
- Deduct total (v. compromised) lien amounts from claim for reimbursement

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Paying the Piper: "Medical Assistance"

- Defined set of services (21 categories)
- Excludes capitated payments unless estate recovery rules apply
- Transmittal 75: Premiums recoverable only if notice given

***Practice tip:** Make sure Medicaid's claim is only for the specific services enumerated and, if reimbursement of premium payments is sought, argue not permissible against SNT and confirm whether separate notice given.*

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Conclusion: Counsel your Client!

- Right to reimbursement on termination at death and, possibly, during lifetime
- Dates back to when first eligible not to when the SNT established
- Consider what is included in "medical assistance"
- Confirm proper notice given if reimbursement of premium payments sought
- Consider which expenses are disallowed until after Medicaid is reimbursed

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