

10/6/2025

GATHERING STORMS: LEGAL CONCERNS OF A POOLED TRUST COUNSEL

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for Stetson's National Conference on Special Needs Planning and Special Needs Trusts
Pooled Trust Intensive
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INTRODUCTION

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ABOUT ME

- Pennsylvania attorney with a small practice in Pennsylvania
- Recruited in 2014 to replace counsel for a nonprofit regarding its administration of its trusts
- Author of the Pennsylvania Special Needs Planning Guide: A Handbook for Attorneys and Trustees of Special Needs Trusts
- Provide help to trustees regarding:
 - Amending trust documents
 - Representing beneficiaries before SSA in matters regarding trust documents
 - Advising regarding distributions



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OVERVIEW OF CONCERNS



Ongoing Issues with Fraud, Theft, and Mismanagement of Pooled SNTs

We will examine three recent cases of trustee misconduct and analyze patterns.



Medicaid Cuts

Our constituents will be affected by cuts under OBBA, with more cuts likely to come.



Changes in SSA Operations

Huge reductions in staff are likely to affect our clients and make issues with benefits much harder to resolve. SSA appears to view AI as a major answer to staff reductions. SSA officials are raising alarms about how sensitive data was accessed, stored, and used.

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CASE STUDIES

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THE CENTER FOR SPECIAL NEEDS TRUST ADMINISTRATION (2024-)



Overview

- The Center managed over 2,100 accounts with assets totaling around \$200 million, serving special needs beneficiaries.
- In November 2024, it filed for bankruptcy and revealed publicly that more than \$100 million was missing from beneficiary accounts. The Center says the thefts first came to light when a key staff member left, and left behind a letter referring to a loan made by the Center to a for-profit company controlled by the Center's founder, Leo J. Govoni.
- Govoni and the Center's accountant were arrested and face federal criminal charges including multiple counts of fraud and conspiracy.

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THE CENTER FOR SPECIAL NEEDS TRUST ADMINISTRATION (2024-)



Lowlights

- Although Govoni left The Center in mid-2009, he is alleged to have controlled it until 2022 through oral directives and relationships with Board members and employees.
- Money was transferred directly out of beneficiary accounts to a for-profit financial services company established by Govoni while he was on The Center's Board.
- Though transfers were referred to as loans, no one has produced the loan document. The Center says it doesn't have it.
- The financial services company then distributed it out to Govani and others, and to companies Govani controlled.
- The Center was receiving administrative services, tax, and accounting services through for-profit companies owned by Govoni, which helped conceal the scheme.
- Govoni also allegedly instructed Center employees to produce fraudulent account statements indicating their money was still in their subaccounts.
- "Excess" money was transferred out of accounts. Money was transferred between subaccounts to meet distribution requests.

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THE CENTER FOR SPECIAL NEEDS TRUST ADMINISTRATION (2024-)



Vulnerabilities

- Mismanagement of nonprofit
 - Conflicts of interest
 - Self-dealing
 - Vendor controlling the company and providing subject-matter "expertise"
- Sophisticated use of shell companies to hide fraud
- Catastrophic failure of staff to recognize their participation

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FOUNDATION FOR THOSE WITH SPECIAL NEEDS (22-24)



Overview

- On May 2, 2022, the Securities and Exchange Commission filed a lawsuit in federal district court against Synergy Settlement Services, Inc. and others for violating federal securities laws requiring registration by noncharities who operate investments
- FL attorney Jason D. Lazarus, one of the Foundation's directors and its president, and CFP Anthony F. Prieto, also a director, also were named
- The SEC said two pooled SNTs nominally operated by the Foundation for Those With Special Needs Inc., a 501(c)(3), were actually being operated by Synergy, a settlement broker that referred cases to the pooled trusts. Lazarus was Synergy's CEO and largest shareholder; Prieto was Synergy's president and a minority shareholder.
- Suit ended in 2024 with civil verdicts against Synergy, Lazarus, and Prieto.

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FOUNDATION FOR THOSE WITH SPECIAL NEEDS (22-24)

Lowlights

- SEC's complaint alleged that Lazarus and Prieto purposely concealed Synergy's operation of the trusts and consistently set the Foundation forward as the trustee.
- Joinder and trustee fees were paid to Synergy from beneficiary accounts, under sham marketing agreements between the investment advisor/custodian and Synergy
- The trust invested in a type of mutual fund with imbedded costs as a way of hiding investment management fees from "end clients"
- Money retained by the trust was used to further Lazarus and Prieto's business interests, including:
 - \$132,000 in trustee administration expenses – after already having collected fees sufficient to pay them
 - Paying premiums on Synergy's business insurance company
 - Promoting Synergy by sponsoring golf tournaments, parties, and judicial luncheons

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FOUNDATION FOR THOSE WITH SPECIAL NEEDS (22-24)

Vulnerabilities

- A second case of a bad actor founder
- How can we prevent bad actors from establishing pooled SNTs?
- Hiding fee information from beneficiaries
- Theft of retained remainder

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NATIONAL FOUNDATION FOR SPECIAL NEEDS INTEGRITY (2015-2019)

Overview

- The Foundation was sued in 2015 by the estate of a beneficiary who died a month after her trust was created. The family alleged that the Foundation led it to believe the trust's balance would be repaid to Medicaid. Instead, it was transferred to the Foundation, which informed the family in 2015, after all the money had been spent.
- The beneficiary had listed herself as the remainder beneficiary. Under the trust agreement, if a remainder beneficiary was not living at the time the trust terminated, the trust retained the remainder.
- The trust's founder and the drafter of the trust, attorney Kenneth Shane Service, testified that he intentionally drafted the trust to confuse Medicaid officials.

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NATIONAL FOUNDATION FOR SPECIAL NEEDS INTEGRITY (2015-2019)

Overview (continued)

- During the civil suit, Service's management of the Foundation came under criticism. Tax records showed that:
 - Service likely received excessive compensation
 - The trust spent aggressively on legal fees and management costs
 - The Foundation paid up to 42% of its revenue some years to Special Needs Consultants, LLC, a for-profit entity registered by Service.
- A second beneficiary filed a lawsuit seeking class action status in 2015, claiming that thousands of dollars had been withdrawn from the beneficiary's account, purportedly as his proportionate share of legal fees paid to a law firm that had received \$2.4 million from the Foundation between 2011-2015.
- Service was later found to have stolen from trusts for whom he served as trustee.

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NATIONAL FOUNDATION FOR SPECIAL NEEDS INTEGRITY (2015-2019)

Vulnerabilities

- A third founder/bad actor who established a nonprofit and a trust and then used it for profit.
- Misleading beneficiaries to conceal the nonprofit's bad behavior.

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POLICY CHANGES AFFECTING BENEFITS

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MEDICAID UNDER THE "ONE BIG BEAUTIFUL BILL ACT" (OBBA)

Goals

- Make permanent the tax cuts from the Tax Cuts and Jobs Act enacted Trump's first term
- Spending increases mostly attributable to the military and immigration enforcement

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MEDICAID UNDER THE "ONE BIG BEAUTIFUL BILL ACT" (OBBA)

Cost

- Cost of tax cuts is approximately \$4.5 trillion over the next 10 years.
- Adds \$3.4 trillion to the deficit.
- House GOP members considered cutting up to \$2.3 trillion from Medicaid (a third of its federal budget), mostly by capping the amount the federal government pays under Medicaid. Ultimately, OBBA's cuts to Medicaid totaled less than \$1 trillion
- American Rescue Plan Act enacted March 11, 2021 in response to COVID cost \$1.9 trillion (which was added to the deficit)

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MEDICAID UNDER THE "ONE BIG BEAUTIFUL BILL ACT" (OBBA)

Reconciliation

- Allows expedited passage of legislation treating spending, revenues, or the debt limit
- Unlike legislation passed through "regular order," a reconciliation bill needs only 51 votes to pass the Senate (vs. needing up to 60)

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MEDICAID UNDER THE "ONE BIG BEAUTIFUL BILL ACT" (OBBBA)

Change: OBBBA makes permanent ABLE program enhancements from in the Tax Cuts and Jobs Act

- "ABLE to Work Act": allows additional ABLE contributions for accountholders with earned income (up to \$15,060 in 2025)
- Rollovers from 529 accounts to ABLE accounts will continue to be tax free

Another bright spot: The ABLE Age Adjustment Act, enacted as part of the Consolidated Appropriations Act of 2023, opens ABLE accounts to people with qualifying disabilities occurring prior to age 46 effective January 1, 2026

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MEDICAID UNDER THE "ONE BIG BEAUTIFUL BILL ACT" (OBBBA)

Change: HCBS expansion

- States may propose HCBS service programs for people who do not need an institutional level of care.
- The submitting state must demonstrate the new waiver program will not increase the average amount of time that people who require an institutional level of care will wait for HCBS services
- Projected savings of \$7 billion

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MEDICAID UNDER THE "ONE BIG BEAUTIFUL BILL ACT" (OBBBA)

Change: Work Requirements for nondisabled Medicaid participants

- Largest source of cost savings for Medicaid
- CBO estimates that this change will reduce federal expenditures by \$326 billion in the next 10 years, with up to 5.3 million people losing coverage
- Savings will be due to lost coverage rather than increased employment

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MEDICAID UNDER THE "ONE BIG BEAUTIFUL BILL ACT" (OBBBA)

Change: Changes to Medicaid expansion programs

- Biannual certifications
- Estimated to save \$63 billion over next 10 years
- Required cost-sharing of up to \$35 per service beginning October 1, 2028, with exceptions for primary care, mental health, addiction treatment, and rural health clinics
- States may allow providers to deny services for a patient's failure to pay cost sharing
- Savings will be due to lost coverage rather than increased employment

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MEDICAID UNDER THE "ONE BIG BEAUTIFUL BILL ACT" (OBBBA)

Change: OBBBA limits states' ability to raise money for Medicaid through "provider taxes"

- OBBBA prohibits states from establishing any new provider taxes or increasing rates of existing taxes.
- For Medicaid expansion states, reduces the "safe harbor" which allowed states to guarantee providers would receive their tax payments back if the state tax is 6% or less of net patient revenues
 - -0.5% annually to a floor of 3.5%
- Estimated to reduce federal spending by \$191 billion and increase the number of people without insurance by 1.1 million

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MEDICAID UNDER THE "ONE BIG BEAUTIFUL BILL ACT" (OBBBA)

Change: Increased recoupment for states that make payments erroneously due to not having information needed to confirm eligibility

- Currently, CMS requires states to pay back federal funds paid erroneously if the state's eligibility error rate is less than 3%
- Beginning October 1, 2029, funds paid in error based on lack of documentation needed to confirm eligibility will now also be included in error rate
- Estimated to reduce federal spending by \$4 billion

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MEDICAID UNDER THE "ONE BIG BEAUTIFUL BILL ACT" (OBBBA)

Change: Retroactive Medicaid coverage reduced

- Effective January 1, 2027, retroactive coverage is limited to
 - 30 days for Medicaid expansion program participants
 - 60 days for other Medicaid program participants
- Estimated to reduce federal spending by \$4 billion

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MEDICAID UNDER THE "ONE BIG BEAUTIFUL BILL ACT" (OBBBA)

Change: Reduces maximum home equity limit to \$1 million, regardless of inflation, for Medicaid long-term care programs (including waiver)

- Effective January 1, 2028

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MEDICAID UNDER THE "ONE BIG BEAUTIFUL BILL ACT" (OBBBA)

Change: Rural Health Transformation Program

- \$50 billion grant program for FY 2026-2030 providing payments to rural health care providers
- Adopted in response to legislators' concerns that rural hospitals would close due to OBBBA's cuts
- Gives back about 37% of the Medicaid funds rural areas otherwise would have lost
- Lack of transparency re how funds are allocated by CMS or states

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MEDICAID UNDER THE "ONE BIG BEAUTIFUL BILL ACT" (OBBA)

Change: Delayed Rollout of CMS Final Rules

- Implementation, administration, and enforcement of CMS' recent SNF staffing rule is delayed until October 1, 2034
- Required a minimum of 3.48 total nursing staffing hours per resident day, requiring SNFs to significantly increase staffing
- Rules intended to simplify eligibility and enrollment in Medicaid, CHIP, Basic Health Program, and Medicaid Savings Plans

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MEDICAID UNDER THE "ONE BIG BEAUTIFUL BILL ACT" (OBBA)

At one point, Congress considered reducing the federal contribution for states that adopted Medicaid expansion from 90% to 50%

If all states that had expanded Medicaid dropped it as a result of this funding cliff, 20 million people were estimated to lose coverage

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What's next?

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CHANGES TO SOCIAL SECURITY OPERATIONS  SSA	SSA's Proposed 2026 Budget • Goals: • Improve customer service • Fight fraud and waste • Empower and optimize SSA's workforce • \$14.793 billion (a decrease from the request for 2025, which was for 15.402 billion)
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CHANGES TO SOCIAL SECURITY OPERATIONS  SSA	Staffing • SSA announced it planned to reduce its workforce to 50,000 (from 57,000) in February • Offered incentives to retire or resign • Required in-office attendance • Told employees that significant workforce reductions were imminent
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CHANGES TO SOCIAL SECURITY OPERATIONS  SSA	Staffing • Administrative and technical support staff reassigned to field offices • Regional offices: 78% staff reduction • Headquarters: 45% • Office of Legislation and Congressional Affairs: 94% • The number of ALJs at SSA has dropped by 14%
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CHANGES TO SOCIAL SECURITY OPERATIONS 	Staffing • Previously, largest staffing cut to SSA was 6%, in 1987 • Last time SSA had this few employees was 1967 • At that time, SSA served 480 beneficiaries for every staff member • With the cut, SSA would serve 1,480 beneficiaries per staff member
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CHANGES TO SOCIAL SECURITY OPERATIONS 	Use of AI • SSA appears to have put its faith in AI to make its remaining employees more productive • There is much skepticism over whether the projections are at all possible • Concerns have been fueled by bad experiences and lack of training
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CHANGES TO SOCIAL SECURITY OPERATIONS 	SSA Data Operations and Security • Under auspices of DOGE, persons were given access to Social Security's data in ways that were unprecedented and which SSA officials found alarming • In August, SSA's Chief Data Officer, Charles Borges, filed a whistleblower complaint that alleging individuals in DOGE created an unmonitored copy of all SSA's data which could lead to widespread identity theft if compromised • A lawsuit resulted in a temporary restraining order to prevent DOGE from accessing personally identifiable data from SSA
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CONCLUSION

