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Ten Hot Topics In Special Needs Trusts

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1. New POMS adopted April 30, 2018
2. SNT Fairness Act
3. ABLE Accounts
4. Pooled Trusts for individuals over age 64
5. D4A's and d4C's for over income cases
6. Different ways to do third party SNT's
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1. New POMS adopted April 30, 2018
    a. The Social Security Administration adopted new Policy regarding Special Needs Trusts as of April 30, 2018. These revisions to the POMS (Program Operations Manual System) were rewrites of SI01120.200, .201, .202 and .203. These can be found at SSA.gov and searching for SSI POMS or by clicking HERE.
    b. Social Security officials said the rewrites were not implementing any new policies, but were more a clarification of existing policy. Some of the changes were more form over substance; updating definitions, removing tables of contents, etc., but there were several large nuggets that could fairly be interpreted as a change in policy. Here are a few of those nuggets.
    c. The Administration added in a 90 day grace period to fix just about any drafting problem with a SNT, provided the Trust had been previously submitted to the

Administration. Formerly this 90 day grace period was limited as to defective early termination clauses, sole benefit/travel issues, pooled trust management provisions and null and void clauses. This further supports the premise that you must submit SNT's as early in the process as possible to be covered under this newly expanded grace period.

d. Veteran's Survivor's Benefits Plans were added to the list of income streams that can be legally assignable to a d4A or d4C in addition to alimony and child support. This addition recognizes the Howard P. "Buck" McKeon National Defense Authorization Act for FY 2015 that amended the U.S.C. to permit the assignment of these benefit to SNT's. The Administration also clarified that they will consider any income stream assigned by court order to be irrevocable to comply with the income assignment rules.
e. Although we have understood this, new policy specifically states that if a d4A or d4C buys a home or vehicle the asset must be titled in the beneficiary's name, unless state law prohibits such. A vehicle may need to be titled in a different driver's name but a lien should be placed on the vehicle. It is in this section that SSA recognizes that others may benefit from the home or car without contributing but there would be limits.
f. The biggest change/clarification came with relaxed language for d4A and d4C moving from "sole-benefit" to "primary benefit" for the distribution standard. Though still calling the d4A and the d4C SNT's "sole benefit trusts" the Administration elaborated to say the trust must be for the "primary benefit" of the beneficiary and that others may also benefit from the use of the SNT funds.
g. A few years back there was concern that SSA would require caregivers being paid from a SNT to be specially licensed or even unrelated to the beneficiary. Now the policy manual specifically contemplates paying family caregivers and says no medical training or certification is required.
h. Travel expenses are always an issue and fall into two categories; paying for others to come to visit the beneficiary and paying for the travel of the beneficiary and those accompanying the beneficiary. Third party travel to accompany a beneficiary has been clarified to include transportation, food and lodging. Use a "reasonableness" test to determine how many accompanying individuals can be paid or reimbursed. As for visitation, the policy remains that the travel must be to ensure the well-being of the SNT beneficiary in a facility.
i. We now have specific policy that ABLE accounts can be funded from a SNT. There was an additional update to the ABLE POMS that will be discussed in another article, but ABLE accounts are becoming more useful and should be considered for any SNT beneficiary that can qualify for one.
j. This is only a sampling of the changes that occurred and these and other changes will be discussed more in depth at a full day Special Needs Trust CLE program scheduled for March 22, 2019 in Tampa. Special Needs Trust committee members are working on several additional articles on these SNT POMS changes, the new ABLE POMS and the new trust decanting law.

2. SNT Fairness Act passed
    a. Signed by President Obama on December 13, 2016 as part of the 21st Century Cures Act – Public Law 114-255, Section 5007.
    b. Allows an individual to establish his or her own first-party Special Needs Trust under 42 U.S.C. 1396p(d)(4)(A) along with the individual's parent, grandparent, guardian or by court order.
    c. Since the individual can now establish their own SNT, an agent under a Power of Attorney for the individual can also establish such a trust. Make sure your POA allows for this type of action.
    d. Now allows for first-party "trigger" SNT – see item #7, below.

3. ABLE Accounts – Achieving a Better Life Experience and Special Needs Trusts
    a. On April 2, 2018 Social Security adopted a new POM on ABLE accounts. There have been several updates to the law and policy since original enactment of ABLE on December 19, 2014.
    b. ABLE accounts continue to be a compliment to SNT's and in some cases a replacement.
    c. Specifically related to SNT's, the new POM gives a little more insight.
        i. Funds deposited into an ABLE account are not specifically income to the beneficiary because of the ABLE account. If "income" of the beneficiary is what is deposited into the ABLE account, "an individual cannot use direct deposit to avoid income counting" which makes it very clear that an ABLE account cannot substitute for a Qualified Income Trust or even a d4A or d4C to be used for Medicaid programs that have income limitations. SI 01130.740 C. 1.a.
        ii. Contributions to an ABLE account from a SNT is considered a third party contribution and has no impact on eligibility for public benefits. SI 01130.740 C.1.b.
        iii. Distributions from ABLE accounts for qualified disability expenses related to housing are not counted as income to the beneficiary for Supplemental Security Income (SSI) purposes. SI 01130.740 C. 4. This means that to get around In Kind Support and Maintenance (ISM) issues, funds from a SNT (first party or third party) can be deposited into an ABLE account for a qualifying individual, up to the maximum annual amount of the current annual gift tax exclusion, and then the housing or food expense can be paid from the ABLE account without causing a reduction in the beneficiary's monthly SSI check due to ISM.
    d. In Florida, our ABLE program, ABLE United, recently adopted a few new policies.
        i. A big question has always been how ABLE accounts will be treated upon the death of a beneficiary. We know the law says the ABLE account is subject to recovery by the State to the extent of Medicaid benefits received by the beneficiary, similar to first party SNT's.

ii. The question remained whether this recovery would be treated like a SNT recovery (independent of a probate process and estate recovery under Chapter 409.9101, Florida Statutes) or some other process.
iii. First, embedded within the 2018-19 appropriations bill passed in Florida, there is a provision for ABLE accounts, for 1 year, that states that upon the death of a beneficiary first any outstanding qualified disability expenses could still be paid (unlike first party SNT's). Chapter 2018-10 – House bill No. 5003.
iv. Then remaining funds would be transferred to either the estate of the beneficiary or an ABLE account of another eligible individual specified by the designated beneficiary or the estate of the beneficiary.
v. Finally, there is a prohibition against the state filing a claim for Medicaid recovery of funds in an ABLE account. It isn't exactly clear what this means, but ABLE United is stating that this would eliminate Medicaid recovery all together, but this could just mean it flips over recovery to the probate process under Chapter 409.9101.
vi. These recent Florida changes have a 1 year sunset provision so if not renewed by new legislation before July 1, 2019 they will expire.

4. Pooled Trusts for individuals over age 64
   a. This continues to be a topic of litigation in several states. By last count, Florida is one of only 19 states and the District of Columbia that do not penalize an individual for contributing to a Pooled SNT after reaching age 65.
   b. Various arguments have been made against a penalty being imposed, with mixed results. One theory that seems to be working is that the funding of a Pooled Trust is not a transfer because there is fair compensation being received for the funding.
      i. This makes sense since the funds are put into a "sole benefit" trust.
      ii. In Colorado there needs to be an actuarially sound spending plan to satisfy the fair compensation argument.
      iii. In Maine, a similar argument lost at the local level and is working its way through the U.S. court of appeals in Richards v. Hamilton.
      iv. In Florida this is currently not an issue and Floridians over age 64 can fund pooled SNT's and immediately receive Florida Medicaid without a transfer issue.
         1. A related issue in Florida is that the federal law (and Florida policy) states that a beneficiary must be "disabled" to use a pooled SNT.

42 U.S.C. 1396 p (d) (4)

(C) A trust containing the assets of an individual who is disabled (as defined in section 1382c(a)(3) of this title) that meets the following conditions:

(i) The trust is established and managed by a non-profit association.

(ii) A separate account is maintained for each beneficiary of the trust, but, for purposes of investment and management of funds, the trust pools these accounts.

(iii) Accounts in the trust are established solely for the benefit of individuals who are disabled (as defined in section 1382c(a)(3) of this title) by the parent, grandparent, or legal guardian of such individuals, by such individuals, or by a court.

(iv) To the extent that amounts remaining in the beneficiary's account upon the death of the beneficiary 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 beneficiary under the State plan under this subchapter.

Florida Program Policy Manual 1640.0576.08

Pooled trusts for the disabled: A trust containing the assets of an individual who is disabled, if:
1. it was established on or after 10/01/93;
2. the trust is established and managed by a nonprofit association;
3. a separate account is maintained for the beneficiary of the trust but, for purposes of investment and management, the trust pools the accounts;
4. the trust is established solely for the disabled individual by a parent, grandparent, legal guardian, court or the individual himself; and
5. to the extent that amounts remaining in the trust upon the individual's death are not retained by the trust, the trust pays to the state an amount equal to the total amount of medical assistance paid on behalf of the individual.

2. So then the challenge becomes how to prove a person over the age of 64 is "disabled."
3. Generally, the criteria for determining "disability" is the Social Security definition but it is difficult, if not impossible, to get Social Security to determine a person over age 64 is disabled. The individual is "aged" and therefore likely getting all of the federal benefits to which they are entitled.
4. There is a provision for having the state of Florida determine a person meets this definition of disability. The provision is in the Medicaid Program Policy Manual at 1640.0609.06

1640.0609.06 Definition of Disability (MSSI)
When an allowable transfer is alleged to have been made to a disabled individual (per policy in 1640.0609.04), you must determine if the individual meets the definition of disability used by the SSI Program.
Disability must be determined according to standard procedures. That is, if the person receives Social Security disability or SSI benefits, he is considered disabled for Medicaid purposes. If he does not, the District Medical Review Team (DMRT) must make an independent determination to evaluate if the individual meets the disability criteria.

5. Other than the DMRT seems to now be called a Regional Medical Review Team, this still seems to be the Florida policy.
6. So, a request must be made to determine the person is also disabled if the beneficiary of a pooled SNT is over age 64. Medical records need to be provided for evaluation. I have written a few articles on this issue that can be found at previous AFELA programs and also on a blog I write for. The short answer is request that DCF do the disability determination; they are required to do so if asked.

5. D4A's and d4C's for over income cases.
   a. I'm still surprised that many practitioners still do not know that a 4dA or a d4C (pooled) SNT can be used in lieu of a qualified income trust (QIT) for the long term care Medicaid programs (and waivers based on the institutional programs) as well as the other SSI related Medicaid programs (which preclude the use of a QIT).
   b. There are good reasons WHY you may want to do this but first HOW it works.
   c. In both the federal CMS model Medicaid manual and the Florida Program Policy manual, it is contemplated that an individual can deposit extra income into a d4A or a d4C in order to get below the income threshold for the Medicaid programs that have an income limit.
      i. The CMS Policy Manual:

         1) In 3259.7 the CMS Manual states that some trusts may be created using "income, either solely or in conjunction with resources."
         2) Furthermore, 3259.7 says that "when an exempt trust for a disabled individual is established using the individual's income (i.e., income considered to be received by the individual under the rules of the SSI program), the policies set forth in subsection C for treatment of income used to create Miller trusts apply."
      ii. The Florida Manual:

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:

1. Do not consider the corpus of the exempt trust as an asset to the individual beginning with the month the assets are placed into an executed qualified disabled trust or pooled trust;
2. Do not consider the funding of a qualified disabled or pooled trust as a transfer of assets or income subject to imposition of a penalty period, provided the trust purchases items and services at fair market value for the sole benefit of the disabled individual (refer to 1640.0609.06);
3. Do not count any income deposited into the trust as income to the individual when determining the individual's eligibility;
4. Do not consider disbursements from the trust to third parties as income to the individual;
5. Do not consider any income earned by the trust which remains in the trust as income to the individual;
6. Count any payments made directly to the individual as income to the individual;
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.

Any funds paid directly to the individual from the trust must be counted as income to the individual. Disbursements not paid to the individual are not counted as income to the individual.

Fax or send a copy of the approved qualified disabled or pooled trust to:
ACS Recovery Services
Post Office Box 12188
Tallahassee, Florida 32317-2188
Fax: (866) 443-5559

When you receive inquiries regarding the settlement of remaining funds in the trust after a recipient's death, tell them to make checks payable to Agency for Health Care Administration and send to the above address. Also advise them to clearly identify the individual by including a note with the individual's full name and social security number or Medicaid number. If there are further questions, refer callers to ACS Recovery Services (866) 357-3268.

d. Keep in mind that this works for all of the programs that fall under the MSSI programs. Here is a full list of these 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),
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)

e. Since there can be limitations on the use of the funds within a QIT (see 1840.0110) – meaning the Policy says funds in a QIT can only be used for medical care of an individual, a 4dA or a Pooled Trust can offer more flexibility for the use of the funds. See item #9 below.

6. The different ways to do third party SNT's – let me count
   a. A stand alone irrevocable SNT
      i. This is what we likely think of when we talk about a third party SNT.
      ii. The Trust is drafted specifically for a particular beneficiary with an appointed trustee with guidance how to administer the trust.
      iii. It is irrevocable from day one and gets its own Tax Identification number, thus filing its own 1041 tax return every year.
      iv. This trust allows for anyone (except the beneficiary) to put funds into this trust now or in the future.
      v. This type of trust inherently is not very flexible so we sometimes put in roles like trust protectors or trust advisory panels to handle issues like unforeseen circumstances that may require modification of the trust or a vacancy in the trustee position.
   b. A SNT embedded within a will or within another trust (often a revocable living trust).
      i. This trust (revocable or irrevocable), embedded in a RLT, or within a will springs into life upon some even occurring: generally the death of the testator or settlor of the trust.
      ii. If done under a will this would require the will be admitted into probate and an estate opened. If done under a RLT then probate may be avoided, but either way creditors of the settlor would still have a claim before the SNT is funded.
      iii. This would be the preferred strategy if nobody but the settlor (or testator) will be funding the SNT at any time. There is no tax id number until the trust is established, so no reporting or tax filing until funded.

    iv. This type of trust is no easier or more difficult than a stand alone trust but because the funding and most of the work is done later this may be more affordable.

c. A revocable SNT that becomes irrevocable later.
    i. Technically third party SNT's don't have to be irrevocable – as long as the beneficiary cannot do the revoking or direct the use of the trust. See 1640.0576.03 and POM SI 10020.200 D.1.a.
    ii. There can be creditor and tax issues for the party with the power to revoke or amend the SNT, but if this is not a problem consider setting up a revocable SNT that remains revocable until someone other than the settlor funds the trust.
    iii. By making the trust irrevocable upon funding (probably by someone other than the Settlor) there can be creditor and tax advantages as well as encourage others to fund the SNT since then the settlor would not then later be able to change the terms of the SNT after someone else has made an irrevocable gift to the SNT.
    iv. In short, consider a revocable SNT set up by the parents that remains revocable until funded by another party. This way during the lifetimes of the parents there is no separate tax reporting requirements, unless funded by others, and there is a clearly identifiable trust to "tell the world about" to encourage others to incorporate the SNT into their estate plans.

d. Consider using a pooled third party SNT.
    i. If "pooling" makes sense for some first party money, why not use the same concept for third party money.
    ii. Some nonprofit SNT trustees also have a "pool" for third party money that has a lot of the same advantages of the d4C pooled trusts but without the required Medicaid payback provision or sole benefit limitations of the d4C.
    iii. Advantages can be little to no cost up front (only when the trust is funded), low fees and no minimum fees because the funds are pooled. There is a professional trustee with a professional money manager that can provide their services more cost effectively with a single, large pot of money to administer.
    iv. The beneficiary should experience lower costs with better results because of the economies of scale.
    v. Funds are just directed into the pooled third party SNT either by will, trust or direct beneficiary designation and the contributor also designates the residual beneficiaries to receive the remaining funds upon the death of the special needs beneficiary.

7. Trigger Trusts – trusts that morph as needed. This could be self settled trusts that convert into d4A's if necessary. This could also apply to third party general support trusts that convert to a third party SNT upon some event occurring.
    a. This is a relatively new concept, particularly in the first party world.

b. Until the Special Needs Fairness Act (21st Century Cures Act) – see bullet #2 above – this would only have applied to third party money since the beneficiary could not establish their own d4A until recently.
c. The idea is to build two (or sometimes more) trusts within one and give someone other than the beneficiary the ability to “trigger” a change in which trust provisions will govern the distribution standard.
d. For third party SNT’s this could mean converting from a general support trust (with ascertainable standards like medical and general support provisions) that even may have mandatory income payouts to the beneficiary, into a purely discretionary SNT that is exempted for eligibility for public assistance programs. This type of trust should be able to toggle back and forth as needed, but this may be confusing for a case worker or person evaluating the trust.
e. For first party money, it should be possible to toggle from a standard trust to a d4A upon some triggering event but then the d4A rules should apply to that trust from that point forward. This means sole benefit issues apply, Medicaid payback, etc. Once becoming a 4dA this trust could not toggle back to a support trust without a Medicaid pay back as this would be considered an early termination under SI 10020.199.
f. This entire concept is somewhat new and should be more fully explored.

8. Decanting bad or marginal SNT’s
    a. With the adoption of chapter 736.04117 on July 1, 2018 Florida’s trust decanting laws are much broader and meaningful, particularly in the SNT world.
    b. Florida has had decanting laws on the books since 2007 and likely recognized the concept for decades before then.
    c. The idea is that a decanting (or transferring from one trust to another) of trust assets can remedy problems with the original trust or to address issues that were not anticipated in the original trust instrument like tax objectives or changes in circumstances (such as a subsequent disability of a trust beneficiary).
    d. As long as the trustee has power to distribute income and principal – either absolutely or in a limited capacity – a trust can be decanted. Depending on the powers in the original trust instrument the terms of the second trust may be limited.
    e. This is particularly helpful for a special needs beneficiary when the original trust may have been a general support trust or had mandatory payouts of income or principal. Such a trust could be a countable resource for SSI or Medicaid purposes, or at a minimum affect eligibility.
    f. Special Needs Trusts are specifically contemplated in 736.04117(4)(a) for a beneficiary under a disability. This would allow for a decanting to a properly drafted trust without the need to go to court to reform or modify a defective SNT, saving significant time and money for all.

9. Qualified Income Trusts (QIT) issues
    a. Florida is one of the few states that even have income limitations for its long term care Medicaid programs (and waivers).
    b. Since Miller v. Ibarra (746 F. Supp 19 (1990)), states must make an accommodation for individuals applying for these Medicaid programs when the individual's income is over the state income cap – presently $2,313 per month in 2019.
    c. A trust was codified into federal law to address this issue in 1993 at 42 U.S.C 1396 p d (4) (B). In Florida this trust has become known as a Qualified Income Trust and is found in Florida policy at 1840.0110

1840.0110 Income Trusts (MSSI)
The following policy applies only to the Institutionalized Care Program (ICP), institutionalized MEDS-AD, institutionalized Hospice, Home and Community Based Services (HCBS) and PACE. It does not apply to Community Hospice.
To qualify, an individual's gross income cannot exceed 300 percent of the SSI federal benefit rate (refer to Appendix A-9 for the current income standard). If an individual has income above the ICP income limit, they may become eligible for institutional care or HCBS if they set up and fund a qualified income trust. A trust is considered a qualified income trust if:

1. it is established on or after 10/01/93 for the benefit of the individual;
2. it is irrevocable;
3. it is composed only of the individual's income (Social Security, pensions, or other income sources); and
4. the trust stipulates the state will receive the balance in the trust upon the death of the individual up to an amount equal to the total medical assistance paid on their behalf.

The eligibility specialist must forward all income trusts to their Region or Circuit Program Office for review and submission to the Circuit Legal Counsel for a decision on whether the trust meets the criteria to be a qualified income trust. Refer to Appendix A-22.1, Guidance for Reviewing Income Trusts, for instructions on processing income trust cases.
The individual (or their legally authorized representative) must deposit sufficient income into the income trust account in the month in which the income is received to reduce their countable income (the income outside the trust) to within the program income standard. The individual must make the deposit each month that eligibility is requested. This may require the individual to begin funding an executed income trust account prior to its official approval by the Circuit Legal Counsel.
Once the Circuit Legal Counsel returns the income trust transmittal through the Region or Circuit Program Office, the eligibility specialist must promptly process the Medicaid application, making sure proper notification of eligibility and patient responsibility is given.
If the Region or Circuit Program Office and the Circuit Legal Counsel determine the trust is a qualified income trust:

1. do not consider the corpus of the trust an asset to the individual

for any month the qualified income trust exists and eligibility is requested;
2. do not apply penalties for transfers of income placed in a qualified income trust account provided the individual receives fair compensation;
3. do not count income deposited into the trust account as income when determining if the individual's income is less than the program income standard;
4. do not consider disbursements from the trust account to third parties as income to the individual;
5. do not count income generated by the trust account which remains in the trust as income to the individual;
6. count any payments made directly to the individual as their income; and
7. count all income going into the trust (plus any not going into the trust) in determining patient responsibility, unless protection of income for the month of admission or discharge policies apply (refer to Chapter 2600).

Note: The amount computed for patient responsibility exceeds the provider's Medicaid rate.
The trustee of the qualified income trust must provide quarterly statements identifying the deposits made to the trust for each month.
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. When such payments are made, the individual is considered to have received fair compensation for income placed in the trust account up to the amount paid for the medical care and to the extent medical care costs are at fair market value. If the individual's patient responsibility exceeds the Medicaid cost of care, the eligibility specialist must determine if fair compensation is received for income transferred into the income trust. If necessary, the eligibility specialist must refer the case to the Region or Circuit Program Office for review and clearance.
If the individual's patient responsibility is less than the Medicaid rate, the eligibility specialist does not need to look at the disbursements (unless funds are paid to the individual, in which case the funds must be counted as their income). All income must be verified at the source, including income placed into the trust.
Using Form CF-ES 2356, Third Party Recovery Transmittal, fax or send a copy of the approved qualified income trust to the AHCA Third Party Liability vendor.
When inquiries are received regarding the settlement of remaining funds in the trust after the individual's death, staff can advise callers to make checks payable to Florida Medicaid and send to the AHCA Third Party Liability vendor (refer to Form CF-ES 2536 for the mailing address). The correspondence must clearly identify the individual by including a note with the individual's full name and Social Security number or Medicaid number.
An individual may choose to revoke an income trust at the time of their discharge from a Medicaid facility if the trust document allows them to do so. If revoked, Florida Medicaid must receive reimbursement (following above instructions) prior to any other beneficiary.

d. Basically when a QIT is established the individual's income in excess of the monthly $2,313 needs to be deposited into the QIT to pass the income test for

Florida's long term care Medicaid programs. The list of these programs is in the first paragraph of this policy. The QIT does not work for any of the other Medicaid or SSI related programs. However, a d4A and a d4C do work for the MSSI program. See #5, above.

e. Though the concept is simple, there are many challenges with QIT's.
    i. First it is difficult to get a bank or financial institution to open a QIT bank account. These accounts often maintain minimal balances and service charges are a problem.
    ii. Next, it can be difficult to find someone to be the trustee. Since activity must occur every month, there needs to be a readily available trustee and a backup in case the initial trustee has a crisis.
    iii. There can be difficulty getting the document properly executed if the principal can't sign personally. Powers of Attorney are often lacking in authority and DCF can be a stickler about this.
    iv. Technically there only certain allowable disbursements from the QIT, though this does not appear to be strictly enforced. See the highlighted portion above stating that disbursements must be made for a medical expenditure.
        1. Placing funds into a QIT is initially considered a transfer that would cause a period of ineligibility for the desired program, unless the funds are used for medical expenses.
        2. This is not an issue for a single person in a nursing home since most of the individual's monthly income must be paid to the facility as patient responsibility.
        3. This is an issue for a married person where the community spouse is entitled to keep much of the Medicaid applicant's income as an allowance. I understand that practitioner are making such distributions from a QIT, but technically this could be problematic.
        4. This can also be a problem for a single or married person on our community based waiver programs and living at home. This person does not have a patient responsibility and therefore gets to keep his or her income to cover living expenses and often there are not sufficient medical expenses to account for all of the income placed into the QIT. Here again is when to consider a 4dA or d4C pooled SNT in lieu of a QIT because the distribution standards are broader for those trusts than the QIT. See #5 above.

10. Special Needs Trusts, particularly Pooled Trusts, are great compliments to many of the other strategies used to gain or maintain Medicaid eligibility.
    a. Rarely is there only one strategy that is best for Medicaid eligibility. Therefore, a Pooled Trust can compliment the other strategies.
    b. A home is an exempt resource to qualify for SSI and Medicaid, but often it is difficult to financially maintain the home once financially eligible for Medicaid so

placing funds in a Pooled SNT can preserve a reserve fund to pay the taxes, maintenance, insurance and related expenses of a primary residence to preserve this asset for the Medicaid recipient to continue to live in or to return home to or to preserve the asset as an inheritance for family.

c. There can be challenges with DCF to explain the escrow fund that is allowed for income producing (rental) property. See 1840.0501 et seq. Flowing rent into, and building the reserve in, the Pooled SNT for taxes, maintenance and other expenses allows the funds to be clearly exempted. Then, as needed, the funds in the SNT can be paid out to support the rental property. Additionally, income producing properties can be purchased with SNT funds thus giving more time to find properties and not having to purchase a property quickly in order to gain initial Medicaid eligibility.
d. Paying caregivers is a common spend-down strategy. Personal Services contracts are a common strategy to remove funds from the Medicaid applicant's name. See 1640.0614.04. Often the payment is made in a lump sum but sometimes this isn't desirable for either tax reasons or a hesitancy to pay for all services up front. Placing funds in a SNT allows for these expenses to be paid out over time and thus stretch the taxes over multiple years or to pay as services are performed, and not before.
e. Funds in a SNT can be used to pay for extra caregivers or to pay for a private room for beneficiary on Medicaid (since Medicaid only pays the shared room rate).
f. Funds in a SNT can purchase a vehicle, home or other exempt resource in the name of the beneficiary.
g. SNT funds can be used to pay guardian fees, agent's fees under a power of attorney and the attorney's fees for these individuals.
h. Particularly for beneficiaries in the community, SNT's can pay for any of the beneficiary's basic needs.