

Pooled Special Needs Trusts for Disabled Individuals Age 65 and Over

Travis Finchum
Special Needs Lawyers, P.A.

Travis@SpecialNeedsLawyers.com

SpecialNeedsLawyers.com



Special Needs Trusts

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

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-AD/ICP-MEDS/Individual (88% FPL)	\$ 997	\$ 5,000
**MEDS-AD/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
**Q1 Individual (135% FPL)	\$ 1,529	\$ 8,400
**Q1 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/SMMC-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 <i>non blind</i> \$2,260 <i>blind</i>	
Spousal Impoverishment (eff 07/01/21) Minimum Monthly Maintenance Needs Allowance (MMMNA) CSMIA 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

- 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

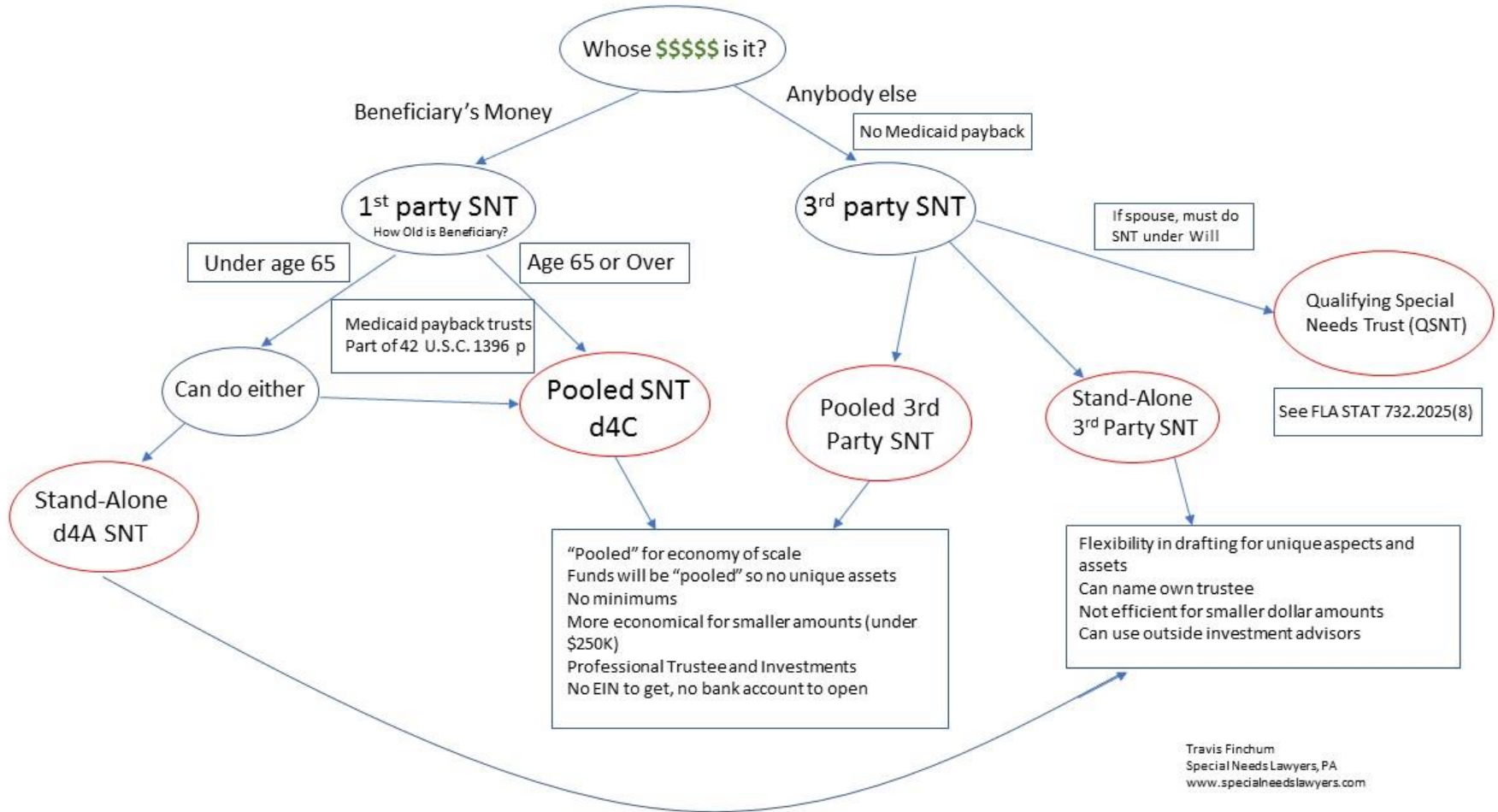
42 U.S.C. §1396 p(d)(4) (Social Security Act)

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

(d)(4)(B) – Qualified Income SNT

(d)(4)(C) – Pooled SNT

SNT (Special Needs Trust) Analysis



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**

Pooled Trusts – Ethical Consideration

- **What expenses are allowed after the death of a beneficiary?**

Pooled Trusts – Allowable at Death

1. Allowable administrative expenses

- Upon the death of the trust beneficiary, the trust may pay the following types of administrative expenses from the trust prior to reimbursement of the State(s) for medical assistance:
 - Taxes due from the trust to the State(s) or Federal government because of the death of the beneficiary;
 - Reasonable fees for administration of the trust estate, such as an accounting of the trust to a court, completion and filing of documents, or other required actions associated with termination and wrapping up of the trust.

Pooled Trusts – Not Allowable at Death

2. Prohibited expenses and payments

- Upon the death of the trust beneficiary, the following are examples of some of the types of expenses and payments not permitted prior to reimbursement of the State(s) for medical assistance:
 - Taxes due from the estate of the beneficiary other than those arising from inclusion of the trust in the estate;
 - Inheritance taxes due for residual beneficiaries;
 - Payment of debts owed to third parties;
 - Funeral expenses; and
 - Payments to residual beneficiaries.

Pooled Trusts

- **Time Line of what's been going on in Florida with Pooled Trusts:**
 - **2008 – CMS Memo to States**
 - **4/12/01 – DCF publishes change to website**
 - **4/16 – Public Records Request**
 - **4/19 – First Call with DCF Chief of Staff**
 - **4/19 – ELS notices DCF with 30 day notice of unpromulgated rule**
 - **4/30 – Publication of Workshop notice for 5/20**
 - **5/4 – Email from DCF putting change on hold**

Pooled Trusts

- **Minnesota Supreme Court Case – Pfoser – January 20, 2021**

Social Security ALJ Opinions:

- **Maryland/Virginia – May 4, 2021**
- **California – June 16, 2021**

Kansas Policy Change – February 2, 2022

Pooled Trusts

- **Fair Market Value: (Actual Value?)**
- 1640.0407 Definition of Actual Value (MSSI, SFP) For assets that are in cash, or payable in cash on demand, the actual value is the cash value. For other forms of assets, the actual value is the fair market value (the amount of cash that could be received by selling or converting the asset).

Ethical Consideration: Pooled Trusts

- **Fair Market Value:**
 - **Can we justify putting \$1 Million into a Pooled Trust for a beneficiary 90 years old?**
 - **Will the beneficiary receive equal value back?**
 - **What is the trust doing with remaining funds and is this being adequately disclosed?**

Pooled Trusts

➤ Fair Market Value: POMS

- FMV is the current market value (CMV) of a resource at the time the resource transfers. The CMV of a resource is the going price that it can be reasonably expected to sell on the open market in the geographic area involved.

Thank You!

Travis Finchum
Special Needs Lawyers, P.A.

Travis@SpecialNeedsLawyers.com

SpecialNeedsLawyers.com

