

Hot Topics in Special Needs Trusts 2019

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Special Needs Trusts

- To benefit individuals with disabilities.
- Maintain eligibility for public assistance programs.
- Enhance quality of life.

Two Categories of SNT's

- Self Settled – d4A, d4B and d4C
 - Under age 65, QIT, Pooled Trust
- Third Party – set up by others

Where is the Guidance

- Federal law – 42 U.S.C. 1396 p - from 1993
- Federal Policy – Social Security POMS
 - SI 01120.200-203
 - CMS Medicaid Manual
- Florida Policy – DCF Program Policy Manual
 - 1640.0576.01 et. seq.

New POMS April 30, 2018

- Rewrite of:
 - SI 01120.200 – Trusts in General
 - SI 01120.201 – Self Settled Trusts
 - SI 01120.202 – Development and Documentation of Trusts
 - Si 01120.203 – Exceptions for Self Settled Trusts

New POMS April 30, 2018

- Definitions updated
- Removed Table of Contents
- 90 day Grace Period Expanded
- Incorporated ABLE Accounts throughout
- Veteran's Survivor Benefit Plans (SBP) was added to list of income streams that can be assigned

New POMS April 30, 2018

- Clarified that all court ordered assignments of income will be considered irrevocable (alimony, child support, etc.)
- Remember SBP's must be assigned to self-settled trusts (d4A or d4C)
- Discussed titling of assets purchased from self-settled SNT's – home, vehicle

New POMS April 30, 2018

- Sole Benefit vs. Primary Benefit
 - Still calls d4A and d4C “sole benefit trusts”
 - But can be for the primary benefit
 - Others can benefit
 - Home, television, vehicle

New POMS April 30, 2018

- Paying Caregivers
 - Don't need medical or certification
 - Can be related
 - Can't request tax information (unless a deemor)

New POMS April 30, 2018

- Travel Expenses
 - For the Beneficiary – can pay and can cover others necessary including admissions tickets – travel, lodging and food
 - Visitation – still needs to be to ensure the wellbeing of a beneficiary in a facility

New POMS April 30, 2018

- ABLE Accounts – Updated ABLE POMS SI 10030.740 on 4/2/18
- Specifically contemplates funding ABLE accounts with SNT's
- Transfers to ABLE not income to beneficiary

Special Needs Trust Fairness Act

- 21st Century Cures Act – signed December 13, 2016
- Amended 42 U.S.C. 1396 p (d)(4)(A)
 - To allow individual to create own d4A

Special Needs Trust Fairness Act

To allow individual to create own d4A

Planning Tips

- Make sure your Power of Attorney document allows for the creation of these trusts by your Agent for your Principal
- Now can consider “Trigger” trusts that could convert a typical RLT into a 4dA with a Trigger. More on this later.

ABLE Accounts and SNT's

Updated ABLE POMS SI 10030.740 on 4/2/18

Funds deposited into an ABLE account from a SNT is not income to the beneficiary

Can't use an ABLE account in lieu of a QIT

Can roll a 529 into an ABLE (529A) account

Can also put earned income plus \$15,000 annually

Favorable recovery in Florida?

Pooled Trust for over age 64

Continues to be a topic of litigation nationwide

There are various arguments and some have been successful

In Florida can use a Pooled trust over age 64 for Florida Medicaid (not for SSI)

Issue with “proving disability” for older folks

Pooled Trust for over age 64

**Issue with “proving disability”
for older folks**

The beneficiary must be “disabled”

**Can’t get Social Security to do a
disability determination if elderly**

**Must ask State to do determination –
need medical records – DMRT - RMRT**

D4A's and d4C's for over income cases (in lieu of QIT)

We know you can use a d4A or d4C for excess assets (over the \$2,000 limit)

Can also place income over the limit for all MSSSI programs into a d4A or d4C like a QIT
– can only use a QIT for \$2313 programs

D4A's and d4C's for over income cases (in lieu of QIT)

Says who?

1640.0576.09 Treatment of Qualified Disabled Trusts (MSSI, SFP)

After the trust is approved by the Circuit Legal Counsel as meeting the criteria of a qualified trust for the disabled **under age 65** or **a pooled trust**, apply the following policies to determine the individual's eligibility for Medicaid benefits:

3. Do not count any income deposited into the trust as income to the individual when determining the individual's eligibility;

7. Count all income placed into the trust (along with countable income outside the trust) when computing patient responsibility. Standard spousal impoverishment policies apply.

If income is deposited into the trust, the trustee must provide quarterly statements identifying the deposits (and disbursements) made to the trust for each month.

D4A's and d4C's for over income cases (in lieu of QIT)

For which programs?

0240.0102 Program Overview (MSSI, SFP)

SSI-Related Medicaid provides medical assistance as defined by policy (see below) to certain groups of individuals. Although Medicaid is run by the state, the state is given federal matching funds for the program and must follow certain federal requirements in order to receive these funds.

SSI-Related Medicaid Programs include:

1. SSI Eligible Individuals (SSI-DA),
2. Institutional Care Program (ICP),
3. Eligible Individuals under SOBRA - Aged or Disabled (MEDS-AD),
4. Protected Medicaid (PM),
5. Medically Needy (MN),
6. Emergency Medicaid for Noncitizens (EMN),

D4A's and d4C's for over income cases (in lieu of QIT)

For which programs?

7. Hospice,
8. Home and Community Based Services (HCBS),
9. Modified Project Aids Care (MPAC),
10. SSI-Related Programs for Refugees (RAP),
11. Qualified Medicare Beneficiaries (QMB),
12. Working Disabled (WD),
13. Special Low Income Medicare Beneficiary (SLMB),
14. Qualifying Individuals I (QI1), and
15. Program of All Inclusive Care for the Elderly (PACE)

The many ways to do a 3rd Party SNT

Stand Alone Irrevocable SNT

A SNT embedded within a Will

A SNT embedded within another Trust

A Revocable SNT that becomes Irrevocable

A Pooled Third Party SNT

Trigger Special Needs Trusts

Trusts that morph as needed

Could be third party SNT

Could be a first party SNT

Can these trusts morph back and forth?

Decanting bad or marginal SNT's

New decanting statute – 736.04117

Much broader and more meaningful

General support trusts vs. special needs

Specific provision for a beneficiary under a
disability

QIT Problems

Florida one of the few states with an income limit for our long term care programs

QIT only works for LTC programs (\$2,313 monthly income limit)

Such a pain to explain, execute and administer

QIT Problems

Difficulty getting it executed properly

Spouse can sign, POA but need power

Who will be the Trustee?

Requires monthly work

Good luck finding a bank to open one of these accounts

Will there be a service charge?

QIT Problems

What do you mean funding is a “Transfer?”

QIT Problems

What do you mean funding is a “Transfer?”

Funding a QIT is a transfer that causes a penalty unless used for medical care.

1840.0110 states:

“Funds deposited into a qualified income trust are not subject to transfer penalties provided they are paid out of the trust for medical care for the individual.”

QIT Problems

What do you mean funding is a “Transfer?”

This isn't a problem for a single person in a nursing home – all goes to patient resp.

Can you pay MMMIA out of QIT to spouse?

What if in community on Waiver? No facility

Creative uses of SNT's

Compliment other strategies – combinations

Support/fix up an exempt home

Hold funds for Income Producing property

Pay caregivers – Personal Service Contract

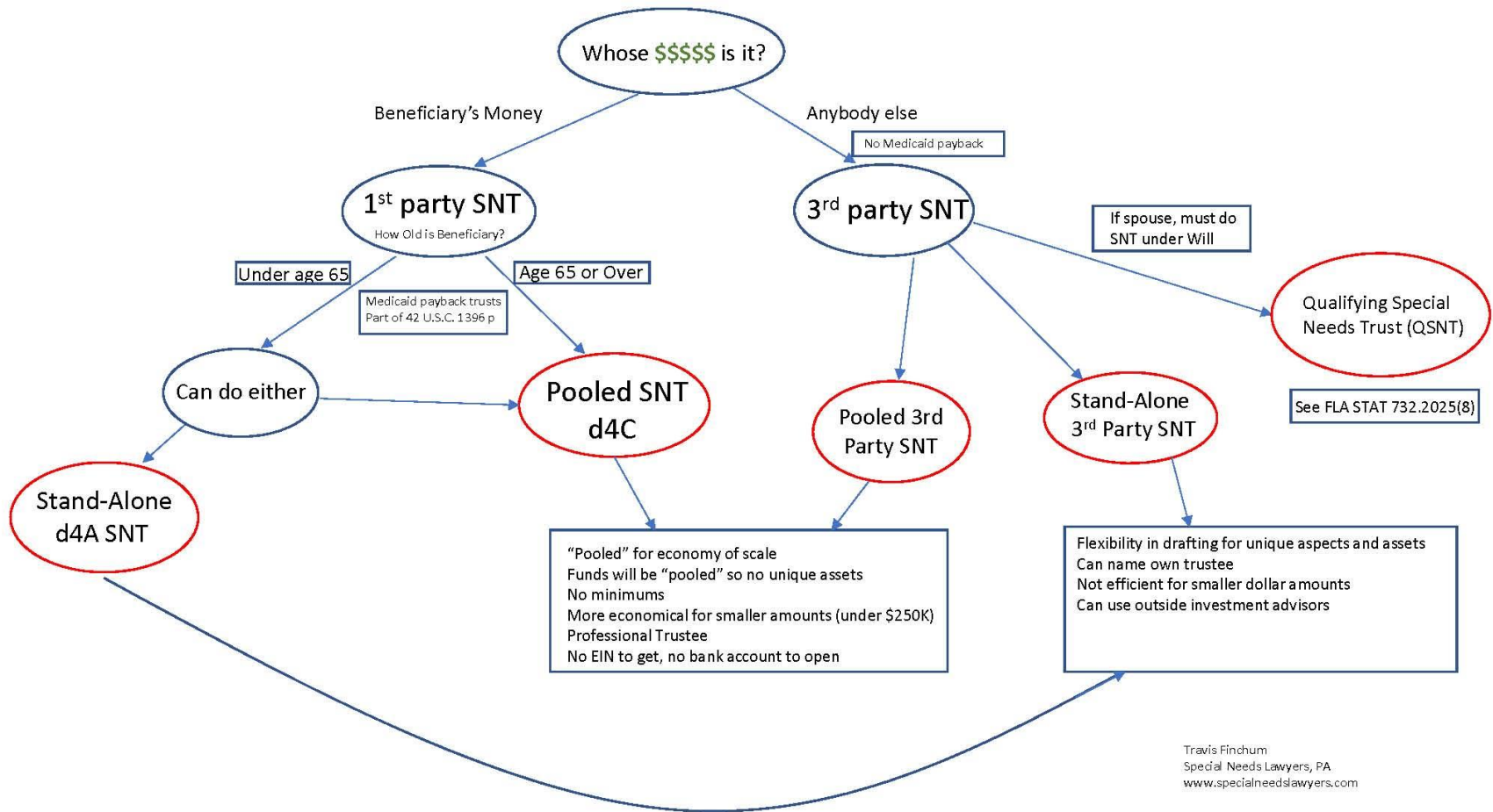
Pay for Private room

Purchase a home, vehicle or exempt asset

Pay guardian's and lawyer's fees

Support beneficiaries in the community

SNT (Special Needs Trust) Analysis



Trait	ABLE	d4A	d4C	Third Party SNT
Can be Established by Beneficiary Directly	yes	yes	yes	no
No Limited annual Contributions	no	yes	yes	yes
No Medicaid Payback on Death	maybe	no	no	yes
Can pay for food and shelter for SSI recipient without impacting benefits	yes	no	no	no
Grows Tax free	yes	no	no	no
No Lifetime Limits on account size	no	yes	yes	yes
Exempt from Creditors Claims	yes	maybe not	maybe not	yes
Allows for some disbursements after death	yes	no	no	yes
Low fees	yes	no	maybe	maybe
Distribution standard broader than just sole benefit of beneficiary	yes	no	no	yes
Can be controlled by the beneficiary directly	yes	no	no	no

yes
no
maybe

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Thank You!

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