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Determining Sole Benefit

Practical Guidance for Compliant Disbursements

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Learning Objectives

- Understand the legislative intent and policy rationale behind the Sole Benefit Rule.
- Apply the POMS standards for permissible and impermissible expenditures.
- Evaluate common 'red flag' transactions that risk disqualification.
- Implement administrative best practices and documentation strategies.

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Federal Framework
Special Needs Trusts

	Special Needs Trust	Pooled Special Needs Trust
Use	Pay for needs and wants not otherwise provided by government programs	Pay for needs and wants not otherwise provided by government programs
For	Individuals with disabilities under age 65	Individuals with disabilities
Established By	Created by an individual, a parent, a grandparent, or a legal guardian	Created by an individual, a parent, a grandparent, or a legal guardian
Funded By	Assets of the individual with a disability	Assets of the individual with a disability
Distribution at Death	Repayment to State prior to Beneficiaries	Amount Retained by Trustee Repayment to State
Trustee	Anyone other than Beneficiary	Nonprofit Organization
Statute	42 U.S.C. § 1396p(d)(4)(A)	42 U.S.C. § 1396p(d)(4)(C)

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Overview of the
Sole Benefit Rule

Requires that all disbursements from a pooled trust be made for the sole benefit of the disabiled beneficiary

Exclusivity of Benefit | to | Primary Benefit

"if the trust benefits no one but that individual, whether at the time the trust is established or at any time for the remainder of the individual's life..."

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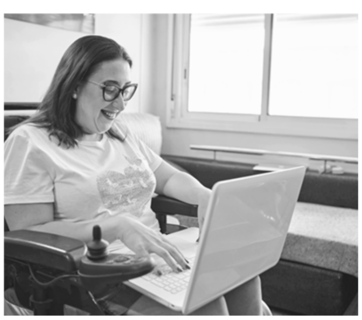

Lewis v. Alexander Preemption

- States may not impose additional restrictions beyond §1396p(d)(4)(C)
- Federal law preempts state-imposed 'reasonableness' or 'special needs' requirements
- Uniform federal interpretation of the Sole Benefit Rule is required
- Trustees should apply the federal definition, allowing incidental benefits if primarily for the beneficiary

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Exceptions to the Sole Benefit Rule

Third Party Payments
Payments to third parties providing goods/services for the beneficiary.

Caregiver Compensation
Reasonable caregiver compensation to family members at market rates.

Travel Expenses
Travel expenses for necessary companions.

Incidental Expenses
Admission for companion accompanying beneficiary.

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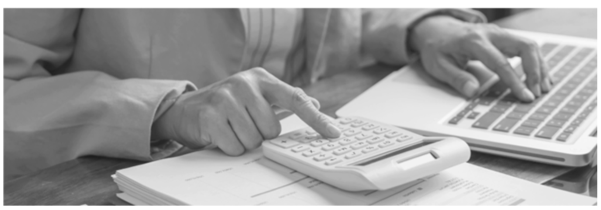

Additional Exception to Sole Benefit Rule

Reasonable Trustee and Professional fees for trust administration.

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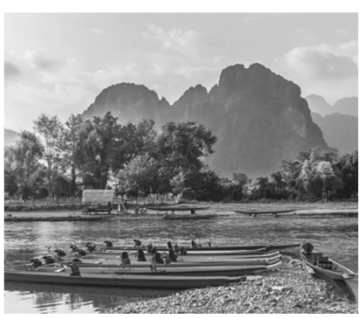
Hypothetical Family Vacation

- Beneficiary and her family are Hmong. Her parents originally immigrated from Laos.
- Beneficiary has cognitive and physical disabilities. She currently resides at home with the support of her family and a Medicaid Waiver.
- Beneficiary’s parents and primary caregivers plan a trip to southeast Asia to visit family.
- Beneficiary wants to go with her parents and requires 24/7 supervision and care.
- Can Trustee pay for parent(s) airfare?
- Can Trustee pay for hotel stays?
- Can Trustee pay for meals?



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Hypothetical Caregiver Comp

- Beneficiary received a settlement through Worker's Compensation after an injury at work.
- Beneficiary experienced a traumatic brain injury and is unable to live independently.
- His spouse has never worked outside the home.
- Beneficiary receives benefits through a Medicaid Waiver. His spouse is now his primary caregiver and receives payment through the Waiver.
- Can Trustee pay spouse additional compensation?
  - Consider greater hourly wage
  - Consider additional hours

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Hypothetical Visit or Monitoring

- Beneficiary has early onset dementia.
- Beneficiary has appointed his daughter as his Attorney-in-Fact and Health Care Agent.
- Daughter typically comes around the holidays to visit her father.
- During her visits, daughter checks on her father's mail and status of his important paperwork, Medicaid renewal preparation, and Social Security annual accounting.
- Can Trustee pay for daughter's airfare?
- Can Trustee pay for her hotel stay?
- Can Trustee pay for meals while she is visiting?

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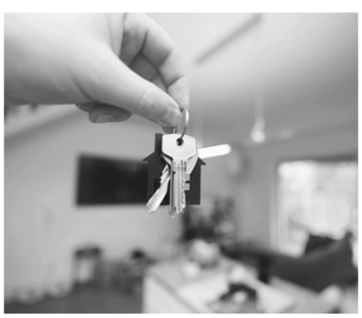

Hypothetical Home Purchase

- Beneficiary has cerebral palsy and wants to buy a home.
- Beneficiary plans to live in the home with her sister, sister's spouse, and their children.
- Beneficiary has been living with the sibling since her parents' died.
- Sibling's home is not accessible, and they wish to purchase something that is more wheelchair friendly for Beneficiary.
- Can Trustee pay for the home?
- Can Trustee pay for a portion of the home?
- If so, how should the home be titled?
- Can the Trustee pay for furnishings?
- What if others will also be using that furniture?

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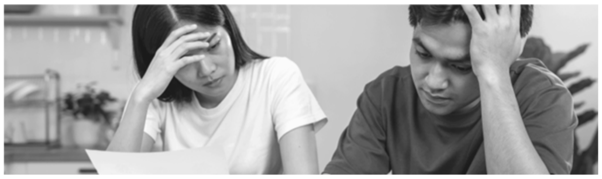

Common Compliance Pitfalls

- Paying for goods and services covered by government programs.
- Paying above-market value for goods and services to an interested party.
- Not maintaining documentation regarding distribution.
- Not having a practice for systematic review of beneficiary's needs and wants.

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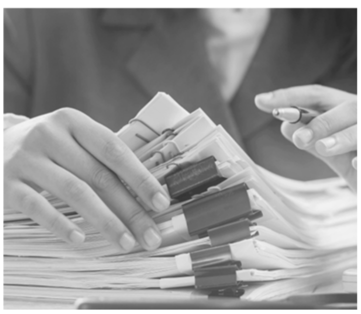

Trustee Guidance Best Practices

- Maintain documentation for each disbursement and its benefit to the beneficiary.
- Use written service agreements for caregivers and service providers.
- Review comparable services and market values.
- Conduct annual reviews for compliance and purpose alignment.
- Consult legal counsel before discretionary expenditures.
- Train fiduciary staff on reviewing SSA and DHS updates.

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Legal Authority and Citations

Trusts

42 U.S.C. § 1396p(d)(4)(A)-(C)

POMS

SSA POMS SI 01120.203
SSA POMS SI 01120.201

Cases

Lewis v. Alexander
Pfoser v. Harpstead

Manuals

CMS State Medicaid Manual §§ 3257-3259
State Medicaid Manuals

Resources

Special Needs Alliance
Alliance of Pooled Trusts

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Questions and Gratitude

Stay in Touch

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