

**National Senior Citizens Law Center**

Preliminary results of the Disability Redesign Plan showed an increase in favorable decisions being made at initial application. Despite the preliminary reports, Commissioner Massanari reported that test results were mixed, noting that denied claimants felt "more satisfied" with the process, and DCMs found greater job satisfaction; however, the program was more costly, a factor that was considered in light of "the agency's current and projected workloads and budgetary restraints." As a result of this announcement, other aspects of the Disability Redesign Plan (e.g., elimination of reconsideration) will probably not be implemented.

**3. SSA ISSUES TRANSMITTAL ON ALLOWABLE ADMINISTRATIVE EXPENSES UPON DEATH OF A BENEFICIARY UNDER THE MEDICAID TRUST EXCEPTIONS**

The Social Security Administration issued transmittal EM-01085 in May 2001 to clarify what administrative expenses can be deducted from a Special Needs Trust or a Pooled Trust established under § 1917(d)(4) before reimbursement to the state Medical Assistance agency. See Information Mailing 01-03. The problem arose because some field and regional offices were interpreting POMS SI 01120.203 B.1.F and SI 01120.203 B.2.g as requiring reimbursement to the state agency before payment of federal and state income and estate taxes, final trustee fees, court fees, and other administrative fees upon probate of the beneficiary's estate. This created a conflict with well-established estate laws that require payment of taxes and certain administrative expenses prior to distribution of the beneficiary's estate. Concern was also raised because of the fear that many trustees would merely resign upon the death of the beneficiary.

Allowable administrative expenses now include:

- taxes due from the trust to the state and federal government
- reasonable fees for administration of the trust estate, such as an accounting of the trust to a court, completion and filing of documents

Prohibited expenses and payments include:

- funeral expenses (usually a pre-distribution payment under state law)
- payments to residual beneficiaries
- third-party debts

A copy of EM-01085 is attached at: A-1.

**4. STATE CANNOT USE CHILD'S SOCIAL SECURITY BENEFITS TO PAY ITSELF FOR FOSTER CARE**

The Supreme Court of Washington has ruled that the anti-alienation provision of the Social Security Act, 42 U.S.C. § 407(a), prohibits a state from using Social Security benefits of foster children for whom it serves as representative payee to reimburse itself for the costs of current foster care as well as costs for past foster care. *Guardianship Estate of Keffeler v. State*

FILE NO: EM-01085 DATE: 05/14/2001

TO : All RCs/ARCs/ADs/FOs/TSCs/TSC Coord/PSCs/DDSs/  
FDDS/OGC/DCO/OPSOS/OAS/DCS/OSR/OSDD/DCFAM/DCLCA/  
DCDISP/OD/OPB/OHACO/OHAROs/OHAMOs

FROM : SSA, OPB

SUBJECT: Supplemental Security Income - Trusts - Allowable Expenses Upon  
Death of the Beneficiary Under the Medicaid Trust Exceptions -  
(Instructions Will Follow Shortly)

RETENTION DATE: November 12, 2001

A. BACKGROUND

This Emergency Message clarifies POMS SI 01120.203 B.1.f. and SI 01120.203 B.2.g. regarding the treatment of trusts in the SSI program. Those POMS sections deal with the requirement that, in order for certain trusts to meet the exception to counting as a resource under section 1613(e) of the Social Security Act, the State must be reimbursed for medical assistance paid on behalf of the individual. Under this clarification, the Medicaid trust exceptions can apply when the trust provides that certain expenses necessary, for example under State or Federal law, may be paid prior to reimbursement of Medicaid expenditures to the State. This clarification is effective 1/1/00. These instructions also provide procedures for excluding affected cases from processing time.

B. POLICY

1. State Medicaid Reimbursement Requirement

a. Special Needs Trusts Established under 1917(d)(4)(a) of the ACT

To qualify for the special-needs trust exception, the trust must contain specific language that provides that upon the death of the individual, the State will receive all amounts remaining in the trust, up to an amount equal to the total amount of medical assistance paid on behalf of the individual under the State Medicaid plan. The State must be listed as the first payee and have priority over payment of other debts and administrative expenses except as listed in 2. below.

b. Pooled Trusts Established under Section 1917(d)(4)(C) of the ACT

To qualify for the pooled trust exception, the trust must contain specific language that provides that, to the extent that amounts remaining in the individual's account upon the death of the individual are not retained by the trust, the trust pays to the State from such remaining amounts in the account an amount equal

to the total amount of medical assistance paid on behalf of the individual under the State Medicaid plan. To the extent that the trust does not retain the funds in the account, the State must be listed as the first payee and have priority over payment of other debts and administrative expenses except as listed in 2. below.

**2. Allowable Administrative Expenses**

The following types of administrative expenses may be paid from the trust prior to reimbursement of medical assistance to the State:

- Taxes due from the trust to the State or Federal government because of the death of the beneficiary;
- Reasonable fees for administration of the trust estate such as an accounting of the trust to a court, completion and filing of documents, or other required actions associated with termination and wrapping up of the trust.

**3. Prohibited Expenses and Payments**

The following expenses and payments are examples of some of the types not permitted prior to reimbursement of the State for medical assistance:

- Payment of debts owed to third parties;
- Funeral expenses; and
- Payments to residual beneficiaries.

**4. Applicability**

This restriction on payments from the trust applies upon the death of the beneficiary. Payments of fees and administrative expenses during the life of the beneficiary are allowable as permitted by the trust document and are not affected by the State Medicaid reimbursement requirement.

**C. CASE PROCESSING TIME**

Upon adjudication, initial claims that have been held pending release of these instructions may be excluded from processing time by entering "ZZZ" in the unit field. Failure to do so will cause such cases to be included in monthly processing time reports. This policy applies only to those cases that were held pending these instructions. Field offices may post additional characters in the unit field to identify a specific unit but must post "ZZZ" in the first three positions of the unit field. These cases will be excluded from processing time provided that the unit field is "ZZZ..." at the time of adjudication.

**D. QUESTIONS**

Direct all program related and technical questions to your RO support staff or PC  
OA staff. RO support staff or PC OA staff may refer questions or problems to  
their Central Office Contacts.

INSTRUCTIONS AFFECTED: SI 01120.203B.