

# Drafting Successful Medicaid Trusts

*Expert advice on withstanding MassHealth scrutiny*

Creating an effective Medicaid trust requires not only a deep understanding of trust law, but also of estate and tax planning. You must know how to draft trust terms that will get approved—not always easy when it seems unclear what the state will—and will not—allow. Using the right language and key terms is vital—and more challenging than ever.

This program provides analysis of recent and current Medicaid trust cases both at the fair hearing stage and at the Superior Court and Supreme Judicial Court. The faculty include a complete review of the SJC's decision in *Fournier v. Sudders* and explore the current arguments the state is making, which includes attacks on the limited power of appointment to charities or children, the argument that nominee realty trusts are revocable, the power to loan money to the donor, the power to buy life insurance, and several others. Review the *Hirvi* Settlement, the 130 CMR § 610.00 regulations, and the MassHealth Eligibility Operations Memo 20-04. Learn about the grantor powers that are safest to use and which ones are being challenged by the state. Hear a discussion of the income tax benefits of making the trust a grantor trust and the importance of keeping the § 121 capital gains exclusion.

Learn what paragraphs should and should not be in these irrevocable trusts, as well as how to draft around current challenges and make arguments to distinguish your trust from the *Cohen*, *Doherty*, and most recent *Braiterman* cases that MassHealth uses to attack Medicaid trusts. Explore the step-up basis rules and the estate and gift tax rules related to drafting these trusts, along with the tax implications of using life estates. Learn how to draft a QTIP share and remainder share into these trusts to obtain estate tax reduction and nursing home protection at the same time. Finally, learn how naming the estate the beneficiary of your IRA coupled with a testamentary trust can offer significant estate tax savings and nursing home protection without a negative income tax hit on the required minimum distributions.

## Agenda

- How to Draft and Use Medicaid Income Only Trusts in Your Practice
- How to Make a Medicaid Trust into a Grantor Trust and Related Income Tax Benefits; When and Why It Could Make Sense to Not Make the Trust a Grantor Trust; Life Estates and How to Use Them with Medicaid Trusts in Light of *Daley*
- Medicaid Trusts: Income, Estate, and Gift Tax Planning
- Drafting Bypass Trusts and Marital Shares in Medicaid Trusts to Accomplish Estate Tax Savings at the Same Time
- Current Fair Hearing Decisions, Superior Court Cases, and SJC Decisions, Especially the *Fournier* Case, Dealing with These Trusts and Related Arguments Being Made
- Understanding How Testamentary Trusts and Naming the Estate as a Designated Beneficiary on IRAs Can Offer Both Tax and Nursing Home Protection Benefits

## Faculty

Lisa M. Neeley, Esq., *Rubin and Rudman LLP, Boston*, Chair; Karen B. Johnson, Esq., *Madge & Johnson, PC, Westford*; Todd E. Lutsky, Esq., LL.M., *Cushing & Dolan, PC, Waltham*; Angelina Pargoff Stafford, Esq., *Doherty, Wallace, Pillsbury & Murphy, PC, Springfield*



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## Dates & Location

Register at [www.mcle.org](http://www.mcle.org)

### LIVE WEBCAST

Tuesday, December 10, 2024  
2:00 pm–5:00 pm  
Program # 2250060WBC

### REBROADCAST

Friday, December 27, 2024  
9:00 am–12:00 pm  
Program # 2250060RB1

### REBROADCAST

Thursday, January 2, 2025  
12:00 pm–3:00 pm  
Program # 2250060RB2

### ON DEMAND WEBCAST

View after Thursday, January 2, 2025  
Program # 2250060WBA

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## Materials

- E-materials link emailed upon registration
- Transcript & videorecording emailed 2 weeks post-program

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