

# LWP CONNECTION MARCH 2015

## KNOWING THE BREAKEVEN POINT...A MUST WHEN PRE-PLANNING!

David J. Zumpano, Esq, CPA, Co-founder Lawyers With Purpose

When Medicaid planning, many practitioners focus on the look back date and the penalty period to identify the best strategy to ensure Medicaid eligibility in the shortest period of time. While that may be true for crisis planning, when preplanning for Medicaid benefits, the look forward period and the breakeven date are critical factors to become eligible in the shortest period of time.

When pre planning, practitioners must strategize on two premises; (1) what the worst case scenario would be (if the client fell ill the day after pre planning is completed) and compare that to (2) the best case scenario, which occurs when the client stays healthy for 60 months. While crisis practitioners focus on the look back date and review of financial records for the previous 60 months, pre planning practitioners must focus on the date of a conveyance (uncompensated transfer) and "look forward" 60 months to determine the timeframe in which the the transfer will be in the purview of a future Medicaid application. Understanding the distinction between the look-back period and the look forward period is critical in determining the breakeven date when preplanning for future Medicaid benefits.

So, what is the breakeven date? It is the date, when pre-planning, that if it is reached, it will be better to wait out the 60 months from the original conveyance date than to convert to a crisis case. The breakeven date is calculated by determining the worst case scenario and comparing it to the best case scenario. The worst case scenario is if the client fell ill the day after pre planning was completed. What would be the best case scenario in such an event? To determine that, you would calculate as if it were a crisis case, and determine the "minimum months to qualify", the soonest period in which you would be able to get the client eligible for Medicaid if they came in in crisis.

Once you have calculated the minimum months to qualify, and then compare it to the best case scenario, if the client had stayed healthy for sixty months. The breakeven point is simply the best case minus the worst case. Restated the best case is remaining healthy 60 months (the entire look forward period) and the worst case is if it were a crisis case and you calculate the minimum months to qualify.



Let's give an example. Assume a client came into you in crisis and after doing your calculations you are able to determine that you can get them qualified for Medicaid in 23 months. This is done by transferring assets and reserving enough assets to pay through the 23 month ineligibility period. It's pretty straightforward in a crisis case. Assume now the same exact client came in, but was healthy.

In preplanning case you would calculate what would happen if the client were in crisis (like we just presumed) and then compare it to the best case scenario (they stay healthy 60 months). In this pre planning case the breakeven date would be 37 months (60 minus the minimum months to qualify of 23 months) from when the preplanning was completed.

Therefore in a pre planning case if the need for nursing home care occurred within 37 months, you would convert the pre planning case to a crisis case at that time and get them qualified in 23 months. If however, the client's need for nursing home care occurred after month 37 (the breakeven point), then instead of converting to a crisis case, you would privately pay until the 60th month after the original transfer (look forward date). It's really quite simple once you understand these new terms.



DEAR PAST,  
THANK YOU FOR ALL THE LESSONS.

DEAR FUTURE,  
I AM READY!!!



# HOW TO KNOW WHEN AN SNT NEEDS A TAX ID NUMBER

David J. Zumpano, Esq, CPA, Co-founder Lawyers With Purpose

The question among many practitioners is, does a supplemental needs trust need a separate tax I.D. number and have to file a separate income tax return? The answer is, it depends. So let's examine when an SNT needs a separate tax I.D. and when it doesn't.

A supplemental needs trust will be a first party or third party trust. A first party supplemental needs trust is funded with assets of the disabled individual who is also the beneficiary of the trust. Under law a first party supplemental needs trust can only be created by the parent or grandparent of the individual, or a court. Once the first party supplemental needs trust is created, it will not require a separate tax I.D. number, but instead will use the tax I.D. number of the disabled beneficiary. All income earned by the first party supplemental needs trust will be reported on the income tax return of the disabled beneficiary, but will not affect or be counted toward their continuing eligibility, as long as distributions are made on the beneficiary's behalf and not made directly to the beneficiary.

A third party supplemental needs trust is created and funded by someone other than the disabled beneficiary, but for the benefit of a disabled beneficiary. Whether a tax I.D. number is required for the third party SNT will depend upon how the trust is structured. In most third party SNT's, the creator of the trust (grantor) wishes to maintain control of the trust for the benefit of the disabled beneficiary. In this case, no separate tax I.D. number would be required as it would be considered a "grantor" trust and all income would be taxed to the grantor. If the grantor is not the trustee, but retains other identified rights, then the same rules would apply. Alternatively, if the grantor creates a trust and retains no rights to change it, benefit from it or control its distribution, then it may be a non grantor trust and need a separate tax identification number.

Similarly, after the grantor who created the trust and retained rights to make it a grantor trust dies, the third party supplemental needs trust now becomes a "non grantor trust" and requires a separate tax identification number. Annual income tax returns would have to be filed for non-grantor SNT's but the actual tax will be deemed payable by either the beneficiary, or the trust, depending upon the actual distributions made. For example, if a supplemental needs trust earned \$10,000.00 in a year, and they used \$7,000.00 of it for the beneficiary, it would "pass through" the \$7,000.00 in taxable income to the beneficiary on a Form K1. The remaining \$3,000.00 retained in the trust, would be taxed at the trust tax rate and payable by the trustee directly with the tax return filed by the trust with the IRS. Finally, in relation to IRAs, the IRS has ruled in Private Letter Ruling 200820026, that an IRA payable to a supplemental needs trust at the death of the IRA owner, will not be required to be liquidated and, but instead, the age of the disabled beneficiary will be used for "stretch purposes" and it will be considered a grantor trust of the beneficiary for purposes of the IRA distribution.

So does a supplemental needs trust need a tax I.D. number? No and yes it all depends how you create the trust during lifetime and how you plan for it!

## CHECK OUT WHAT'S NEW!

The focus sessions have been recorded and uploaded to the member website. You can find them by going to:

[Home / LWP™ Retreats / 2015 February 3-5 Practice Enhancement Retreat](#)

### **Dissecting the Single VA Benefits Trust**

Presented by: Victoria Collier

### **Build Your Brand -- Nice Companies Finish First**

Presented by: Susan Hunter

### **Implementing an Annual Client Maintenance Program**

Presented by: Liana Bateman

### **Building Team Relationships: Communication Skills**

Presented by: Susan Hunter

### **How to Create a Marketing Budget**

Presented by: Roslyn Drotar

### **Legal-Technical 'Need To Know' for Team Members**

Presented by: Candace Pollock



## MEMBER OF THE MONTH

Sergio White

### What is the greatest success you've had since joining LWP?

Thanks to the LWP systems and processes, our biggest success has been being able to get up to speed very quickly in an area of law that is so important. The support from LWP in the form of the Live ListServ for any practice related questions; and the webinars designed to keep us abreast of changes in the area of Elder Law and Estate Planning have made the transition back into full time practice smooth for me and beneficial for my clients.

### What is your favorite LWP tool?

My Favorite LWP Tool is by far the LWP-CCS. I really enjoy sitting down in front of the computer and punching in the numbers to help come up with a Medicaid qualification strategy for my clients. Then going through the client questionnaire to build the trust and other estate documents is also something I enjoy doing very much.

### How has being part of LWP impacted your team and your practice?

Being a part of the LWP team for me has been transformative. Having returned to practicing law after several years in education, I have found in LWP a family of likeminded individuals who truly care about the work they are doing and the clients they serve. It is very satisfying to me to be able to help a family in crisis preserve the legacy that they worked so hard to build, and ensure that it will be there for their family. Through LWP, I have met and befriended many people who will be part of my life for many years to come.

## NOTABLE EVENTS

### Weekly

Live ListServ  
Every Monday-4:00 PM EDT

### Bi-Weekly

Marketing Roundtable  
2nd and 4th Fridays  
12:00 Noon EDT

### Monthly

Veterans VA Tech Training  
3rd Thursday-3:00 PM EDT  
Veterans Roll Call  
3rd Thursday-4:00 PM EDT  
Veterans Marketing Moments  
3rd Friday-3:00 PM EDT

### Live Programs

Practice With Purpose  
June 1-3 St. Louis MO  
Tri-Annual Retreat  
June 3-5 St. Louis MO

To register for an event, visit our events page  
[LawyersWithPurpose.com/Events-for-Lawyers.php](http://LawyersWithPurpose.com/Events-for-Lawyers.php)





Legacy Building, Suite 202  
555 French Road  
New Hartford, NY 13413

# Early Bird

REGISTRATION

How would you like to be entered for one of three prizes to assist you for this upcoming Tri-Annual Practice Enhancement Retreat in St. Louis, MO? Submit your attendee information to Kyle Russ at [kruss@lawyerswithpurpose.com](mailto:kruss@lawyerswithpurpose.com) to be entered for a \$150 Visa Gift Card.

Deadline April 15, 2015