

## Protecting Personal Injury Recoveries for Persons on Public Benefits

Planning to Retain Ongoing Eligibility for Public  
Benefits

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## Medicaid Liens Imposed Against a Lawsuit Recovery

SSL §104, §366, §369

18 NYCRR §360-7.11

**Ahlborn** decision – 547 US 268, 126 S.Ct. 1752 (2006)

Medicaid HMO – Medicaid pays the premiums. No  
right of recovery and no lien may be filed for Medicaid  
HMOs. Local DSS claim the cost of the premiums as  
reimbursements




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## Medicaid: Liens

Benefits incorrectly paid: requires a judgment

Against Personal Injury Proceeds

Liens against Real Property of Institutionalized  
individual




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## Special Needs Trusts

Exception Trust created for the benefit of a disabled person under the age of 65

Created with the individual's own assets

Created by disabled individual, parent, grandparent, legal guardian or by a court of competent jurisdiction




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## Payback Provisions

Trust assets are used to repay the State for all Medicaid provided to the beneficiary even if lien has been satisfied for less than the full amount of Medicaid provided at the time of the lawsuit




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## Pooled Trusts

Exception trust – (d)(4)(c)

For income and assets

No age requirement

Transfer of assets rule applies for individuals 65 years of age or older

Joinder agreement to join master trust




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## Medicaid Estate Recovery

SSL §366 (3)(a)  
 SSL §369

Age 55 years or older

Probate vs. non probate

Notice of Claim




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## Estate Recovery Prohibitions

During lifetime of surviving spouse, or at any time when the MA recipient has a surviving child who is under age 21 or a child of any age who is certified blind or certified disabled.

From recipient's personal injury action filed against a nursing facility – runs for lifetime of the recipient.




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## ABLE Act

ABLE – Achieving a Better Life Experience Act of 2014

tax free savings accounts for individuals with disabilities

[www.mynyable.org](http://www.mynyable.org)  
[www.ssa.gov](http://www.ssa.gov) – SI 01130740




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## ABLE Accounts

Individual must be disabled prior to age 26 and either entitled to SSI or DDSI or meet criteria for disability

Who can open account?

eligible individual

parent or legal guardian

person with power of attorney for eligible individual




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## ABLE Act

Trusts can fund ABLE accounts

Funds in the account may be used for disability related expenses

Funds paid from ABLE accounts to pay for food and shelter will not result in a 1/3 reduction of SSI




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## ABLE Accounts

Maximum account balance is \$100,000

Maximum deposit each year - \$15,000

Contents of these accounts are disregarded for eligibility determinations and income earned from the accounts are similarly disregarded.

Medicaid payback provision




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Medical Indemnity Fund

(MIF)

N.Y. Pub. Health L. §2999 – g

Purpose: To provide a funding source for future health care costs associated with birth related neurological injuries, in order to reduce premium costs for medical malpractice insurance coverage



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MIF

Fund will pay medical costs of the enrollee

Fund is primary to Medicare and Medicaid

No financial criteria for the qualified infant plaintiff enrolled in the fund

No reimbursement to the State upon the death of the qualified infant plaintiff



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MIF

Fund is to provide all medical care for the qualified infant plaintiff

Benefits are portable and will be paid even if infant is no longer in New York



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## MIF – con’t

Medicaid is no longer need for the infant plaintiff

Parents’ income and assets are not a factor in the infant plaintiff’s enrollment

Settlement stops the Medicaid payback when plaintiff passes away




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## MIF

Allocation of settlement

portion allocated to the fund  
portion allocated to nonfund damages

legal fees




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## SNT and the MIF

Weigh the benefits of SSI program with payback provisions of SNT

MIF eliminates the need for Medicaid but does not preclude infant plaintiff eligibility for SSI

No payback to State for SSI benefits provided to a beneficiary of a SNT




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## CPLR Article 12

### Infant Compromise Order

§1206 – directs that infant's lawsuit to be paid to:

1. Guardian of the Property
2. Conservator or Committee

Absent is the authority to direct that the funds be paid to a trustee of any type of trust.




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## CPLR Article 12

§1206(c) – directs the manner in which infant's funds may be invested

1. authorized investments
2. structured settlements

### Missing Prudent Investor Rule

What happens when infant attains 18 years of age?




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## Guardianship of Property

SCPA 17

SCPA 17A

Article 81 of the Mental Hygiene Law




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## Questions



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