


Medicaid Estate Recovery

Minnesota Department of Human Services
Benefit Recovery Section
Special Recovery Unit
Saint Paul, Minnesota
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Agenda

1. Overview of Minnesota Estate Recovery, Liens and Undue Hardship
2. Litigation Update
3. 2009 Legislative Changes to Estate Recovery
4. 2008 Implementation of TODDs
5. Other issues in Recovery
 - Living Trusts
 - Affidavit of Collection
 - Late Claims
6. Annuities and Special Needs/Pooled Trusts

State Statute

- Minn. Stat. §256B.15
 - Covers Minnesota's estate recovery
 - Recovery is limited to individuals that receive MA, GAMC, and AC. §256B, §256D, and §256B.0913
 - Minnesota Policy:
 - That individuals or couples, either or both of whom participate in the MA program, use their own assets to pay their share of the total cost of their care during or after their enrollment in the program according to applicable federal law and the laws of this state. §256B.15, Subd. 1(a)

State Statute

- Minnesota's Definition of Estate
 - Probate estate
 - §524.1-201
 - The person's interest or proceeds of those interests
 - 2003 Minnesota expanded its definition of "estate" as allowed under federal statute
 - 2009 legislative change clarified Minnesota's policy on the scope of recovery from the surviving spouse's estate

State Statute

- Estate Recovery:
 - **A claim is allowed if the recipient who received MA was:**
 - Over 55 years of age;
 - Of any age residing in a Medical Institution for 6 months or longer and could not reasonably be expected to return home; or
 - Received General Assistance Medical Care under §256D
 - **The claim is delayed if survived by:**
 - a surviving spouse; or
 - a child under the age of 21, or a child of any age who is blind or permanently disabled.

State Statute

- Estate Recovery:
 - An estate recovery is first paid from the proceeds of nonhomestead assets if recipient is survived by:
 - Sibling- who resided in the decedent MA recipient's home at least one year before the decedent's institutionalization and continuously since the date of institutionalization
 - Child or Grandchild- who resided in the recipient's home for at least two years immediately before the recipient's institutionalization and continuously since the date of institutionalization and who establishes that they provided care to the recipient and that the care was provided prior to institutionalization and that the care permitted the recipient to remain in the home rather than the institution.

Liens

- Two types of liens are used in MN
 - TEFRA/pre-death liens: Known in MN as MA liens. Allowed to encumber real property while the recipient is alive and in a LTC facility. Certain restrictions apply
 - Post-death lien: In MN known as NPCs. Created to recover against real estate that would be outside of probate (life estate, joint tenancy). Can be filed post death, up to one year for claims of MA received after age 55, if the individual was in a LTC facility, or GAMC. (Can not file NPCs to recover Alternative Care)
 - Send in worksheet (e-docs 3203)

MA Liens

- Covered under Minnesota Statute §514.980-§514.985.
 - Filed by DHS Special Recovery Unit after a request is sent by the County
- Allowed when an individual received MA and owns property in Minnesota on or after the time when:
 - Recipient was institutionalized in a LTCF
 - Inpatient in a hospital
 - ICF-MR

MA Liens

- Exceptions:
 - It is a homestead of the recipient's spouse;
 - It was the homestead of the recipient and the following people reside in the property:
 - Recipient's child who is under 21;
 - Recipient's child who is permanently disabled, regardless of age;
 - Recipient's child who is blind, regardless of age
 - A sibling who resided in the decedent MA recipient's home at least one year before the decedent's institutionalization and continuously since the date of institutionalization; or
 - A child who resided in the recipient's home for at least two years immediately before the recipient's institutionalization and continuously since the date of institutionalization and who establishes that they provided care to the recipient and that the care was provided prior to institutionalization and that the care permitted the recipient to remain in the home rather than the institution.

Notice of Potential Claim (NPC)

- An NPC lien arises when the Department makes MA payments on behalf of the MA recipient.
 - Authority comes from the expanded definition of estate under title 42 USC 1396p(b)(4)(B).
- The NPC may be filed anytime before or within one year after the MA recipient dies.
 - A NPC filed prior to the recipient's death shall not take effect and shall not be effective as notice until the recipient dies.
 - An NPC filed after the recipient dies shall be effective as a lien from the time of filing.

NPC

- An NPC applies to all real property the recipient holds interest in; this includes life estate and jointly held interest in land
 - collection after the recipient death is only allowed on life estate and jointly owned interest created on or after August 1, 2003
- The NPC shall constitute a lien in favor of DHS against the recipient's interests in the real estate it describes for a period of 20 years from the date of filing or the date of the recipient's death, whichever is later.

NPC

- Property Subject to the NPC:
 - Real property owned by the recipient and the recipient dies single and a claim could be filed under Minn. Stat. §256B.15
 - An NPC may be filed on the interest in real property of a deceased recipient that is survived by a spouse, minor child, or a child of any age who is totally and permanently disabled
 - the NPC can not be enforced or collected upon until after the exemption no longer applies

NPC

- Property Subject to the NPC (Cont.):
 - A sibling who resided in the decedent MA recipient's home at least one year before the decedent's institutionalization and continuously since the date of institutionalization; or
 - real property of a recipient that is survived by a child or grandchild who resided in the recipient's home for at least 2 years immediately before the date of institutionalization of the recipient and who established they provided care which permitted the recipient to reside at home rather than the institution.
 - The NPC may not enforced or collected upon until after the exemption no longer applies or on the sale of the property.

Undue Hardship Waivers

- Procedure:
 - Notice of an MA claim filed in an estate must be given to all heirs or devisees of the decedent whose identity can be discovered.
 - Must include procedures for applying for a hardship waiver
 - Counties must make a reasonable effort to learn the names and current addresses of each of the decedent's heirs and devisees.

Undue Hardship Waivers

- Contents of the Notice of Claim:
 - Statement of claim
 - Notice of right to apply for hardship
 - Statement of what constitutes undue hardship
 - Procedures and Instructions for application of undue hardship
 - Information regarding appeal rights and procedures

Undue Hardship Waivers

- What constitutes undue hardship: The claim can only be satisfied by the sale of the asset in question and the following occurred at least 180 days prior to death continued through the date the hardship is finally granted.
 - Assets are used by applicant to produce income in trade, profession or occupation;
 - Assets are necessary part of applicant's trade, profession or occupation;
 - Trade, profession or occupation is applicant's sole source of income; **AND**
 - Applicant has worked continuously and exclusively in trade, profession or occupation.

Undue Hardship Waivers

- Waiver exists if an estate claim could not be paid except by a sale of decedent's real estate and:
 - Applicant actually and continuously occupies the real estate as his/her only dwelling place for at least 180 days before decedent's death and continues to occupy dwelling through the date the hardship is granted; **AND**
 - Real estate was classified as homestead property for tax purposes pursuant to Minn. Stat. § 273.124 through the entire time referred to above.
- *This is determined on a case-by-case basis. A written statement from the applicant stating how long he/she resided there, how the utilities are titled, and checking with the recorder's office.*

Undue Hardship Waivers

- Using 42 USC 1396p, Hardship Waivers, CMS provided guidance on what can be recovered in an American Indian and Alaska Native's estate within State Medicaid Manual 3810.
- Minnesota followed by providing guidance under the Department's Health Care Manual at 19.50
 - Mirrors the federal guidance

Undue Hardship Waivers

- Actions which exclude a waiver:
 - Illegally divested or diverted assets in order to avoid recovery; or
 - The hardship can not be created by the applicant
 - If granted, the waiver must benefit the applicant

Undue Hardship Waivers

- Not considered an undue hardship:
 - Sibling who lives in homestead at least one year before recipient's institutionalization and continuously since date of institutionalization; or
 - Child or grandchild who lives in homestead at least two years before institutionalization and continuously since date of institutionalization and who can establish by a preponderance of evidence that care permitted recipient to reside at home.
- *Considered exception to immediate recovery from an individual's homestead*

Litigation

- In re Estate of Jobe 590 N.W.2d 162 (Minn. App. 1999)
 - Husband and wife acquire their home and held it in joint tenancy. Husband began receiving MA. Husband dies and wife passes subsequent never receiving MA. Homestead only asset in the estate. County filed a claim and the estate argued that only half the value of the property is allowed to pay the claim.
 - Property held in joint tenancy at death between husband and wife allows for the entire value of the property to pay the MA claim.

Litigation

- In re Estate of Grote 769 N.W.2d 82 (Minn. App. 2009)
 - the 2003 amendments did not affect the relevant provision permitting recovery from the estate of the surviving spouse and that the entirety of any property owned in joint tenancy at the time of the death of the recipient that has passed into the estate of the surviving spouse is available for recovery of benefits paid for the recipient.
 - The court agreed not to rule on the amount of the property to be collected upon (difference between current value and the value at the date of death of the first spouse)

Litigation

- In re Estate of Barg 752 N.W.2d 52 (Minn. 2008)
 - Does Federal Law Preempt Minnesota Statute § 256B.15 from recovery of Medicaid benefits paid for a predeceased recipient spouse from the estate of the surviving spouse?
 - What is the proper scope of recovery from a surviving spouse's estate?

Litigation

- Barg (con't):
 - Preemption is disfavored due to the overall purpose of federal legislation and to the fact that federal law preempts recovery from a Medicaid recipient's estate until after the death of the surviving spouse.
 - The court relied upon state property law informed by principles of state probate code and stated that if recovery is to be allowed, the interest of the recipient must be:
 - *An interest recognized by state law;*
 - *An interest which was held at death of the recipient; and*
 - *The interest resulted in a conveyance of an interest of some value to the surviving spouse that occurred as a result of the recipient's death*

Litigation

- In re Estate of Perrin, 796 N.W.2d 175 (Minn. App. 2011)
 - Similar facts in Barg except the claim was brought forth on the argument that Minn. Stat. 519.05 allows for recovery due to the statutory authority that spouses are jointly and severable liable for each other's necessary medical expenses (the court in Barg never addressed the 519.05 issue in its opinion).
 - App. Ct. concluded that collateral estoppel applied and precluded litigation of the county's claim for recovery. The claim was necessarily adjudicated on the merits in Barg.

Litigation

- Douglas County v. Lindgren, et al; file No:21-CV-09-477
 - Douglas county brought forth a claim against the defendants alleging entitlement to recover the value of gifts given to the Defendants by their mother, an MA recipient
 - Cause of Action brought forward under Minn. Stat. 256B.0595, Subd 4 & Subd 9.
 - Court ordered that Minn. Stat. 256B.0595 is preempted by federal law
 - Decided to not to appeal

Litigation

- In Re Estate of Donald Ruddick, File No: 62-PR-10-183
 - To ensure an outcome that establishes precedent on joint and several spousal liability that is beneficial to the state in other Medical Assistance benefit recovery cases.
 - Confirming that the joint and several spousal liability statute, section 519.05, is a valid basis for satisfaction of a recovery claim is necessary in light of the 2008 *In re Estate of Barg* decision and the likely challenges to the 2009 estate recovery amendments..

Cause of Action

Minn. Stat. 256B.0595

- Uncompensated Transfer
 1. Waiver
 2. Action brought forward against the individuals that received the asset in question
 3. Have the county attorney call me

2009 Legislative Changes

- Expand definition of estate
 - Clarify the ability to recover in the estate of the surviving spouse
 - Recognize marital property interest as a legal title interest for purpose of MA estate recovery
 - Limits recovery to the value of property in the estate that was marital property or jointly owned property at any time during the marriage
 - CMS approval was received

2009 Legislative Changes

- Medicare Cost Sharing
 - Effective January 1, 2010
 - Claims will no longer include QMB, SLMB, QI, QWD
 - History: Estate recovery and pre-death liens have included recovery for the cost of services or benefits received by MA recipients who are also enrolled in Qualified Medicare Beneficiaries (QMB), Service Limited Medicare Beneficiaries (SLMB), Qualified Individuals (QI) and Qualified Working Disabled, or who only receive the QMB, SLMB or QI benefit.

2009 Legislative Changes

- Medicare Cost Sharing (requirements from the federal agency)
 - Effective January 1, 2010, States are required to exempt Medicare cost-sharing benefits (i.e., Part A and Part B premiums, deductibles, coinsurance, and co-payments) from estate recovery.
 - The exemption applies to the following groups of dual eligibles: QMB, SLMB, QI, QDWI, QMB Plus (QMB with full Medicaid benefits), and SLMB Plus (SLMB with full Medicaid benefits).

2009 Legislative Changes

- Medicare Cost Sharing
 - MA Liens and SNTs: This new exclusions does not apply to MA liens and Special Needs Trust.
 - Date of death: This new exclusion does not apply to estate recovery for deaths that occur before January 1, 2010.
 - Any person dying on or after January 1, 2010, a claim still can be made against their estate for Medicare cost-sharing benefits received prior to the effective date

2009 Legislative Changes

- Medicare Cost Sharing
 - **Claims for enrollees described below with dates of service on or after January 1, 2010 must be manually excluded from a probate claim until the programming has been completed in MMIS.**
 - Qualified Dual Eligibles—QMB, SLMB, QI, QDWI, QMB+, SLMB+; and (Identified with Major Program = QM, SL, or WD)
 - Age 55 or older at the date of service of the MA benefit;
 - The Recipient Claims History Profile Request form, DHS-2133-ENG, has been update to include the following information/instructions.

2009 Legislative Changes

- Use the following guide when preparing a claim for recovery of medical assistance filed in the probate estate of the above recipients:
 - **A. Medicare Cost Sharing benefits—Paid Under Major Program QM, SL, or WD only**
 - Dates of service* before 01/01/2010→ Subject to recovery;
 - Dates of service* on or after 01/01/2010→ Exempt from recovery;
 - **B. Medicare Premiums--**
 - *DOS for premiums defined as “date Medicaid paid the premium”=Warrant Date; Identified with “Warrant Date on or after 01/01/2010” and Provider Name is “Fed SMI Trustee (Buy-In)”
 - **C. Medicare Co-pays, deductibles, co-insurance--**
 - *DOS for co-pays, etc. defined as “date the request for payment is received by the Medicaid State agency” = Billed Date Identified with “Billed Date” on or after 01/01/2010 and “Claim Type” = T, U, V, or W

2008 Legislative Changes

Transfer on Death Deeds ("TODD")

What they are and how they have
an effect on estate recovery

Authorization

- 2008 Legislation
 - Minn. Stat. §507.071
 - Only applies to those who pass away on or after May 18, 2008.

What is a TODD

- A way to convey real property to one or more grantee beneficiaries upon the death of the grantor(s) without the cost of probate or granting interest prior to death.
 - No interest is transferred until after the death of the grantor.
 - The TODD may be revoked at any time by the grantor owner as long as revocation is recorded prior to death.

Definitions

- Beneficiary or Grantee Beneficiary: Party to whom an owner grants future interest in Minnesota real property.
- Owner: person having an ownership interest in all or party of the real property to be conveyed or transferred by a TODD.
 - Does not include a spouse who joins the deed for the sole purpose of releasing statutory or marital interest.

Who can be a Grantee Beneficiary

- Spouse
- Children
- Relatives
- Friends
- Charitable Organizations
- Trustee of a Trust
- Corporations

Grantee Beneficiary

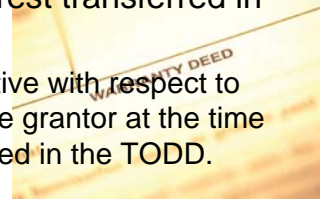
- Owner not required to have grantee beneficiary's :
 - Consent
 - Signature
 - Agreement
- The grantee may disclaim his/her interest in the property as provided by Minn. Stat. §501B.86
- Grantor may designate multiple grantees to take title as j/t, t/c, etc....

Ability to designate successor

- A grantor may designate successor beneficiaries if the grantee shall predecease.
 - If the TODD makes a class gift, such as “to my grandchildren” without naming the grandchildren in the TODD, a probate proceeding will be necessary.
- Grantor may designate the TODD void if grantee dies before grantor.
 - Can not be revoked by the provisions of a will.

Multiple Deeds

- If two or more TODDs are recorded, the last TODD recorded is the effective deed.
- If grantor owner conveys the property to a third party subsequent to recording a TODD, that interest conveyed to a third party shall make the interest transferred in the TODD ineffective.
 - The TODD remains effective with respect to the interest still held by the grantor at the time of grantor’s death described in the TODD.



Rights of Creditors

- The interest transferred to the grantee after the death of the grantor is subject all encumbrances the property was subject to during the grantor’s lifetime.
 - This includes any claim for MA not already satisfied by the grantor’s estate.



Certificate of Clearance

- Any person claiming an interest in real property conveyed by a TODD must apply to a county agency in the county where the real estate is located for a clearance certificate to release Public Assistance claims and liens on real property.
 - County can force the sale by petitioning the probate court where the property is located or in the county where a probate is pending for an order allowing sale of the real property substituting the net sale proceeds so they can pay the MA claim.

Revocable Trust

- Can a Revocable or living trust avoid an MA claim?
 - **Answer:** NO.
 - These type of trusts most commonly have a provision that directs the trustee at the grantor's death to "pay all claims and expenses".
 - Restatement (Second) of Trusts, §156; allows for creditors to reach these sort of trust.

Revocable Trust

- Creditor's rights in MN:
 - Minn. Stat. §502.76- When the grantor in a conveyance personally reserves, for the grantor's own benefit, an absolute power of revocation, such grantor is still the absolute owner of the estate conveyed, so far as the rights of creditors and purchasers are concerned.
 - Minn. Stat. §502.70- a creditor of the donee...after the death of the donee, may subject to the creditor's claim all property which the donee could at death have appointed to the donee's estate.
 - Minn. Stat. §256B.15, Subd 1(b)- For the purpose of this section, the person's estate must consist of:
 - (5) assets conveyed to a survivor, heir, or assign of the person through survivorship, living trust, or other arrangements.

Revocable Trust

- Procedure:
 - Minn. Stat. §501B.76- Petition for Court Order
 - a person interested in the trust may petition the district court for an order:
 - (3) to determine the persons having an interest in the income or principal of the trust and the nature and extent of their interests;
 - Minn. Stat. §501B.17-Venue

Affidavit of Collection

- **Right to Collect Claim by Affidavit**
 - The state or a county with a claim for recovery of MA payments arising under **Minn. Stat. § 256B. 15** can use the affidavit of collection provided for under **Minn. Stat. § 524.3-1201** to collect the deceased recipient's personal property in satisfaction of its claim.

Affidavit of Collection

- **When Right Arises: Extent of Right:** The right to collect a decedent's personal property by affidavit:
 1. Arises beginning 30 days after the decedent's death
 2. Exists only when the decedent's entire estate consists of personal property with a net value of \$50,000.00 or less, no request for appointment of personal representative is pending or has been granted in any jurisdiction and the claimant is entitled to payment or delivery of the property.
 3. Extends to the decedent's personal property in safety deposit boxes, their interest in multiple party accounts, nursing home accounts, and debts owing to the decedent.

Minn. Stat. § 524.3-1201; Minn. Stat. § 55.10; and Minn. Stat. § 524.6-207

Affidavit of Collection

1. The net value of the entire probate estate does not exceed \$50,000.00;
2. 30 days have elapsed since the decedent's death
 - if the property to be turned over is the contents of a safe deposit box, 30 days have elapsed since the filing of an inventory of the contents of the box pursuant to **Minn. Stat. § 55.10, Subd. 4(h)**;
3. No application or petition for the appointment of a PR is pending or has been granted in any jurisdiction;
4. The claiming successor is entitled to payment or delivery of the property; and
5. If presented to a financial institution with a multiple-party account in which the decedent had an interest at the time of death, the amount of the affiant's claim and a good faith estimate of the extent to which the decedent was the source of funds or beneficial owner of the account.

Affidavit of Collection

- **How Recovery is Made:**
 - The state or a county with a claim for recovery of MA can collect its claim by presenting the party indebted to the decedent or in possession of their personal property with a certified copy of the death certificate and duplicate copies of an affidavit stating:

Late Claim

- Claims authorized by section 256B.15 or 256D.16 must not be barred after one year. **Minn. Stat. §524.3-803(a)(3)**
- The court may allow presentation of an otherwise barred claim for cause shown at any time prior to the filing of a petition to settle the estate or a closing statement. **Minn. Stat. §524.3-803(c)(4)(ii); see Minn. Stat. §524.3-715(18)**

Late Claim

- The term “**cause shown**” or “**good cause**” is undefined.
 - It appears district courts have wide discretion in deciding whether good cause for presenting an otherwise barred claim exists. See **Estate of Thompson, 484 N.W.2d 258 (Minn. App. 1988)**
 - The nature of the claim may affect a court’s view as to whether good cause exists. See **Estate of Kuckenbecker, 383 N.W.2d 11 (Minn. App. 1986); Estate of Morse, 363 N.W.2d 842 (Minn. App. 1985); Estate of Kotowski, 704 N.W.2d 522 (Minn. App. 2005)**

Late Claim

- **Good Cause** may include, but is not limited to:
 - Acts of the personal representative, such as a delaying commencement of the probate, failing to notify a known and identified creditor, or fraud or misrepresentation;
 - A showing that the delay in presenting the claim will not prejudice the estate; or
 - **A showing that the claim is for a public purpose, e.g. recovery of federal and state tax dollars expended for a public, as opposed to a private, purpose.**

Annuity Recovery Policy Overview

- What is an annuity?
 - An annuity is a contract –the **purchaser/owner** pays a sum of money to an **annuity issuer** (usually an insurance company), and in return, the annuity issuer agrees to make a series of payment) to the purchaser, or the individual(s) the purchaser designates (**payee(s)**), according to the terms of the contract.



Annuity Classification

HCPM 19.25.30 – Annuities

Annuities can be classified in many different ways. Traditionally, the key classifications relate to:

- 1.The time at which annuity payments begin.**
 - a. Immediate Annuity*
 - b. Deferred Annuity*
- 2.The nature of the periodic payments.**
 - a. Fixed Annuity*
 - b. Variable Annuity*
- 3.The period over which annuity payments will be made**
 - a. Term Certain Annuity*
 - b. Life Annuity*
- 4.The type of annuity issuer.**
 - a. Commercial Annuity*
 - b. Private Annuity*

Annuity Evaluation

- Eligibility evaluation of annuities:
 - An asset
 - Transfer of assets (purchase or other annuity transaction within the client's **lookback period**) for MA payment of LTC services
 - A source of income
 - **Requirement for DHS to be named a Preferred Remainder Beneficiary**
 - 42 U.S.C. §§ 1396p(e) and 1396p(c)(F); Minn. Stat. §§ 256B.056, subd. 11, 256B.0594 and 256B.0595, subd. 1(f).

Who Needs to Name DHS a Preferred Remainder Beneficiary of Their Annuity?

- **Individuals requesting or renewing eligibility for MA payment of LTC services**, and/or that individual's spouse (even if the individual's spouse neither receives nor requests MA payment of LTC services), when they have an ownership interest in an annuity; and
- At least one **annuity transaction** occurred on or after 2/8/06 and within the individual's lookback period; and
- The annuity provides for a **death benefit** and allows for someone other than the surviving spouse to be named a beneficiary under the annuity.
 - **Note: Defined-Benefit Retirement Funds held in the form of an annuity should be evaluated as an employer-sponsored or union-sponsored retirement plan, not as an annuity. HCPM 19.25.10 – Retirement Funds and Retirement Plans.**

Preferred Remainder Beneficiary Designation

- As the preferred remainder beneficiary, DHS may receive up to the total amount of MA paid on behalf of the individual and/or the individual's spouse when a death benefit becomes payable under the terms of the annuity contract.
- DHS' interest is a secondary to any of the following persons who have been named a death beneficiary of the annuity:
 - Spouse, if not living in a medical institution;
 - Child(ren) who are under 18; and
 - Child(ren) of any age who are totally and permanently disabled according to the Supplemental Security Income (SSI) program.

Forms Required to Name DHS a Preferred Remainder Beneficiary

1. **Annuity Beneficiary Designation Form - Annuity Owner Seeking Payment of Long-Term Care Services (DHS-5036)**. Use this form when the person requesting MA payment of LTC services owns the annuity individually or jointly with his or her spouse or someone else.
2. **Annuity Beneficiary Designation Form - Annuity Owner is the Spouse of Person Seeking Payment of Long-Term Care Services (DHS-5036A)**. Use this form when the spouse of the person requesting MA payment of LTC services is the owner of the annuity, or is a co-owner of the annuity with someone other than the person requesting MA payment of LTC services.
3. **Issuer of Annuity Notice of Obligation (DHS-5037)**. Send this form directly to the annuity issuer along with the signed DHS-5036 or DHS-5036A. The DHS-5037 provides the annuity issuer instructions regarding:
 - Naming DHS as a preferred remainder beneficiary,
 - Completing the Confirmation/Status of Request portion of the form and returning it to the county agency within 30 days,
 - The annuity issuer's ongoing obligation to communicate with the county and state agency under federal and state laws when DHS is named a preferred remainder beneficiary.

Steps for Naming DHS a Preferred Remainder Beneficiary

1. Send the appropriate Annuity Beneficiary Designation form (DHS-5036 or DHS-5036A) to the person requesting MA payment of LTC services for each annuity in which the person or his or her spouse has an ownership interest. Include the Minnesota Health Care Programs Request for Information ([DHS-3271](#)) and instruct the person or his or her spouse to:
2. When the person returns the DHS-5036 or DHS-5036A, complete, and send an Issuer of Annuity Notice of Obligation (DHS-5037), and set a reminder in MAXIS (DAIL/TIKL) to track the return of the form.
3. Send the original DHS-5037 and DHS-5036 or 5036A to the annuity issuer for each annuity owned by client and/or spouse.

See HCPM 19.25.30.10 - Naming DHS a Preferred Remainder Beneficiary for complete instructions.

Steps for Naming DHS a Preferred Remainder Beneficiary (Cont.)

4. When the annuity issuer returns the DHS-5037:
Continue or approve eligibility for MA payment of LTC services if all other factors of eligibility are met and the Confirmation/Status of Request section of the DHS-5037 indicates one of the following:
 - a. DHS is named a preferred remainder beneficiary of the annuity as required by law.
 - b. DHS is named a preferred remainder beneficiary of the annuity, as provided by law, with a right to recovery after the annuity owner's spouse who is not living in a medical institution, or after an annuity owner's child under 18 or a disabled child of any age.
 - c. No death benefit is available under the annuity.
 - d. The issuer describes a valid reason why it is not possible to name DHS a preferred remainder beneficiary.

See HCPM 19.25.30.10 - Naming DHS a Preferred Remainder Beneficiary for complete instructions.

Steps for Naming DHS a Preferred Remainder Beneficiary (Cont.)

If the annuity issuer does not return the DHS-5037 within 30 days:

- a. Contact the annuity issuer to verify whether the issuer is in the process of complying with the request or has returned the DHS-5037.
- b. If the annuity issuer does not respond within a reasonable period of time after following up with them, send a request to the **Special Recovery Unit** to pursue the designation of DHS as a preferred remainder beneficiary of the annuity and include the following:
 - A copy of the completed DHS-5036 or DHS-5036A and DHS-5037 sent to the annuity issuer.

Note: It is highly recommended that a copy of the annuity contract be sent as well.
- c. Continue to approve eligibility for MA payment of LTC services.

See HCPM 19.25.30.10 - Naming DHS a Preferred Remainder Beneficiary for complete instructions.

Client's Failure to Name DHS a Preferred Remainder Beneficiary

A recipient (or spouse) who fails to follow all steps required to name DHS a preferred remainder beneficiary are ineligible for MA Payment of LTC services for a specified period of time based on the value of the annuity.

Note: Annuity issuers often require their company's own authorization to release information form and change of beneficiary form to be completed by the annuity owner(s) in addition to the DHS forms before making the requested beneficiary change to name DHS a preferred remainder beneficiary. The recipient must complete all documents required by the annuity issuer to make a beneficiary designation change.

See HCPM 19.25.30.10 - Naming DHS a Preferred Remainder Beneficiary for complete instructions.

Special Needs Trusts

HCPM 19.25.35.20 – Special Needs Trusts
42 U.S.C. § 1396p(d)(4)(A), Minn. Stat. §§ 501B.89, subd. 3 and
256B.0595, subd. 4, para (d)(5).

• Requirements:

- Established on or after August 11, 1993.
- Established before the client turns age 65.
 - A trust qualifying as a Special Needs Trust established before the client turns 65 remains excluded after the client turns 65.
 - Additions to the trust by the client or the client's spouse after the client turns 65 are evaluated as asset transfers.
- Established by the client's parent, grandparent, legal guardian or court.
- Funded with the income or assets of the client.
 - The trust may also contain assets of other individuals.

Special Needs Trusts

• Requirements (Cont.):

- Client must meet the **disability** standards of the Supplemental Security Income (SSI) program at the time the trust was established.
- Client must be the lifetime beneficiary under the trust and the trust must state that payments from the trust must be for the **sole benefit** of the client.

Special Needs Trusts

• Requirements (Cont.):

- Trust must contain a provision stating that, upon the death of the client, DHS (or "the State") receives all amounts remaining in the trust, up to an amount equal to the total amount of MA paid on behalf of the client.
 - Payment of administrative expenses and fees may be approved if required to be reasonable by the terms of the trust or if the trust clearly states reasonable and necessary administrative expenses may be paid only if DHS is provided with advance notice of and approves such expenses.

Pooled Trusts

HCPM 19.25.35.25 – Pooled Trusts; 42 U.S.C. §§ 1396p(d)(4)(C) and 1396p(c); Minn. Stat. §§ 501B.89, subd. 3, 256B.0595, subd. 1, para (k) and 256B.0595, subd. 4 para (d)(5).

• Requirements:

- Established on or after August 11, 1993.
- No age limit to **establish** a pooled trust.
 - **Note:** The establishment of a pooled trust or addition to a pooled trust on or after the client reaches age 65 must be evaluated as an asset transfer and may result in the imposition of a period of ineligibility for MA payment of long-term care services.
 - *Center for Special Needs Trust Administration, Inc. v. Olson*, 676 F.3d 688 (2012).
 - *In re Pooled Advocate Trust*, 813 N.W.2d 130 (S.D. 2012).

Pooled Trusts

- **Requirements (Cont.):**

- Established by the client's parent, grandparent, legal guardian, court, **or by the client.**
- The trust must be managed by a non-profit organization and contain separate trust accounts (referred to as **sub-accounts**) for two or more individuals.
 - A non-profit organization administering a Pooled Trust will have a **Master Pooled Trust Document** (also referred to as a Pooled Trust Master Trust agreement) and individuals sign a **Joinder Agreement** when they fund their sub-account and become a beneficiary of the Pooled Trust.

Pooled Trusts

- **Requirements (Cont.):**

- The trust must specify that upon termination of the trust, **DHS will receive all amounts remaining in the client's sub-account not retained by the trust** up to an amount equal to the total medical expenditures paid through MA on the client's behalf.
 - Administrative expenses and fees may be paid before DHS is reimbursed from the trust if the trust contains a provision stating that the expenses and fees must be reasonable or if the trust clearly states reasonable and necessary administrative expenses may be paid only if DHS is provided with advance notice and approves such expenses.

Pooled Trusts

- **Requirements (Cont.):**

- Funded with the income or assets of the client.
 - A separate sub-account is maintained for each beneficiary of the trust, but for purposes of investment and management of funds, the trust pools the accounts.
 - The client's trust sub-account may also contain assets of other individuals.
- The client must meet the **disability** criteria of the Supplemental Security Income (SSI) program at the time the trust is established.
- Client must be the lifetime beneficiary under the trust and the trust must state that payments from the trust must be for the **sole benefit** of the client.

Special Needs Trust & Pooled Trust Verifications & Annual Accounting Requirements

- **Verification at Application:**

- Request a copy of the trust instrument(s) and most recent trust accounting.
- Complete the **Special Needs/Pooled Trust Referral Form (DHS-4759)** and send it to the DHS Special Recovery Unit (SRU) with a copy of the trust and most recent accounting.

- **Annual Accounting:**

- The trustee of a Special Needs Trust or Pooled Trust with a beneficiary who is an applicant or recipient of MA is required by state law to submit an annual trust accounting directly to the DHS Special Recovery Unit. If sent to the county, please forward to DHS-Special Recovery Unit.

HCPM 19.25.35.20 – Special Needs Trusts
HCPM 19.25.35.25 – Pooled Trusts
Minn. Stat. § 501B.89, subd. 4.

Guidance

- See MN HCPM 19.50
 - Added section 19.50.05
- Most Recent Bulletin
 - #09-21-11C Supplemental Bulletin to #09-21-11

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Questions

