

ABC's and 123s of Special Needs Trusts

Elder Law Forum 2022

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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

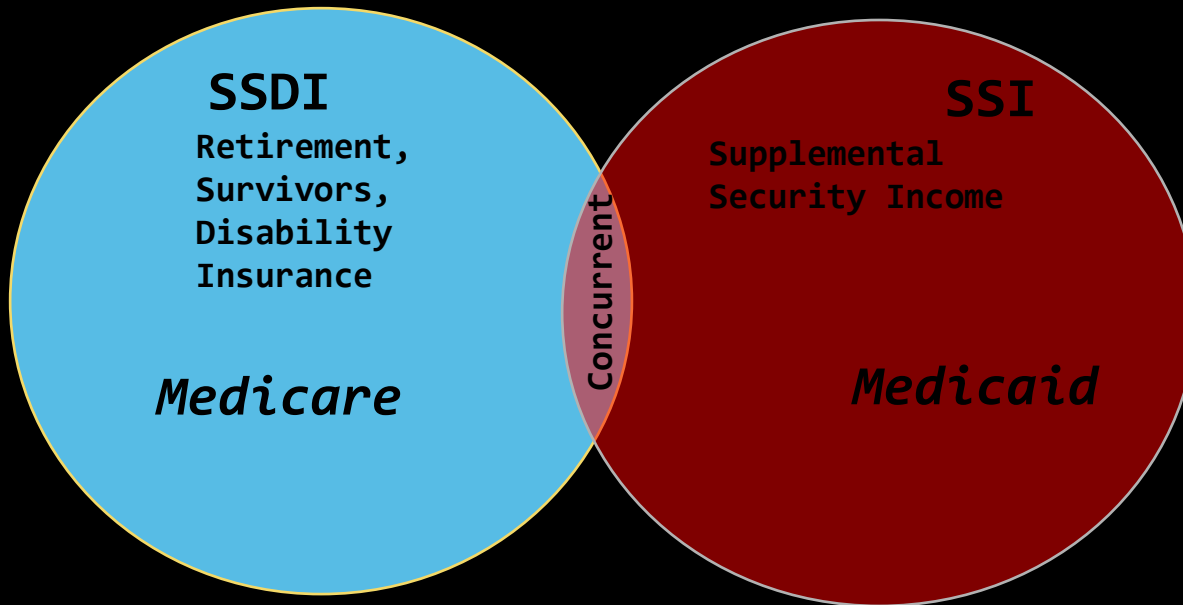
- Social Security Disability Insurance (SSDI)
- Supplemental Security Income (SSI)
- Disabled Adult Child – Childhood Disability Benefits

Overview of Public Assistance Programs

Medical Coverage

- Medicare
- Medicaid
- Medicaid Waiver Programs
- Private Insurance - ACA

Program Differences



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 Medicaid Coverage Groups Financial Eligibility Standards: April 2022

Coverage Group	Income Limit	Asset Limit
*ICP/HCBS/Hospice- Individual (300% FBR)	\$ 2,523	\$ 2,000
*ICP/HCBS/Hospice – Couple	\$ 5,046	\$ 3,000
*HCBS/Working People w/Disabilities – Individual (WPwD) (550% FBR)	\$ 4,626	\$ 2,000 \$13,000 Disregard
*HCBS/Working People w/Disabilities – Couple (WPwD)	\$ 9,252	\$ 3,000 \$24,000 Disregard
**MEDS-ADI/ICP-MEDS/Individual (88% FPL)	\$ 997	\$ 5,000
**MEDS-ADI/ICP-MEDS/Couple	\$ 1,343	\$ 6,000
Medically Needy, MNIL-(I)-No Income limit	\$ 180	\$ 5,000
Medically Needy, MNIL-(C)-No Income limit (Subtract from gross income)	\$ 241	\$ 6,000
**QMB Individual (100% FPL)	\$ 1,133	\$ 8,400
**QMB Couple	\$ 1,526	\$ 12,600
**SLMB Individual (120% FPL)	\$ 1,359	\$ 8,400
**SLMB Couple	\$ 1,831	\$ 12,600
**QI1 Individual (135% FPL)	\$ 1,529	\$ 8,400
**QI1 Couple	\$ 2,060	\$ 12,600
**Working Disabled Individual (200% FPL)	\$ 2,265	\$ 5,000
**Working Disabled Couple	\$ 3,052	\$ 6,000
**Low Income Subsidy (LIS)- Individual (150% FPL)	\$ 1,719	\$ 15,510
**Low Income Subsidy (LIS)- Couple	\$ 2,309	\$ 30,950
**Medicare Part B Premium	\$ 170	N/A
**Medicare Part A Premium	\$ 499 (Free for most)	
Personal Needs Allowance (PNA) (eff 01/01/22) NH-ICP/HCBS/Hospice/PACE Hospice (Community) 100% FPL ALF-PACE/MMC-HCBS Community/Budget	\$ 130 \$ 1,133 R&B+ 20% FPL (Individual \$227) / (Couple \$454) \$ 2,523	
Maintenance Needs Standards / Other (eff 01/01/22) Standard Disregard Earned Income Disregard Student Earned Income Disregard Limit Spouse Deeming – ½ FBR Child Allocation Substantial Gainful Activity (SGA)	\$ 20 \$ 65 + ½ \$ 2,040 monthly, Maximum \$8,230 per calendar year \$ 420 \$ 420/child (Difference between the couple and single FBR) \$ 1,350 per month non blind \$2,260 blind	
Spousal Impoverishment (eff 07/01/21) Minimum Monthly Maintenance Needs Allowance (MMMNA) CSMA Excess Shelter Standard** CSRA Home Equity Interest Limit Transfer of Asset Divisor (eff 03/21)	\$ 2,178 \$ 3,435 \$ 654 \$137,400 \$ 636,000 \$ 9,703	
Community Hospice Allocations: Spouse only – Spouse + Dependents or Dependents Only –	FBR (\$841) CNS Standard	

*These Standards change effective January 1 of each year in accordance with federal law
 ** These Standards change effective April 1 of each year in accordance with federal law

Special Needs Trusts

- First Party (self settled) – with beneficiary's own funds
- Third Party – someone other than the beneficiary or spouse

Special Needs Trusts

- Parties to a Trust:
 - Settlor/Grantor
 - The person who establishes the Trust
 - Trustee
 - The person or corporation that manages the Trust
 - Beneficiary
 - The person who benefits from the Trust

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**

Third Party Special Needs Trusts

- **Can set up the trust and fund it now**
- **Can have trust funded later**
- **Can write SNT within Will or it can be within a Revocable Living Trust**
- **Can direct funds into a Pooled Trust later**

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**

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

ABLE Accounts

- Annual contributions limited to annual gift tax excl. (\$16,000)
- Opened on-line at AbleUnited.com
- Exempted for SSI, Medicaid, Food Assistance, Housing
- Grows Tax-Free if used for QDE – Qualified Disability Expenses

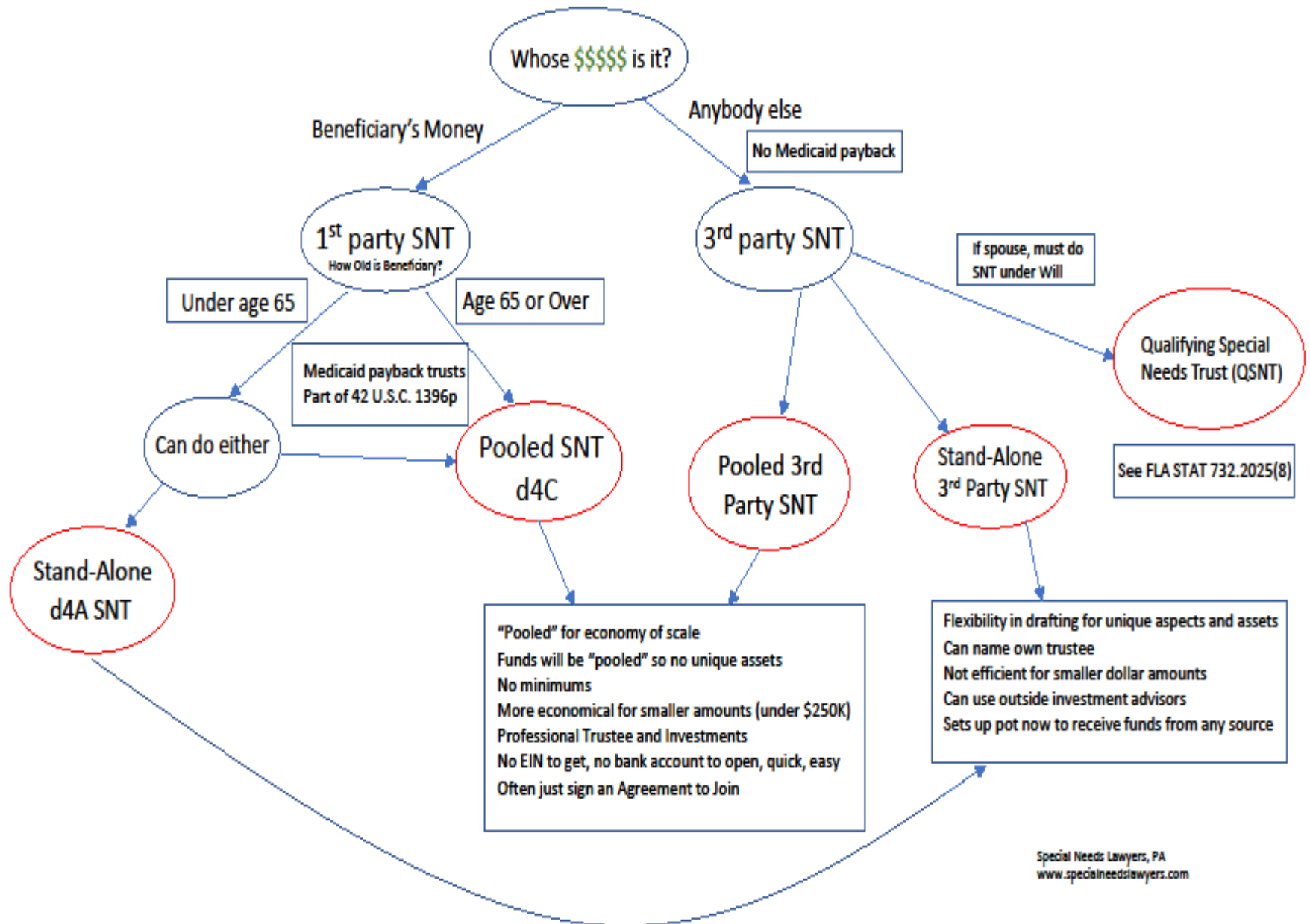
ABLE Accounts

- 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
- Can make additional deposits over limit if working.

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

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	no	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

yes
no
maybe

Responsibilities of Trustee

- Mandatory reporting to agencies
- Consider distribution impact on benefits of beneficiary
- Annual Tax filing
- Honor terms of the Trust
 - Post death pay back provisions
 - Distribution to residual beneficiaries.

Governing Rules/Law

- Social Security : POMS (Program Operations Manual System)
 - Over 20,000 pages
- Medicaid : Program Policy Manual
- Federal Law
- State Law

Thank You!

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