

Special Needs Trusts and ABLE Accounts – 2018 Year End Update

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Special Needs Trusts

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

Overview of Public Assistance Programs

Incomes

- Social Security Disability Insurance (SSDI)
- Supplemental Security Income (SSI) – **SNT YES**
- Disabled Adult Child – Childhood Disability Benefits

Overview of Public Assistance Programs

Medical Coverage

- Medicare
- Medicaid – SNT YES
- Medicaid Waiver Programs –SNT YES
- Private Insurance - ACA

Eligibility for SSI and Medicaid Programs

- Level of care (medical need)
- Resource test and cap levels on assets and income
- Penalty periods if you transfer
- **Traditional trusts count** as an available resource

SSI-Related Programs -- Financial Eligibility Standards: January 2019

| PROGRAMS & TYPES OF COVERAGE | INCOME | | ASSETS | | MAINTENANCE NEEDS STANDARDS / OTHER | | |
|--|---|--|--|--|---|-----------------------------------|-------------------------------------|
| | Individual | Couple | Individual | Couple | | | |
| PROGRAMS MANAGED BY SOCIAL SECURITY | | | | | Disregards: *Standard Disregard = \$20 *Earned Income Disregard = \$65 + 1/2 Student Earned Income Disregard = \$1,870 monthly, maximum \$7,550 for calendar year Ineligible Spouse Deeming: ½ FBR = \$386 Child Allocation = \$386/child (Difference between the couple and single FBR) Parent to Disabled Child Deeming: Parent Allocation = \$771 Disability Substantial Gainful Activity (SGA) = \$1,220 non-blind \$2,040 blind Medicare Part B Premium = \$136, Part A free for most or \$437 <i>* A \$20 General Income Disregard applies to these programs. \$20 will be subtracted from the total of all income not based on need before comparing the income to the income limit. In addition, \$65 is subtracted from the total of all earned income, and ½ the remainder is subtracted before comparing the income to the income limit.</i> | | |
| *Supplemental Security Income (SSI) Federal Benefit Rate (FBR) Cash payment of SSI from SSA; Includes Full Medicaid | \$771 (FBR) | \$1,157 (FBR) | \$2,000 | \$3,000 | | | |
| *Low Income Subsidy (LIS) or Extra Help (150% FPL) Helps with costs associated with Medicare Prescription Drug Plans Automatic with full Medicaid or Medicare Savings Programs (QMB, SLMB, Q11). Income asset limits change annually | \$1,518 | \$2,058 | \$14,390 | \$28,720 | | | |
| PROGRAMS FOR PEOPLE 65+ OR DISABLED (Community Medicaid Programs) | | | | | | | |
| *MEDS-AD (MM S) (88% FPL) Full Community Medicaid | \$891 | \$1,208 | \$5,000 | \$6,000 | | | |
| *Medically Needy (No Income Limit) Medically Needy Income Level (MNIL) Full Community Medicaid when Share of Cost is met | Subtract \$180 from gross income | Subtract \$241 from gross income | | | | | |
| PROGRAMS FOR PEOPLE WITH MEDICARE (Medicare Savings Programs/Buy-In) | | | | | | | |
| *QMB (100% FPL) Pays Medicare A & B premiums, coinsurance & deductibles only | \$1,012 | \$1,372 | \$7,730 | \$11,600 | | | |
| *SLMB (120% FPL) Pays for Medicare Part B premium only (PBMO) | \$1,214 | \$1,646 | | | | | |
| *Q11 (135% FPL) PBMO | \$1,366 | \$1,852 | | | | | |
| *Working Disabled (200% FPL) Qualified Disabled Working Individuals (QDWI) Program Pays for Medicare Part A only. Must have lost SSDI due to employment | \$2,024 | \$2,744 | \$5,000 | \$6,000 | | | |
| PROGRAMS BASED ON INSTITUTIONAL POLICY – Patient Responsibility and Income Trusts may apply. | | | | | | | |
| Institutional Care Program (ICP) Pays Nursing Home (NH) room, board & care Pays Medicare A & B premiums, coinsurance & deductibles | \$2,313 (MEDS-AD Institutional Income Limit \$891) | \$4,626 (MEDS-AD Institutional Income Limit (\$1208) | \$2,000 (\$5,000 if MEDS- AD eligible) | \$3,000 (\$6,000 if MEDS-AD eligible) | PERSONAL NEEDS ALLOWANCE | | |
| Hospice Pays Hospice services related to terminal illness Pays Medicare A & B premiums, coinsurance & deductibles | | | | | Individual | Couple | |
| Home and Community Based Services (HCBS) or Waivers Pays Medicare A & B premiums, coinsurance & deductibles | | | | | \$130 | \$260 | |
| | | | | | Community \$1,012 NH \$130 | Community \$1,372 NH \$260 | |
| | | | | | PACE / SMMC-LTC in ALF: R&B+ \$202 / \$404 PACE / SMMC-LTC at home: \$2,313 / \$4,626 PACE in NH: \$130 / \$260 IBudget: \$2,313 / \$4,626 References: 2640.0117.01 & 2640.0118 | | |
| STATE FUNDED PROGRAMS | | | | | SSI Individual \$30 only in NH = \$100 (SPS) Transfer of Asset Divisor = \$9,171 (eff 7/1/2018) Community Hospice Allocations: Spouse only = FBR (\$771) Spouse + Dependents or Dependents Only = CNS Standard Spousal Impoverishment: MMMNA = \$2,058 Excess shelter = \$617 Standard Utility Allowance = \$359 Maximum Income Allowance = \$3,161 Community Spouse Resource Allowance = \$126,420 Family Members Allowance with Spouse = (MMMNA-income) divided by 3 Dependents with no Spouse = CNS Standard Home Equity Interest Limit = \$585,000 | | |
| OPTIONAL STATE SUPPLEMENT (OSS) REDESIGN Maximum Payment = \$78.40 single / \$156.80 Couple Assists with paying room & board at alternate living facilities | \$849.40 | \$1698.80 | \$2,000 | \$3,000 | | \$54 Provider rate \$795.40 | \$108 Provider rate \$1590.80 |
| PROTECTED OSS (Reference OLM 2040.0822) Maximum Payment = \$239 single / \$478 Couple Assists with paying room & board at alternate living facilities | \$956 | \$1912 | | | | \$54 Provider rate \$956 | \$108 Provider rate \$1912 |
| HOME CARE FOR DISABLED ADULTS (HCDA) Pays small stipend to caregivers of disabled | \$2,250 | \$4,500 | | | | | |

Special Needs Trusts

- Self-Settled – with beneficiary's own funds
- Third Party – someone other than the beneficiary or spouse

Third Party Special Needs Trusts

- **Set up by a family member or friend for a person with disabilities**
- **Can be done by a spouse if done in a Will (only after death)**
- **Generally a specific trust for each beneficiary**
- **No Medicaid pay-back – can go to other family members**

Self Settled Special Needs Trusts

Must be Irrevocable

Must be the funds of the person
with a disability

- Inheritance
- Personal Injury Award
- Earnings and Savings

Self Settled Special Needs Trusts

42 U.S.C. §1396 p(d)(4) (Social Security Act)

(d)(4)(A) – Under Age 65 Disability SNT

(d)(4)(B) – Qualified Income SNT

(d)(4)(C) – Pooled SNT

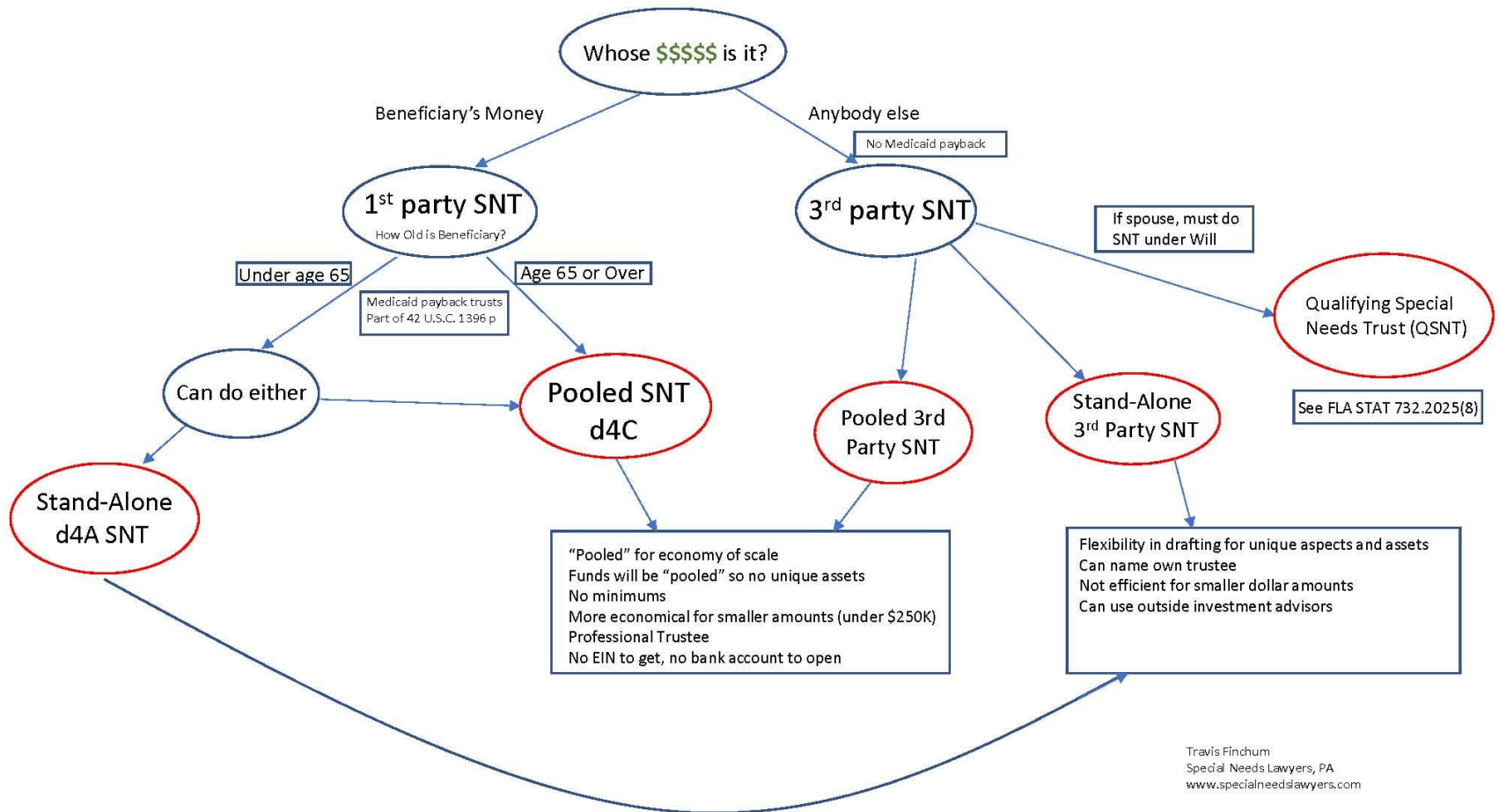
Self-Settled SNT (d4A)

- As of 12/13/16 can be established by the beneficiary directly (and therefore his or her Agent)
- Still can be established by parent, grandparent, legal guardian or by court order
- Still MUST have mandatory Medicaid payback on death of the beneficiary before residual beneficiaries

Pooled Trusts

- By combining funds with others similarly situated (pooling), costs can be lowered and “minimum fees” can be avoided
- Some pooled trusts have one-time enrollment fees as low as \$500
- Many pooled trusts do not have minimum monthly or annual fees
- Non-profit organizations also administer trusts
- Guardian Pooled Trust – Guardiantrusts.org

SNT (Special Needs Trust) Analysis



Special Needs Trusts: Advantages and Disadvantages of Self-Settled SNT's

➤ **Advantages**

- **Maintain governmental benefits**
- **Keep your money**
- **Provide for supplemental needs**

➤ **Disadvantages**

- **Trust assets may be restricted**
- **Challenges related to selecting a trustee**
- **Trust assets subject to state claim on death**

ABLE Accounts

- Achieving a Better Life Experience
- 529A
- Signed by President in Dec 2014
- Started in Florida July 1, 2016
- Florida's ABLE is ABLE United
- Administered under FL Prepaid College Board
- Waiving all admin fees (small investment fee)

ABLE Accounts

- Annual contributions limited to annual gift tax excl. (\$15,000)
- Opened on-line at AbleUnited.com
- Exempted for SSI, Medicaid, Food Assistance, Housing
- Grows Tax-Free if used for QDE – Qualified Disability Expenses

ABLE Accounts - QDE

- ▶ Education;
- ▶ Housing;
- ▶ Transportation;
- ▶ Employment training and support;
- ▶ Assistive technology and related services;
- ▶ Health;
- ▶ Prevention and wellness;
- ▶ Financial management and administrative services;
- ▶ Legal fees;
- ▶ Expenses for ABLE account oversight and monitoring;
- ▶ Funeral and burial; and,
- ▶ Basic living expenses

ABLE Accounts

- SSI limit is \$100K then excess counts
- Medicaid limit is \$418K (529 FL limit)
- Beneficiary's disability must have occurred prior age 26
- Medicaid payback on death of bene
- Can only have 1 ABLE account

ABLE Accounts Recent Changes

- ▶ Upped the annual contributions with annual gift tax exclusion - \$15,000/year
- ▶ Allows rollovers from 529 plans to 529A's
- ▶ Allows additional contributions for earned income up to FPL - \$12,140 per year (if don't have DBP) and may be eligible for Federal Tax Savers Credit (26 USC 25B)
- ▶ Florida has waived Medicaid recovery from ABLE accounts and remaining funds will go to Estate of Beneficiary for 1 year. Still Estate Recovery?

| 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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