



**NAMISAP**

National Alliance of Medicare Set-Aside Professionals

# The Intersection of MSA's and Special Needs Trusts

**Presented By:**

**Beth Hostetler, Albertsons Companies**

**Will Lindahl, CPT Institute**

**Ken Paradis, Chronovo**

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# Beth Hostetler



Beth Hostetler is a currently Director of Medicare Services and Medical Provider Programs for Albertsons Companies, which is the second largest retail grocer in the United States. She is a registered nurse and certified Medicare set-aside allocator and formerly certified as a Life Care Planner. She manages all aspects of MSP compliance for Albertsons including policy and procedure, MSA vendor management and internal training. She is a board member of NAMSAP and has been a frequent speaker at their annual meetings as well as other national WC industry functions.

# Will Lindahl



Will Lindahl is the Executive Director for CPT Institute established in 1994. CPT Institute operates in all fifty states and is the nation's leading national charity providing Master Trusts which include Settlement Management Trusts, Special Needs Trusts, and Minors Trusts.

Will has been helping settlement professionals, attorneys and settlement consultants mitigate government benefit issues affecting insurance and workers' compensation settlements for the past twenty years. CPT Institute has established over ten thousand trusts in its twenty-four-year history and has developed one of the lowest cost non-profit trust programs in America.

# Ken Paradis



Ken began his career as a Special Assistant Attorney General for the Massachusetts Workers' Compensation Trust Fund. As Chief of Staff for the Massachusetts Department of Labor, he led initiatives on the Job Training Partnership Act funds, the Division of Industrial Accidents policies, and the daily work of 11 state agencies. After developing this insider's perspective on government and insurance, Ken has co-founded and lead several insurance services enterprises in various specialties including Social Security Disability advocacy (Crowe Paradis /Advocator Group), Medicare Secondary Payer compliance (Crowe Paradis / ISO Claims Partners), Professional Administration (Ametros), and his current structured settlement enterprise, Chronovo.

# Agenda

- **Overview**

- What is a SNT? / When is it Applicable? / Why Use a SNT with a MSA?

- **Value / Need for Injured Individual**

- $MSA+SS+SNT=Max.$  Benefit / Settlement Factors

- **Value for Underwriter**

- How could these offsets work? / Public Benefits Programs / What Medicaid Can Provide

- **SNT / Trustee Types & Comparisons**

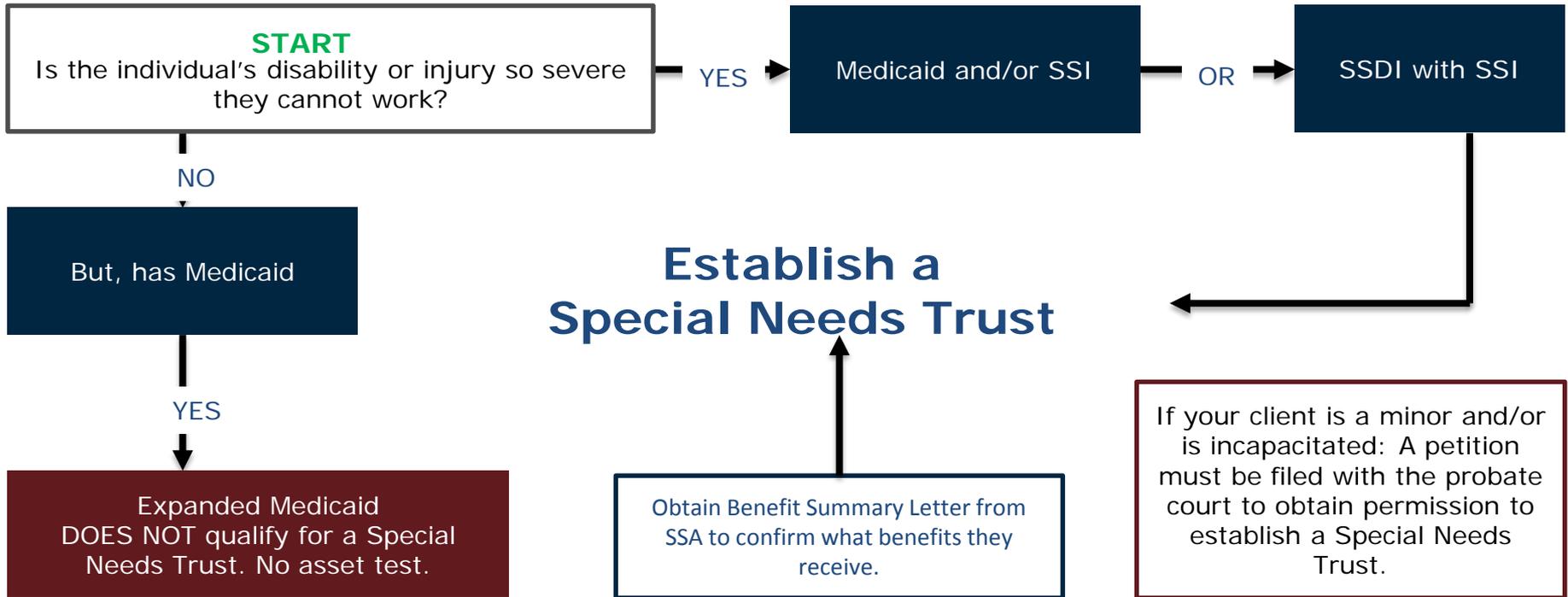
- **Highlights of Albertsons' Program**

- **Two Case Examples**

# What Is A SNT?

- First-Party Special Needs Trusts are commonly referred to as a Individual (d)(4)(a) or Pooled (d)(4)(c) SNTs.
- ***All SNTs protect eligibility for Medicaid, Supplemental Security Income (SSI) and In home support services worth thousands in services monthly.***
- **Legal authority:** Under the federal law Omnibus Budget Reconciliation Act of 1993 (OBRA '93), commonly referred to by the federal law **42 U.S.C. §1396p(d)(4)(C)**.
- **“First-Party”** simply refers to whose money is being put into the SNT. A First-Party SNT is utilized when the money belongs to the Beneficiary, typically from a settlement or inheritance.
- The grantor can be the Beneficiary, Parent, Grandparent, Legal Guardian/Conservator of the Beneficiary, or the Court.

# When is a SNT applicable?



MSA's are a countable asset.  
MSA must be held in Special Needs Trust if client is receiving or needing to protect Medicaid and/or SSI.

# Why use a SST w/ a MSA?

- **Value / Need for the injured individual**
  - Ensure ongoing eligibility for Medicaid and SSI
  - Increase settlement value by maximizing income
  - With a structure, ensure “replenishing MSA”
- **Value for the underwriter of risk**
  - MSA cannot be self-admin. if on SSI / traditional Medicaid *CMS memorandum July 1, 2001*
  - Ongoing eligibility = reduced future liability
  - Possible offset payment (from future Medicare to present Medicaid) to reduce the MSA costs

# MSA+SS+SNT=Max. Benefit

## MEDICARE SET-ASIDE

MSA protects  
Medicare and  
Medicare eligibility  
for injured  
individual

## STRUCTURED SETTLEMENT

SS fund the MSA &  
SNT for savings for  
underwriter and  
increased value for  
injured individual

## SPECIAL NEEDS TRUST

SNT preserves SSI  
Medicaid & IHSS  
eligibility and  
allows settlement  
dollars to enhance  
injured individual's  
quality of life

# Settlement Factors

Client must meet disability requirement to utilize a Special Needs Trust

Special Needs Trusts only protect eligibility for Medicaid, SSI & IHSS

A Pooled Special Needs Trust **MUST** be used if client is over age sixty four

All disbursements must be for the benefit of the claimant

Eligibility of even \$1 dollar of SSI means automatic eligibility for Medicaid (1634 states)

Client **cannot** self administer MSA if eligible for SSI

With structure, confirm LC will allow future payment to be irrevocable if P&T

Receipt of funds eliminates protection / must occur *before* settlement

Use "life only" annuity for MSA

# OBRA '93 Impact

Under the federal law Omnibus Budget Reconciliation Act of 1993 (OBRA '93), commonly referred to by the federal law **42 U.S.C. §1396p(d)(4)(C)**.

*“Any citizen that is injured and is no longer able to work are entitled to access to Medicaid, SSI and IHSS. If they meet the criteria, this is a legal offset of costs not associated with an MSA.”*

Many cases are successfully mediated/settled when you account for economic value of these services to broaden support to protect the claimant.

# Public Benefit Programs

- **Needs-Based**

- Supplemental Security Income (SSI)
- Traditional Medicaid (*income & asset test*)
- Expanded Medicaid (*income test only*)
- In Home Support Services (IHSS)

- **Entitlement**

- Social Security Disability Income (SSDI) \*Some clients may get SSI supplement
- Social Security – Adult Disabled Survivor
- Medicare (*MSA must be in SNT for clients with SSI*)

- **Other**

- Expanded Medicaid as of 2014 – Think working poor
- Section 8 (*DeCambre v. Brookline*)
- Veteran Benefits

# What Medicaid Can Provide

## Traditional Medicaid

- **Primary medical care coverage**, such as doctor visits, diagnostic testing, emergency services, surgery, hospitalization, prescription drugs, dental services, and optometry services.
- **Ongoing care and recovery**, such as in-home medical care services, personal care services, occupational and physical therapy, outpatient drug abuse services, nursing facility stays, intermediate care facilities for developmentally disabled individuals, and adult day health care.
- **Other medical-related costs**, such as medical supplies, durable medical equipment, and transportation for doctor visits.
- **Provides waiver programs** for home and community based services such as the acquired brain injury program or the personal care assistant program which avoids institutionalization.

## Expanded Medicaid

DOES NOT REQUIRE A SNT. Premium may be paid, income affects eligibility.

# SNT Comparison

Individual - (d)(4)(A) Trusts	Pooled - (d)(4)(C) Trusts
Separate Trusts	Master Trust
State Specific	Nationwide
Must be under 65	Any Age
No additional funds after 65	Funds can be added anytime*
Mandatory Medicaid Payback	Mandatory Medicaid Payback
Need knowledgeable administrator to protect government benefits	Need knowledgeable administrator to protect government benefits
Cost varies and time consuming	Low cost and quick setup
Need government agency approval	Need government agency approval

# Trustee Comparison

Feature	Family	Corporate	Fiduciary	Pooled Trusts	CPT
Setup Costs	\$\$\$	\$\$\$\$	\$\$\$	\$\$	\$\$
Administrative Costs	Free or \$	\$\$\$\$ & %	\$\$\$ & %	\$\$ & %	\$
Minimum Corpus Size	\$	\$\$\$\$	\$\$\$	\$	\$
Professional Administration	×	✓	✓	✓	✓
Represent Themselves	×	×	×	✓	✓
Instant Setup	×	×	×	✓	✓
Phone Setup	×	×	×	×	✓
Onsite Setup	×	×	×	×	✓
Apps	×	×	×	×	✓
No Cost MSA	×	×	×	×	✓
Hold MSA	×	×	×	Maybe	✓
Structures	Maybe	Large Corpus	Maybe	Maybe	✓
Insured	×	✓	Yes	Maybe	✓
Bondable	Maybe	✓	Yes	Maybe	✓
Non-Profit Trustee	N/A	×	×	✓	✓
Charity	N/A	×	×	Few	✓
Available Nationally	N/A	Few	×	Few	✓

# Highlights of Albertson's Program

- Corporate philosophy as self- insured
- Assess if Medicaid beneficiary
- Determine on what basis entitled to Medicaid
- Enlist help of CPT for assessment if necessary
- Educate / advise all concerned parties of need
- If SNT declined, sign declination
- If SNT accepted, refer to CPT
- Structure of MSA
- Professional administration of MSA
- Albertson's pays set up fee for SNT
- Albertson's pays for cost of professional administration of MSA

# Two Case Examples

## 1. Maximize Benefits / Bridge Settlement Gap

– **CRITICAL FACTORS:**

- 2005 DOI. Multiple attempts to try and settle. Claimant demanding 1 million
- 47 year old general merchandiser/ stock clerk with injury to low back. S/P SCS, chronic pain , depression , GI issues . Multiple co- morbidities. Demands for home care.
- Dual eligible Medicare and Medicaid
- Significant PD/ potential for 100%
- MSA of \$296,879/ structure cost \$50,023 seed and \$154,101 for annual payments
- Settlement; 875k with structure , professional administration and SNT

- **LOGIC:** structure provided for more cash for other needs , SNT in combination with professional administration addressed barriers to loss of benefits . Mediation set tone of collaboration , willingness to address ALL needs

## 2. Lower Cost of Settlement MSA with Offset

- **CRITICAL FACTOR:** Quadriplegic seeking to go “community based” from in-facility care
- **LOGIC:** Possibility of moving to Medicaid from Medicare, therefore excluded / offset from MSA



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Thank You