

2026 NATIONAL CONFERENCE ON SPECIAL NEEDS PLANNING AND SPECIAL NEEDS TRUSTS | STETSON UNIVERSITY
COLLEGE OF LAW

First-Party Special Needs Trusts

Drafting When Federal Compliance Is Not Enough: State-Level D4A Anomalies, Administrative Friction, and Practical Drafting Implications

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Educational materials only, not legal advice for any particular matter. State requirements change; confirm current authority and agency practice before relying on any slide. The written materials contain far more than these slides. Materials prepared with extensive use of Perplexity and Manus AI.

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ROADMAP

Federal compliance is necessary, but not always sufficient

1 The federal floor

Source of funds, the D4A elements, the SNT Fairness Act, and why payback conceals complexity.

2 Drafting and funding decisions

Funding contexts, choosing the vehicle, ABLÉ first, trustee selection, flexibility, death administration.

3 The state-overlay thesis

What counts as a true D4A add-on, seven anomaly categories, and an 11-jurisdiction map.

4 The state tour

Notice, pre-approval, reporting, and payback regimes: NJ, WV, GA, MD vs. DC, HI, MA, and more.

5 Making it operational

Beneficiaries moving between states, trust-company governance, and an intake checklist.

The relevant question is not whether the trust is federally compliant in the abstract, but where it will be reviewed, funded, administered, distributed from, and terminated.

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PART 1

The Federal Floor

Get the federal basics right first: source of funds, disabled beneficiary, proper settlor, sole benefit, age, and payback.

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FEDERAL FLOOR | CLASSIFICATION

The first question is whose money it was

A first-party trust holds assets that belonged to, were vested in, or became legally payable to the beneficiary. If the assets were the beneficiary's by right, you are in first-party territory.

Ordinary first-party funding sources

- Personal-injury settlement or judgment, including structured-settlement rights
- Inheritance payable outright to the disabled individual
- Beneficiary designation: retirement account, life insurance, annuity
- Accumulated SSI or SSDI back benefits
- Any other vested entitlement of the beneficiary

The money need not pass through the beneficiary's hands. A settlement paid straight to the trust is still first-party money.

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FEDERAL FLOOR | PURPOSE

OBRA '93 created a narrow exception, not an asset shield

SSI lens: distributions

- Vendor payments for goods and services may avoid treatment as income
- Shelter payments implicate in-kind support and maintenance (ISM)
- Since Sept. 30, 2024, food is no longer counted as ISM
- ISM may reduce, but not necessarily eliminate, SSI

Medicaid lens: corpus

- Is the trust corpus a countable resource?
- Is administration consistent with the (d)(4)(A) exception?
- Does the state add conditions while the beneficiary is alive?

Keep the benefit systems separate from the drafting question itself. Different agencies, different tests.

Source: 42 U.S.C. § 1396p(d)(4)(A); POMs SI 01120-203, SSA-EM-24048 (food omitted from ISM)

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FEDERAL FLOOR | THE D4A ELEMENTS

Five federal elements, each a later pressure point

1 Disabled beneficiary

- Meets the Social Security disability standard.

2 Proper settlor

- The individual (if competent), parent, grandparent, guardian, or court.

3 Sole benefit

- Administered for the sole benefit of the disabled beneficiary.

4 Under age 65

- Established and funded before the beneficiary reaches 65.

5 Medicaid payback

- State(s) repaid at death, up to medical assistance properly recoverable, before any remainder.

Federal law supplies the floor. It does not guarantee a frictionless path in every jurisdiction.

Source: 42 U.S.C. § 1396p(d)(4)(A); POMs SI 01120-203

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FEDERAL FLOOR | THE 2016 CHANGE

The SNT Fairness Act let a competent individual establish his or her own trust

Dec. 13, 2016

Trusts established on or after this date may be established by the disabled individual, per federal guidance (SMDL #17-001).

- Special Needs Trust Fairness Act, enacted as § 5007, "Fairness in Medicaid Supplemental Needs Trusts," of the 21st Century Cures Act
- Pub. L. No. 114-255, § 5007, 130 Stat. 1033, 1209 (2016)
- Amended § 1396p(d)(4)(A) by inserting "the individual" among permitted establishments
- Removed the need for a court petition solely because no parent or grandparent was available

The federal text has been stable since 2016. The interpretive ecosystem around it has not.

Source: [H.R. 34 \(21st Century Cures Act\)](#), [§ 5007](#) of the [U.S.C.](#)

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FEDERAL FLOOR | PAYBACK

One payback sentence hides five state-level variables

Variable	Where states diverge
Formulation	Exact payback wording; scope measured from trust creation or from birth.
All-state language	Whether the state insists on reimbursement to every state that paid.
Early termination	Whether and how termination during life is restricted or triggers payback.
Order of expenses	Which taxes, administrative costs, and funeral expenses come first at death.
Lifetime conditions	Reporting or approval conditions imposed while the beneficiary is alive.

A drafter who stops at the federal payback clause may produce a trust that reads well and performs badly.

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PART 2

Drafting and Funding Decisions

The same apparently compliant instrument can fund smoothly in one state and stall in another. Most of the risk is decided before signing.

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DRAFTING | FUNDING CONTEXTS

Two funding paths dominate, and timing matters in both

Litigation recoveries

- Personal-injury settlement or judgment; often structured
- Some states require Medicaid lien resolution before funding
- Others require agency review or notice before court approval
- Others focus on reporting after funding

Failed or incomplete family planning

- Parents intended a third-party SNT
- Inheritance, retirement asset, or beneficiary designation passed outright
- The fix is a first-party trust, with payback
- Prevention is beneficiary-designation review in the parents' plan

A purely forms-based approach is dangerous: the funding path, not the form, determines which state gates apply.

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DRAFTING | CHOOSING THE VEHICLE

Match the vehicle to the size of the recovery

Substantial recovery

Roughly six figures and up

Stand-alone (d)(4)(A) trust tailored to the beneficiary, ideally with a professional fiduciary or corporate trustee. The gold standard where the asset base supports competent administration.

Modest recovery

Too large to spend down, too small for stand-alone economics

(d)(4)(C) pooled trust: pooled investment, separate subaccounts. Watch charitable retention, loss of control, and the age-65 fault line.

Very small recovery

Administration cost outweighs benefit

Legitimate spend-down: burial planning, vehicle, home-related expenses, exempt-resource conversion. Timing- and program-specific.

Spend-down is a planning alternative, not a casual fallback.

Source: 42 U.S.C. § 1396p(d)(4)(A), (C)

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DRAFTING | ABLE ACCOUNTS

ABLE first, then the D4A trust

1

Confirm eligibility

Disability began before age 46 (effective Jan. 1, 2026; previously 26).

2

Fund ABLE to the cap

\$20,000 for 2026, from all sources combined. Not the \$19,000 gift exclusion.

3

Fund the D4A

Larger corpus under professional administration, with payback.

4

Refill every January

Move the annual max from the D4A to ABLE. In NJ, send the 45-day notice in November.

Why first: direct, flexible spending on qualified disability expenses; no D4A notice regime; first \$100,000 disregarded for SSI.

Trade-offs: one account and an annual cap. Most states have payback on both, so the move is about flexibility, not the state's rights.

Draft for it: expressly authorize recurring trustee contributions to the beneficiary's ABLE account from day one.

Fill ABLE before the trust, and refill it every January. Plan for the notice, not around it.

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DRAFTING | TRUSTEE SELECTION

Many “state law” failures are really trustee-selection failures

What the role actually requires

- Prudent discretion for supplemental benefit
- SSI and Medicaid literacy
- Accounting discipline and complete books
- Tax and investment competence
- Coordination with care providers
- Withstanding agency and remainder-beneficiary scrutiny
- Durability, personal or institutional

When minimums rule out an institution

Smaller fund, need for expertise

Local, counsel-supervised file

State program available

Family involvement desired

Consider

Professional fiduciary

Attorney-trustee

State-licensed fiduciary

Co-trustee or advisory structure with a professional

Treat trustee selection as part of the drafting conference, not the signature page.

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DRAFTING | LEGAL DRIFT

Draft for drift: flexibility is survival, not elegance

Successor fiduciaries

A deep, ordered succession plan with professional fallbacks.

Trust protector

Where permitted, with powers that cannot be exercised by or for the beneficiary.

Decanting and modification

Lawful paths to conform the trust as rules change.

Situs and governing law

Power to move administration when consistent with the benefit rules.

Asset-holding feasibility

Confirm a custodian will hold retirement, structured-settlement, or real-property interests.

ABLE funding power

Express, recurring authority to contribute to the beneficiary's ABLE account.

Technical tax permission is not a solution if no custodian will hold the asset.

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DRAFTING | DEATH ADMINISTRATION

Draft for the beneficiary's death on day one

1

During life

Fund an irrevocable burial contract or other permitted device if funeral payment from the trust will be barred.

2

At death

Give required death notice; identify the reimbursement timetable.

3

Accounting

Prepare the closing account the state expects, including any prior-year distribution history.

4

Claim resolution

Resolve the payback claim without impermissible delay.

5

Remainder

Distribute only after reimbursement under the governing state's rules.

A payback clause is not a death plan. The sequence of notice, accounting, reimbursement, and remainder must be built in.

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PART 3

The State-Overlay Thesis

Not every state is a trap, but the trap states matter disproportionately.

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STATE OVERLAY | METHOD

A disciplined map counts only true D4A add-ons

Excluded from the count

Not a D4A add-on	Why
Ordinary trust-law duties	UTC-type duties apply to all trusts
SSI/POMS distribution rules	Federal, not state
General Medicaid eligibility doctrines	Miller trusts, income caps, 209(b)
Copied, unsupported assertions	No primary-source confirmation

Result: a more modest map, and a more useful one.

Counted as an anomaly

A statute, regulation, manual provision, formal agency material, case, or durable and consistently enforced practice that adds a notice, approval, reporting, funding, lien, termination, or payback obligation beyond § 1396p(d)(4)(A).

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STATE OVERLAY | CATEGORIES

Seven categories of state friction give us an intake framework

1
Advance expenditure notice

2
Pre-review or approval

3
Prescribed annual accountings

4
Lien or funding gates

5
Termination restrictions

6
Unusual payback formulations

7
Age-65 pooled-trust penalty differences

Know that the eccentricities exist and which category they fall in.

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STATE OVERLAY | THE WHY

Why states add friction, and what each motive predicts

Likely motive	What it tends to produce	Examples
Protect the payback	Pre-expenditure review, broad payback scope, short repayment clocks	NJ (from birth); NV (three months)
Respond to past abuse	Mandatory provisions and bars on beneficiary roles	MD (no beneficiary as protector or adviser)
Limited agency capacity	Bright-line dollar thresholds and checklists in place of judgment	NJ and NV (\$5,000); MD checklists
Institutional lag	Rules and manuals never conformed to federal change	HI (pre-2016 text); MD manual
Courts as gatekeepers	Court approval and agency notice of hearings	NV, CA, GA

Know the motive and you can predict the friction, even in a state that is not on the map.

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STATE OVERLAY | THE 11-JURISDICTION MAP

Eleven jurisdictions with meaningful overlays in the first pass

Jurisdiction	\$ notice	Review / approval	Agency accounting	Lien / funding gate	Payback / termination	Statutory or reg. regime
New Jersey	•		•	•	•	
Nevada	•		•		•	
Georgia		•	•	•		
California		Notice		•	Notice	
Minnesota		Filing	•			•
Iowa		•	•		•	
Pennsylvania		•		•		
Colorado		•			•	•
Missouri		•				
Washington						•
New York		Court				•

• = feature identified in the first-pass survey. Text entries describe a narrower form of the feature. Maryland is addressed separately. Confirm current authority before reliance.
Source: N.J.A.C. 10-71.4-11; NV F-500; GA Manual § 2346; Minn. Stat. § 501C.1205; CO HB19-1054; WAC 382-516; N.Y. EPTL 7-1.12

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STATE OVERLAY | THE CONTRAST

Not every state is a New Jersey

Michigan

Comparatively hands-off with respect to D4A trusts in practice, while still presenting post-age-65 pooled-trust funding issues.

Practitioner observation: Christopher Smith, Esq., SNA member

The lesson for national fiduciaries

- Home-state intuition is the danger
- No fiduciary should assume uniformity
- An easy D4A state may be less simple once pooled trusts are involved
- A national trustee must be facile across jurisdictions

The practical lesson is not that every state is burdensome. It is that no state should be assumed to be easy.

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PART 4

The State Tour

Statute, regulation, manual, and practice: where the friction lives, and why the source matters.

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STATE TOUR | NEW JERSEY

New Jersey: the easy state to bash, and for good reason

\$5,000

Expenditure threshold, per expenditure or in aggregate over 12 months

45 days

Advance written notice to DMAHS (BAAU) before the expenditure

Also required in practice

- Annual accountings to the eligibility agency and to DMAHS/BAAU
- Notice of trustee changes and of the beneficiary's death
- Tort-related Medicaid reimbursement before funding
- Asserted payback scope measured from birth, not trust creation
- Drafting guardrail: no terms that functionally return corpus to the beneficiary

Notice also applies to any amount that would substantially deplete principal.

Administer New Jersey as a high-friction state at drafting, funding, and termination.

Source: N.J.A.C. 10-71.4-11, NJ DMAHS SNT FAQs

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STATE TOUR | THE NEW JERSEY PARADOX

Same politics, different administrative culture

New Jersey

- Budget pressure met with control over distributions during the beneficiary's life
- \$5,000 and 45-day advance notice; dual accountings
- Payback asserted from birth

California, New York, Massachusetts, Illinois

- Comparable budget pressure, more generous administration in practice
- Where friction exists, it is mostly procedural: courts, hearing notice, liens
- Massachusetts: post-65 pooled funding without penalty

In some states, the D4A has been the more flexible tool. In New Jersey, ABLE becomes the release valve.

Speaker's observation from practice; not a ranking of state programs.

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STATE TOUR | NEVADA

Nevada: the other \$5,000 state, with a three-month payback clock

\$5,000

Any trust expenditure above this amount must be reported to DWSS immediately

Annual

Reconciled accounting plus a justification that expenditures were for sole benefit

3 months

Deadline to repay the state after death or termination of the exemption

Difficulty need not come from a statute. A durable, enforced manual provision is just as consequential.

Source: Nevada DWSS Medicaid Manual § 500

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STATE TOUR | GEORGIA

Georgia: a court order may not end the inquiry

1

Submit

Trust submitted on Form 956 (SNT Review Routing Form) before execution or judicial approval

2

Review

DCH Legal Services reviews validity

3

Hearing notice

Advance notice to DCH of the court-approval hearing

4

Lien

Medicaid lien addressed before the trust is treated as validly funded

5

Ongoing

Annual audits or asset reporting

The trust may have to clear a separate agency gate before the resource exclusion is accepted.

Source: Georgia Medicaid Manual § 2346

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STATE TOUR | EIGHT MORE OVERLAYS

Eight more states demand independent attention

State	Overlay	Authority
California	Agency notice before certain establishment hearings and at termination; PI liens resolved before funding	Prob. Code §§ 3600–3605; DHCS SNT Unit
Minnesota	Trust and asset inventory to DHS at MA application; annual accountings with prescribed content	Minn. Stat. § 501C.1205
Iowa	Trust Program review; annual reporting to the program and district court; broad payback	Iowa Medicaid Trust Program
Pennsylvania	DHS review, lien attention before funding, death notice; several former add-ons preempted, so prune old checklists	62 P.S. § 1414; Lewis v. Alexander
Colorado	Trust not valid until the department ensures compliance with state law and Title XIX	C.R.S. disability-trust statute; HB19-1054
Missouri	Published FSD checklists; trusts submitted for approval to exclude assets	FSD trust checklists
Washington	Detailed self-settled-trust regulatory framework; court approval in some guardian cases	WAC 182-516
New York	Stand-alone SNT statute with mandatory provisions; court practice	EPTL 7-1.12

Source: Minn. Stat. § 501C.1205; CO HB19-1054; WAC 182-516; N.Y. EPTL 7-1.12; Lewis v. Alexander

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STATE TOUR | MARYLAND

Maryland: the regulation is the drafting checklist

Topic	COMAR 10.09.24.08-2(C) requirement
Structure	Irrevocable; established and funded before 65; no post-65 additions; sole-benefit language
Payback	Proportional reimbursement to all states that paid; nothing that hinders or delays it
Termination	Detailed early-termination protections
Beneficiary roles	Not trustee, co-trustee, trust protector, adviser, or anyone who can influence distributions
Administration	Trustee conflicts, compensation, titling, lending, investments, annuities, structured settlements, real property
Reporting	Annual accountings; trust and every amendment sent to the Division of Recoveries and Financial Services
Funeral	No funeral expenses from the trust except through an irrevocable burial contract

Source: COMAR 10.09.24.08-2

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STATE TOUR | MARYLAND

Noncompliance with any provision makes the full trust available

Full value

Failure to comply with any provision of the section causes the full value of the trust to be treated as an available resource. COMAR 10.09.24.08-2(C)(12).

Practitioner input: Mary E. O'Byrne, Esq. (past SNA president); Morris Klein, Esq. (SNA member)

How review works in practice

- Review moved from the Attorney General's Office back to Maryland Medicaid around 2018
- Regulation says submission; Medicaid reportedly reviews and returns a confirmatory letter and stamped copy
- Staff manual says "approved" but predates the current regulation; COMAR controls
- Counsel uses a checklist cross-referencing each required provision to the trust text

Whether called approval or review, Maryland is emphatically a state where federal compliance is not enough.

Source: COMAR 10.09.24.08-2

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STATE TOUR | THE BORDER CONTRAST

Maryland and D.C. sit side by side and behave nothing alike

Maryland

- Dense current regulation
- Mandatory provisions and role bars
- Agency review of each trust
- Noncompliance: full trust available

District of Columbia

- No requirements beyond the SSI/federal framework
- No pre-approval
- Voluntary AG review focused on practical details, such as the death-notice address

Practitioner input: Morris Klein, Esq. (SNA member)

Geography is no proxy for administrative expectations.

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STATE TOUR | HAWAII

Hawaii: outdated text, favorable outcomes, and hard termination practice

Outdated text

Rules still appear not to reflect the 2016 SNT Fairness Act self-establishment change.

Pooled-trust age limit

Rule appears to impose an age-65 limit absent from the federal text; an unpublished matter permitted a post-65 (d)(4)(C) transfer.

Termination friction

Probate opened merely to get the state to accept the trustee's reimbursement check.

Practitioner input: Scott C. Suzuki, Esq. (past SNA president)

The hardest problem may arise not at drafting but at termination, because agency implementation is obscure.

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STATE TOUR | MASSACHUSETTS

Massachusetts: post-65 pooled funding, and a death-accounting focus

Pooled trusts after 65

- 2024 legislation: no transfer penalty for funding a valid pooled-trust account before or after 65
- MassHealth EOM 24-08 applies it to applications received on or after March 1, 2024
- A reminder that pooled-trust age treatment cannot be generalized

D4A review and death accountings

- Historical drafting expectations communicated through reviewer responses
- Trust regulations at 130 CMR 515.001 et seq.
- At death with an underfunded claim: accounting of prior-year distributions

Practitioner input: Neal A. Winston, Esq. (SNA member)

Keep distribution records a closing auditor would want, from the first year.

Source: MassHealth EOM 24-08
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STATE TOUR | WHAT MD AND HI TEACH

Find the controlling source, then the actual pathway

Statute and current regulationThe controlling text, checked in its current form

Agency manual and formal materialsOften dated; controls only where consistent with current law

Case law, including preemptionPrunes invalid add-ons (Lewis v. Alexander)

Durable, enforced agency practiceLearned from experienced local practitioners

Secondary summariesLeads only; never authority by themselves

Skip a step and you are not administering nationally. You are hoping nationally.

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STATE TOUR | PAYBACK REGIMES

Payback is where the state variations converge

State	Payback feature	What the trustee must plan for
New Jersey	Asserted scope measured from birth, not trust creation	Claim may exceed assistance paid during the trust term
Iowa	Broad formulation of medical assistance paid	Same; confirm the claim period
Nevada	Repay within three months after death or termination	Liquidity and a ready closing account
Maryland	Proportional to all states; no funeral except irrevocable burial contract	Multistate claims; burial planning during life
Colorado	Reimbursement upon death; other states repaid before anyone else	Order of payment at termination
Massachusetts	Prior-year distribution accounting if balance is short	Records a closing auditor will want
Hawaii	Practical difficulty getting the state to accept payment	Time and process, possibly probate

Source: [BULMANIS SNT EADS](#); [NY F-500](#); [COMAR 10.09.24.08.2](#); [CO HB19-1054](#); [MassHealth FORM 24-08](#)

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STATE TOUR | POOLED TRUSTS AFTER 65

Pooled trusts are not a universal escape hatch after 65

Penalty positions

- South Dakota
- First Circuit
- Illinois (narrow exception)
- Georgia

No-penalty authority

- Minnesota
- North Carolina
- Massachusetts (2024 legislation)

Ask every time

- What is the transfer-penalty treatment here?
- What authority supports it?
- How stable is the current agency position?

Hawaii and Michigan add nuance. The right answer is always state-specific.

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PART 5

Making It Operational

The goal is not to memorize every state's eccentricity. It is to build a process that catches them.

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OPERATIONAL | BENEFICIARIES AND TRUSTS ON THE MOVE

When the beneficiary moves, the trust meets a new reviewer

Draft for the move

- All-state, proportional payback language
- Power to change situs or governing law
- Amendment or decanting authority to conform

At relocation

- Re-run the state matrix before the new application
- Expect review under the new state's rules
- Conform the instrument where required (e.g., Maryland)

Obligations that follow

- Payback to every state that paid
- Death and trustee-change notices to prior states that require them
- Records that satisfy the strictest reviewer

A trust is portable only if it was drafted to be. Administer to the strictest state the beneficiary may live in.

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OPERATIONAL | TRUST COMPANIES

For an institution, the state overlay is a governance problem

State matrix

Which states require review, notice, specific annual accounts, or restrict assets and roles

Intake system

Flags the governing state, funding path, and any pre-funding gate

Funding checklist

Lien clearance, hearing notice, agency submission before assets move

Distribution protocol

Dollar-threshold notices and sole-benefit justifications

Relocation trigger

Re-run the matrix when the beneficiary moves

Closing procedure

Death notice, timetable, closing account, reimbursement, remainder

The reason to study these anomalies is operational competence, not academic completeness.

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OPERATIONAL | INTAKE CHECKLIST

Eight questions before funding, and again before major steps

1Where is the state rule found: statute, regulation, manual, formal agency material, case law, or durable practice?

5Are there annual inventory, accounting, audit, or death-notice requirements?

2Does the state require submission, review, approval, or pre-hearing notice?

6Are there unusual rules for real property, annuities, structured settlements, or funeral payments?

3Are there mandatory provisions beyond federal law: early termination, all-state payback, beneficiary powers, asset forms?

7If pooled funding is contemplated, how are post-65 transfers treated?

4Must Medicaid liens or tort claims be resolved before funding?

8At death, what sequence of accounting, reimbursement, and remainder does the state expect?

Safer than assuming a federal-form D4A trust is portable nationwide.

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OPERATIONAL | HOW THE SURVEY WAS BUILT

AI found the leads; primary sources and colleagues decided what counts

AI-assisted sweep

51 jurisdictions; leads and synthesis

Primary-source check

Statute, regulation, manual, case

Practitioner validation

SNA colleagues on actual agency practice

Lawyer judgment

What to teach, and how confidently

Request for practitioner input.

Send statutes, regulations, manual provisions, forms, cases, or durable agency practice from your state: dollar thresholds, pre-review, required forms or language, agency accountings, lien and payback rules, and post-65 pooled-trust treatment.

The map is a request for practitioner intelligence, not a definitive national claim.

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CONCLUSION

A D4A trust is fully drafted only when it accounts for the state where it will live.

Get the federal elements right: source of funds, beneficiary, settlor, sole benefit, age, payback.

Then account for the state's law, procedure, and durable administrative practice.

Know the categories, and build a process that checks them before funding, administration, and termination.

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Questions

The written materials develop each state, the checklist, and full citations.

WITH THANKS FOR PRACTITIONER INSIGHT

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