

Elder Law in 2024

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What should Wills and Trusts Lawyers know about Elder Law?

- Powers of Attorney
- Modern Long Term Care
- Medicaid for LTC
- Being Too Poor for Medicaid
- Special Needs Trusts in 2024

Powers of Attorney

- Since 2011 there are specially enumerated powers
- Document must be comprehensive
- Initialing special powers

Powers of Attorney

Initialing special powers

- (a) Create an inter vivos trust;
- (b) Amend, modify, revoke, or terminate a trust, but only if the trust instrument explicitly provides for amendment, modification, revocation, or termination by the settlor's agent;
- (c) Make a gift;
- (d) Create or change rights of survivorship;
- (e) Create or change a beneficiary designation;
- (f) Waive the principal's right to be a beneficiary of a joint and survivor annuity, including a survivor benefit under a retirement plan; or
- (g) Disclaim property and powers of appointment.

Powers of Attorney

Initialing special powers

(a) Create an inter vivos trust;

Old: To create, fund and maintain an Income Trust pursuant to 42 USC 1396p (d)(4)(B) in order to qualify me for Medicaid.

Powers of Attorney

Initialing special powers

(a) Create an inter vivos trust;

Consider:

Trust Powers. Create and fund inter vivos trusts. With respect to any trust created by me or on my behalf, my Agent may amend, modify, revoke, or terminate the trust, but only if the trust instrument explicitly provides for amendment, modification, revocation, or termination by an Agent. My Agent may also participate in either a judicial or non-judicial modification of a trust as permitted in the Florida Trust Code, Chapter 736, Florida Statutes. Add property to an existing or subsequently created trust, and accept transfers or distributions from any trustee of any trust, including any trust over which I have a right of receipt or withdrawal, whether as settlor, beneficiary, or otherwise.

Create, fund and maintain any Trust pursuant to 42 U.S.C. 1396p(d)(4), including a Special Needs Trust for a person under age 65, a Qualified Income Trust and Pooled Special Needs Trust in order to qualify me or another person for Medicaid or any other public assistance benefits.

Powers of Attorney

Initialing special powers

(a) Create an inter vivos trust;

Consider:



Trust Powers. Create and fund inter vivos trusts. With respect to any trust created by me or on my behalf, my Agent may amend, modify, revoke, or terminate the trust, but only if the trust instrument explicitly provides for amendment, modification, revocation, or termination by an Agent. My Agent may also participate in either a judicial or non-judicial modification of a trust as permitted in the Florida Trust Code, Chapter 736, Florida Statutes. Add property to an existing or subsequently created trust, and accept transfers or distributions from any trustee of any trust, including any trust over which I have a right of receipt or withdrawal, whether as settlor, beneficiary, or otherwise. Create, fund and maintain any Trust pursuant to 42 U.S.C. 1396p(d)(4), including a Special Needs Trust for a person under age 65, a Qualified Income Trust and Pooled Special Needs Trust in order to qualify me or another person for Medicaid or any other public assistance benefits.

Long Term Care

- Nursing Homes
- Memory Care
- Assisted Living Facilities
- At Home

Long Term Care

- Nursing Home - \$11,000-\$15,000/mo
- Memory Care - \$7,000-\$9,000/mo
- Assisted Living - \$4,000-\$7,000/mo

- Care at home - \$22-\$28/hour
 - 12 hours/day = \$7,920-\$10,080/mo
 - 24 hours/day = \$15,840-\$20,160/mo

Long Term Care

- We don't want to be in nursing homes
 - July 2022 – 66,284 in SNF in Florida
 - July 2019 – 74,369
 - July 2018 - 73,323

- Florida Population
 - July 2022 – 22.24 Million
 - July 2019 – 21.49 Million
 - July 2018 – 21.25 Million

Medicaid in Florida

December 2023

4.85 Million enrollees

SSI (disabled) – 788k in state – 33k in Pinellas

Kids and families – 1.7 million/48k

Elderly and disabled – 80k/3k

Dual Eligible – 492k

62% are children

67% of all children in FL on Medicaid

3/20=3.73 million

4/23=5.78 million (PHE ended)

Source: AHCA

Medicaid

- Under Public Health Emergency (Covid – 19) – Cannot be removed from Medicaid rolls.
- March 13, 2020 to May 11, 2023 - PHE

Medicaid for Long Term Care

- Nursing Home Program (ICP)
- Medicaid in Community (SMMC-LTC)
 - Home, ALF, Memory Care

Continuous Coverage ended in May, 2023 – PHE ended

Medicaid for Long Term Care

- Nursing Home Program (ICP)
 - Federal and state funded
 - Income and Asset Limits
 - Asset Limits different for single vs. married
 - Not all Assets count
 - Patient Responsibility – what the resident owes monthly
 - Resident will never owe more than monthly income

Medicaid for Long Term Care

Medicaid in Community (Waiver)

- At home will bring services into home but no cash
- In ALF or Memory Care will pay Medical portion up to a maximum of \$1,500-\$1,600/month

Medicaid for Long Term Care

- Nursing Home Program (ICP)
- Medicaid in Community (Waiver)

Differences:

- ▶ Waiting list (none for ICP)
- ▶ How it pays and how much it pays

Too Poor for Welfare (Medicaid)?

Medicaid in Community (Waiver)

- In ALF Medicaid will pay Medical portion up to a maximum of \$1,500-\$1,600/month
- ALF - \$4,000-\$7,000/mo
 - \$4,000-\$1,600=\$2,400 short
 - \$7,000-\$1,600=\$5,400 short

Too Poor for Medicaid?

Medicaid in Community (Waiver)

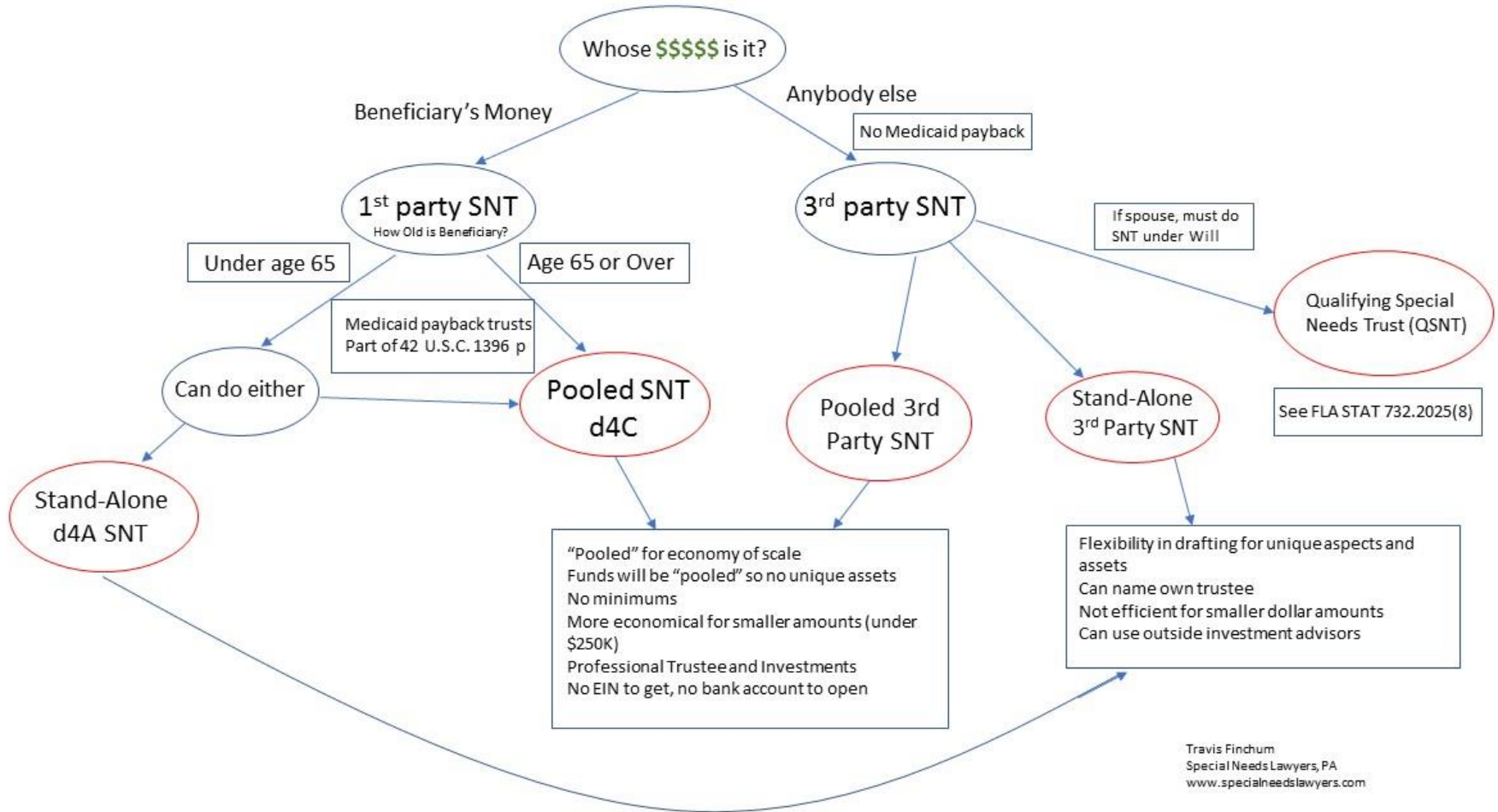
- In Memory Care will pay Medical portion up to a maximum of \$1,500-\$1,600/month
- Memory Care - \$7,000-\$9,000/mo
 - $\$7,000 - \$1,600 = \$5,400$ short
 - $\$9,000 - \$1,600 = \$7,400$ short

Special Needs Trusts



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

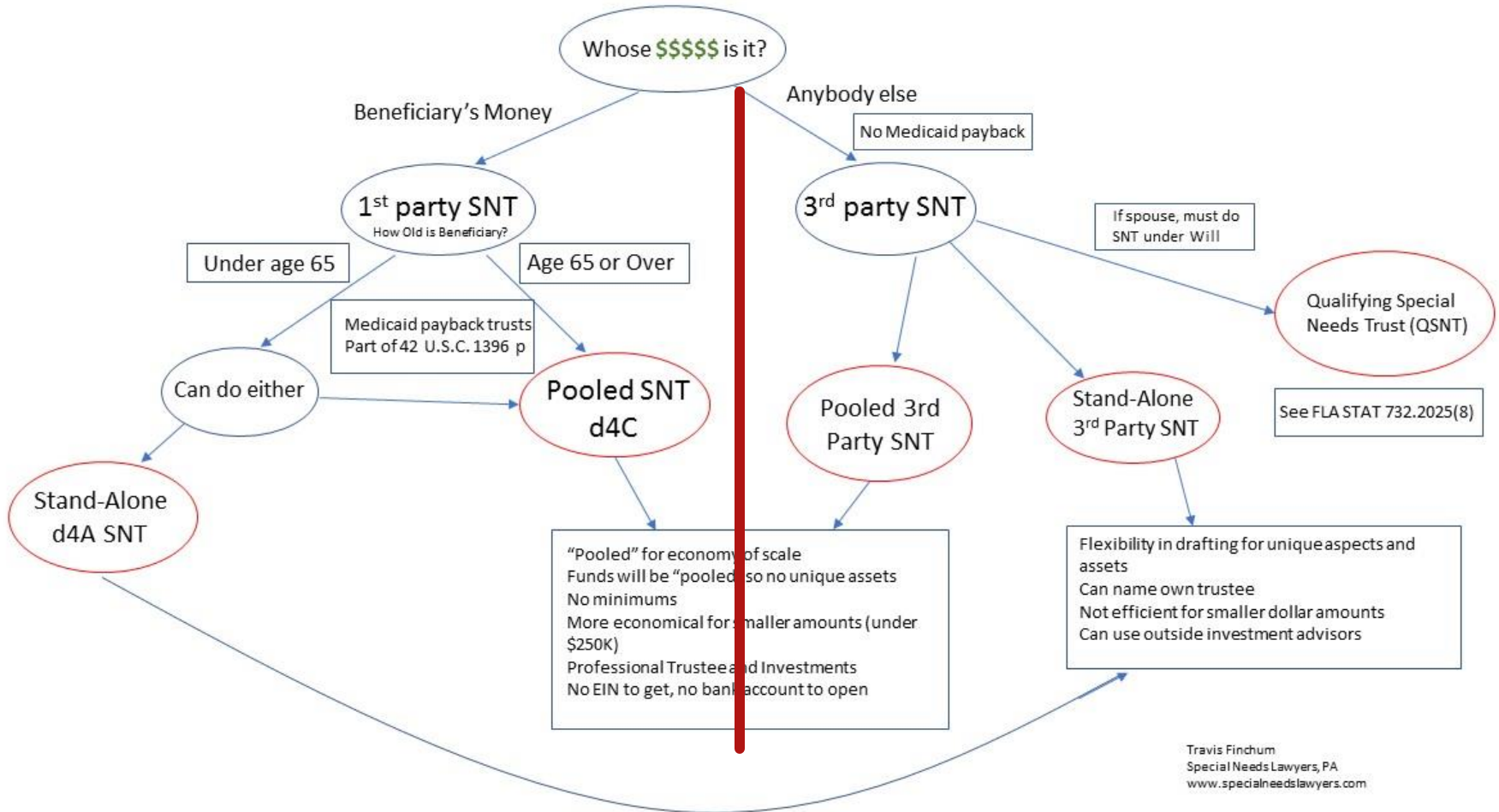
SNT (Special Needs Trust) Analysis



Two Categories of SNT's

- Self Settled – d4A, d4B and d4C
 - 42 U.S.C. 1396p (d)(4)(A), (B) and (C)
 - Under age 65, Qualified Income Trust (QIT), Pooled Trust
 - Have Medicaid payback on death.
- Third Party – set up by others

SNT (Special Needs Trust) Analysis



Two Categories of SNT's

- Third Party – set up by others – a Spouse if done under a Will. Beneficiary cannot direct the use of the trust funds or terminate the trust. No Medicaid payback on death. Will go to residual benes.

Thank You!

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