

Alternatives to Special Needs Trusts

2021 National Conference on Special Needs Planning
and Special Needs Trusts

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Considerations Before Beginning

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1. Trust distributions (and public benefits) are not a science. There is no way to be perfect.
 2. Usually, any plan is better than no plan.
 3. Aim for perfection by creating a plan.
 4. Perfection is the enemy of the good.
 5. Expect others to aim for perfection but remain focused on reality.
 6. Recognize that trustees typically receive trusts in situations where the best opportunities may have already been lost.

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Considerations Before Beginning

7. Recognize desired *SNT* circumstances: If there is an opportunity to allocate more of a settlement to devoted care-giving family members (parents or spouse) so that someone other than the beneficiary can own the house, it usually must be done prior to funding a trust.
8. Desired circumstances: If there is an opportunity to make purchases prior to trust funding, that is often in a beneficiary's best interest.
9. There is a role for attorneys early in the process—long before drafting a trust agreement.

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Considerations Before Beginning

10. There is a role for care managers and trustee advisors in implementing a plan and in determining if the trust is large enough to meet the needs of the beneficiary without reliance on public benefits.
11. Without these considerations, many opportunities to improve the beneficiary's life will be lost.
12. We can never make all the improvements that we would like to make.
13. The type of trust drafted, or any other distribution plan and budget that follow, all focus on the beneficiary's best interests. It is important to keep emphasizing that fact.

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Understand the Key Person: Who is the Beneficiary?

- People First language consistently.
- Then:
 - Where does she live?
 - Where does she want to live?
 - What public benefits is she receiving?
 - What are the requirements of each of the programs for which she receives?
 - What are the other family circumstances?

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Start Early

- Maximize Value and Avoid the Second Train Wreck.
- Obstacles to an early start:
 - lack of decision-maker awareness
 - costs

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Drawbacks of Starting Late

1. Apportionment and allocation opportunities may be past, leaving the trustee with limited options.
2. It is very time-intensive and sometimes requires more hyper-technical expertise of public benefits than a trustee has.
3. Beneficiaries don't understand the importance unless educated, and trustees may be hesitant.

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Profile the Public Benefits

- Income
- Resources
- Transfers
- Medical Necessity or Disability
- Status

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Profile the Public Benefits

- Age Based Factors
 - Individual Meets SSA definition of “Disabled” and is under age 22
 - Individual Meets SSA definition of “Disabled” and is over age 22
- Employment Impact.
- Deeming and Other Family Connections.

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Understand the Key Person’s Disability

- Quality of life includes *choices* in food, housing, personal assistance, transportation, care, employment and social interaction.
- This requires participation from the beneficiary or family member or caregiver.

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Inventory Resources/Challenges

- People:
 - The Beneficiary
 - Family Members
 - Advocates
 - Care and Medical Providers
 - Vendors
 - Benefactors
 - Landlords
 - Employers

- Money

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Case Studies

- --When public benefits aren't an option.

- --When public health insurance is available.

- --When trust needs to provide support to someone other than the beneficiary.

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Settlement Protection/Management Trust

Commonly used for plaintiffs who are receiving settlement proceeds but are not-receiving means-tested public benefits.

Using support trust allows for money management to be handled by an expert, often with Court oversight.

Just as SNTs can accept periodic payments from qualified structures, settlement protection trusts can be designed so that the payments from the structure go into the trust.

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Qualified Disability Trusts

- All beneficiaries must receive either SSI or SSDI
 - “determined by the Commissioner of Social Security to have been disabled”
 - Not true of all SNTs
 - Multiple beneficiaries possible
- Cannot be a grantor trust
 - Trust must be tax paying entity
 - QDT allows trust to get special personal exemption
- Beneficiary under age 65 at time of creation

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QDTs: Case Study

Grandparents four grandchildren, including a two-year-old granddaughter receiving SSI. Her disability can be cured with a major surgery that can be scheduled when she reaches age ten.

Trust provides for grandchild with disability until age eighteen, then for the benefit of all grandchildren.

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QDTs: Case Study

- QDT status so long as the first beneficiary receives SSI.
- QDT does not have a “sole benefit” requirement

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QDTs: Case Study

Parents have four adult children. Three receive SSDI benefits.

Parents create a trust for the benefit of the three children with disabilities. Fourth child is the trustee.

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SOLE BENEFIT TRUSTS

- Allows a potential Medicaid applicant to divert assets to a trust without a transfer penalty
- No payback provision (in most states)
- Grantor can name the trustee and the remainder beneficiaries
- Provides for the life of the beneficiary

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SBTs: Elements

- Established for the Grantor's spouse, child who is blind or disabled, or ANY individual who is under age 65 and disabled
- Trust distributions must be actuarially sound, payable at least annually
- Must be irrevocable

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SBTs: Analysis

Potential Medicaid applicant diverts \$500,000.00 to an irrevocable trust for her 52-year-old son who receives SSDI benefits.

Life expectancy for son is 27.66

$\$500,000.00 / 27.66 = \$18,076.65$ annually

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SBTs: Analysis

- For the benefit of a child with disabilities
- Trust is Irrevocable=not an asset to the grantor
- Actuarially sound=no transfer penalty
- SSDI is not means-tested=no negative impact on son's benefits

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SBTs: Case Study

Medicaid Applicant funds irrevocable trust for 31-year-old granddaughter. Trust is funded with real property (\$100,000.00) and cash (\$100,000.00). Granddaughter receives SSI benefits. Trust provides minimum annual distributions of \$4,370.63.

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SBTs: Case Study

- Remaining life for daughter of 47.19 years.
- $\$200,000.00/47.19=\$4,370.63$
- Not an available asset to the Medicaid applicant.
- Not a transfer penalty for the Medicaid applicant.
- Any cash received by the granddaughter will reduce SSI dollar-for-dollar (\$364.21/month— one annual payment?).

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ABLE Account

- Established for someone who met the definition of “disabled” prior to age 26.
- Contributions limited to annual gift tax exclusion amount unless the beneficiary is working.
- Contributions must be made in cash.
- Contributions made grow tax free.
- Account is exempt for SSI purposes, unless over \$100,000.00.
- Includes payback provision.

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Private Pay Resources: ACA

ACA Insurance Exchange:

- US Citizen or lawfully present resident
- Not in prison
- Not eligible for premium-free Medicare Part A

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ACA Public Exchanges

An ACA compliant policy must cover the following essential health benefits:

- Ambulatory care (outpatient care)
- Emergency services
- Hospitalization
- Maternity and newborn care
- Mental health care, including treatment for substance use disorders)
- Prescription drugs
- Rehabilitation services and habilitative services, including devices
- Laboratory services
- Preventive care
- Pediatric vision and dental care (coverage for adult dental and vision services is not required. The rules for pediatric dental coverage are a little different from the other essential health benefits).

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ACA Policies

--ACA Prevents non-lawfully present immigrants from enrolling in coverage through the exchange.

--Purchase unsubsidized policy through a broker or directly from an insurance provider.

--Can enroll in plan if Beneficiary is lawfully present, even if family members are not lawfully present.

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When You Have an SNT, but Don't Need One

- Read the Document!
- Modify, Amend, Restate, or Decant

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Thank You

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