

THE BOT, THE TRUST, AND THE BENEFIT THREAT

Responding to AI-Driven SSA Scrutiny

Victoria Blair Struse
Partner, Fletcher Struse Wagner & Derksen PLC

Bridget O'Brien Swartz
Vice President & Fiduciary Counsel, Mission Management & Trust Co.

2026 National Conference on Special Needs Planning and Special Needs Trusts

A real trust review.
A real benefit threat.
An unanswered AI question.

1

Special Needs Trust Review

in the Wild Wild West

 **Pre-approval required:** Arizona's Medicaid agency (AHCCCS / ALTCS) requires that all SNT expenditures be approved prior to disbursement.

 **Heightened scrutiny:** Over the last couple of years, disbursements have been heavily scrutinized, down to individual receipts.

 **Who (or what) is reviewing?** Given agency workloads, there is a real question of whether AI is being used to conduct or assist in these reviews.

 **A case in point:** AI was used to possibly state that paying a caregiver, with the SNT as the employer, made the SNT not a "sole benefit" trust.



2

AI Infancy



"In the last six months, A.I. has become, if you will, useful—the inflection point of A.I."
— Nvidia CEO Jensen Huang

Government agencies started using AI in its infancy, which triggered a requirement to learn it.

Lawyers are held to a standard. ABA Formal Opinion 512 sets out duties that apply to AI.

American Bar Association Formal Opinion 512

Lawyers must develop a reasonable understanding of how AI tools work; enough to recognize what the technology can and cannot do.

The Bot, the Trust, and the Benefit Threat

Accompanied presenter narrative and agency correspondence (2026)

2

3

1

What the record supports

What the record supports

- SSA has an enterprise AI strategy and a public inventory of current and planned AI uses.
- SSA released a Policy Assistant Tool enterprise-wide in May 2026 to help employees find and understand policy.
- The challenged review was unusually citation-heavy, literal, and difficult to reconcile with actual trust administration.
- Practitioners reported similar nonprofit-control, investment-delegation, and defense-cost theories in other pooled-trust matters.



The Bot, the Trust, and the Benefit Threat

SSA AI materials, anonymized case materials (2026)

4

7

What the record does not establish

What the record does not establish

- A publicly disclosed trust-review AI workflow.
- The tool, prompt, knowledge base, or human verification process used in this matter.
- That the same person or system produced every reported review.
- A coordinated federal campaign to eliminate the use of SNTs.

Pattern evidence justifies inquiry. It does not substitute for proof.

The Bot, the Trust, and the Benefit Threat

SSA AI materials, anonymized case materials (2026)

4

8

Three Ways to Read the SSA Trust Review

Each view points to a different response to the noncompliance findings

1 Business as Usual

This review is no different than the ones we have had over the years. The reviewers are not sophisticated, have picked up random trusts, and are doing their usual "this does not comply" routine.

Implication
Make the amendments. Change only the document so it pleases the reviewer.

2 AI + Uninformed Reviewer

This appears to be AI paired with a human reviewer who does not understand special needs trusts, or trusts in general. If this is AI, it is biased, and nothing we do will produce a "perfect" document if they have no interest in our having a compliant one.

Implication
Conceding is dangerous. We could go in circles and put other SNTs at risk by continuing to amend.

3 Designed to Remove Beneficiaries

DOGE fired 7,000 people, likely many who knew what they were doing, cut SSA's budget, and implemented AI. The goal is to remove people from benefits, and this is an easy way to do it.

Implication
No trust will satisfy their AI. All trusts will be found out of compliance.

The Bot, the Trust, and the Benefit Threat

SSA AI materials, anonymized case materials (2026)

4

9

3

What SSA challenged

CASE

Nonprofit management

Could a directed or successor trustee be for-profit?

Investment delegation

Did advisor or agent language transfer "managerial control"?

Defense costs

Could common legal expenses reach accounts not actually affected?

Medicaid payback

Did tax language permit payment ahead of the State?

MSA provisions

Who controlled the component, and did early termination apply?

Old citations

Did superseded POMS references create ambiguity?

This was not a one-clause problem. The review challenged the architecture of the trust.

The Bot, the Trust, and the Benefit Threat

Anonymous SSA review email (Mar 10, 2020)

5

10

The procedural bind

CASE

1

Review

SSA declares the master trust noncompliant.

2

Amend

The nonprofit must execute the cure before review.

3

Resubmit

The executed amendment goes back to the agency.

4

Wait

No draft review and no guarantee of approval.

"Change the trust first. Then find out whether the change was enough."

The Bot, the Trust, and the Benefit Threat

POMS SI 01120.255A.2 anonymized agency correspondence

6

11

First principles: What Congress required

BROGDET

1

NONPROFIT

Established and managed by a nonprofit association

2

SEPARATE ACCOUNTS

A separate account for each beneficiary

3

POOLED FUNCTIONS

Pooling is permitted for investment and management

4

SOLE BENEFIT

The account is established solely for the disabled individual

5

RETAIN / PAYBACK

Amounts not retained at death reimburse Medicaid

The statute does not say the nonprofit must personally perform every investment, accounting, tax, legal, or administrative task.

The Bot, the Trust, and the Benefit Threat

42 U.S.C. § 1396p(d)(5)(C)

7

12

“Managed by” does not mean “performed only by”

CONTROL — what must remain with the nonprofit

- trust-wide policy and beneficiary decisions
- selection, instruction, monitoring, and removal
- final distribution authority
- access to information and records
- the ability to correct or terminate the relationship

EXECUTION — what may be assigned or delegated

- investment selection within an approved mandate
- custody and cash-management functions
- tax preparation, accounting, and reporting
- specialized MSA administration
- legal, benefits, or care-management services

The legal question is who holds final authority—not who performs every task.

The Bot, the Trust, and the Beneficiary Threat

POMS 51 (11/20/2025)

8

13

Delegation is not abdication

NONPROFIT MANAGER

Administrative fiduciary
assigned administration

Investment advisor
investment mandate

Specialist / vendor
limited technical function

The delegation should show:

scope

instructions

monitoring

information

removal

retained responsibility

A global hierarchy clause is usually more effective than repeating slightly different authority language in five articles.

The Bot, the Trust, and the Beneficiary Threat

POMS 51 (11/20/2025; Uniform Trust Code § 807)

9

14

Who pays to defend the trust?

ONE ACCOUNT

A dispute unique to one beneficiary

Charge the affected account

A DEFINED GROUP

A provision or practice affects a known subset

Allocate within the affected class under a reasoned method

THE MASTER TRUST

Validity or construction of the common instrument truly affects all accounts

A common expense may be defensible if the fiduciary finding is documented

"If a low-balance account must finance a master-trust defense alone, the trust can be defeated one account at a time."

The Bot, the Trust, and the Beneficiary Threat

POMS who-should-pay policy, everyplace practitioner nonprophets

10

15

5

Payback, MSA, and termination

PAYBACK

Use the exact categories permitted before Medicaid reimbursement. Coordinate any stricter state rule. Do not let a broad tax or expense clause outrun the priority language.

MSA COMPONENT

Identify the MSA as an accounting component of the beneficiary's separate account. State who has final authority and define any vendor role as limited and subordinate.

EARLY TERMINATION

Apply the termination provision to every component. State reimbursement priority, who receives any excess, and that the beneficiary cannot compel termination.

Deleting every vendor reference may reduce facial scrutiny—and make actual administration less transparent.

The Bot, the Trust, and the Benefit Threat

PGMS SI 0120.100, 2020; anonymized trust materials

11

16

The 15-page amendment: What changed—and what did not

ISSUE	WHAT CHANGED	WHAT WE DID NOT CONCEDE
Directed trustee	Required to be a qualifying nonprofit	Not every provider must be a nonprofit
Advisor / agents	Express control, oversight, removal, retained responsibility	Prudent delegation is not prohibited
Defense costs	Affected accounts unless the master agreement truly affects all	Common defense is not automatically impermissible
Payback	Narrowed pre-payback expenses	Not every termination criticism was correct
MSA	Clarified nonprofit control and early termination	A specialist does not necessarily manage the trust

"We were not trying to win a drafting contest. We were trying to protect beneficiaries while the cure period was running."

The Bot, the Trust, and the Benefit Threat

Executed amendment and response letter (May 21, 2020); anonymized

12

17

We amended. Then came round two.



The Bot, the Trust, and the Benefit Threat

Reported by counsel; the second agency letter was not supplied.

13

18

One of the new provisions cited for noncompliance

VICTORIA

"Directed Trustee must be a non-profit organization. The Trustee may appoint a successor Directed Trustee, including a corporate trustee or private fiduciary, if it qualifies to act."

AGENCY RESPONSE

Not in compliance with the POMS.

A Directed Trustee **may** be a for-profit organization.

The Bot, the Trust, and the Baruffi Threat

14

19

Why a model misreads the clause

VICTORIA

In code, a condition applies only to the block it's attached to, and the nearest clause usually controls. In your passage--**"if it qualifies to act"** sits right next to the appointment power--so a model naturally attaches it there and treats it as a self-contained test. It's less inclined to reach back to the prior sentence and treat that as a rule governing everything after it. Lawyers read a restriction as continuing unless something ends it. **Models, like code, tend to need that stated.**

— Claude



The Bot, the Trust, and the Baruffi Threat

15

20

The second new provision cited for noncompliance

VICTORIA

"The Trustee shall place a tax refund into the Trust."

AGENCY RESPONSE

Not in compliance with the POMS.

A Trustee can place the refund in **someone else's sub-account** and not in the sub-account of the person entitled to the refund.



The Bot, the Trust, and the Baruffi Threat

16

21

What the other cases suggest—and what they do not

BOTH

RECURRING THEMES

- nonprofit control versus day-to-day trustee functions
- delegated investment authority
- common defense costs and sole benefit
- later adverse findings despite earlier favorable treatment
- similar questions reported in more than one jurisdiction

PROOF LIMITS

- no proof of a common AI tool
- no proof of a single national decision-maker
- no complete record of every case or outcome
- no basis to treat every review as identical
- no reason to abandon the beneficiary-specific appeal

The right use of comparator evidence is to demand consistency and explanation—not to overclaim causation.

The Bot, the Trust, and the Barbell Threat Anonymized practitioner reports (2025) 14

22

Before you amend anything

BRIODGET

Freeze the record.

Confirm the exact master trust, amendment, joinder, account version, funding date, court order, and notice under review.

"Many dense letters become manageable once the missing link is visible."

Preserve the original email, attachments, metadata if available, and every document submitted in response.

The Bot, the Trust, and the Barbell Threat Practitioner practice recommendations 15

For each agency point, answer five questions

- 1 What rule does SSA say applies?
- 2 What exact trust language is being read?
- 3 What factual assumption is SSA making?
- 4 How does the conclusion follow?
- 5 What change or disposition is SSA asking for?

23

A practical way to sort the issues

BRIODGET

CONCEDE	CLARIFY	CONTEST
The text is plainly wrong or out of date. Correct it narrowly. Do not over-admit. Examples: obsolete citation; vulnerable pre-payback expense; charge to an unrelated account.	The problem is ambiguity or overlapping roles. Make the hierarchy and actual administration visible. Examples: advisor scope; vendor function; affected-class defense costs; cross-references.	SSA has added a requirement or assumed a fact. Preserve the position and build the legal record. Examples: every provider must be nonprofit; delegation equals abdication; pooled rule imported into (c)(4)(A).

The categories keep one weak clause from dragging sound provisions into an unnecessary rewrite.

The Bot, the Trust, and the Barbell Threat Practitioner framework 16

24

8

Make SSA complete the reasoning

BRIDGET

RULE

What authority applies?

TEXT

What exact words are being read?

FACT

What is assumed about administration?

CONCLUSION

Why does the account become a resource?

DISPOSITION

What is resolved, and what remains?

"A citation is not a syllogism. A reviewer still has to explain how the rule reaches the result."

The Bot, the Trust, and the Benefit Threat

Priorator response method.

17

25

Prior approval and moving goalposts

BRIDGET

POMS SI 01120.202A.1: In posteligibility cases, do not reevaluate a previously reviewed trust absent new and material evidence—such as an amendment or a clarification or change in policy.

WHAT PRIOR APPROVAL HELPS SHOW

the agency previously accepted the same or similar language

the trust and beneficiaries relied on that treatment

a later contrary result requires explanation

unchanged language may expose a policy shift

WHAT IT DOES NOT AUTOMATICALLY SHOW

permanent immunity from review

equitable estoppel against the government

that every later account must be accepted

that an untested constitutional theory should lead

Ask the obvious question: What changed—the document, the facts, the law, policy or only the interpretation?

The Bot, the Trust, and the Benefit Threat

POMS SI 01120.202A.1; SI 01120.202A.2

18

26

Two tracks: The master trust and the individual beneficiary

BRIDGET

MASTER-TRUST TRACK

answer each provision separately

execute only the narrowest necessary amendment

preserve disputed positions in the cover response

ask which issues are resolved and why

preserve every version and comparator review

BENEFICIARY-APPEAL TRACK

obtain a written initial determination with reasons

request reconsideration and continuation when available

proceed to ALJ, Appeals Council, and court as appropriate

show concrete benefit harm and standing

build the administrative record before the history disappears

A master-trust email may not itself be an appealable determination. Do not lose the beneficiary while arguing about the document.

The Bot, the Trust, and the Benefit Threat

20 C.F.R. §§ 416.1400--1409; POMS SI 01120.20A

19

27

9

FOIA, policy witnesses, and oversight

BOTH

COMPARATOR FILE

Collect defect letters, favorable decisions, precedents, amendments, and outcomes.

TARGETED FOIA

Ask for trust-review instructions, training, routing, quality control, and documented AI-use materials for a defined component and period.

POLICY WITNESS

Use a hearing request or subpoena only with a concrete proffer tying the witness to the disputed interpretation.

OVERSIGHT

Seek aggregate clarification through policy or congressional channels—but do not substitute it for exhaustion.

"All records concerning AI" is usually too broad. Define the office, date range, trust-review terms, and decision.

The Bot, the Trust, and the Barbell Threat

5 U.S.C. § 552; anonymized practitioner correspondence

20

28

Spillover: (d)(4)(A) trusts and Medicaid review

BIDGET

INDIVIDUAL (d)(4)(A) TRUSTS

- no nonprofit-management requirement
- watch beneficiary control and resource availability
- make trustee, protector, and director roles unmistakable
- integrate early termination, payback, tax, and MSA provisions
- do not let a pooled-trust rule migrate into the analysis

STATE MEDICAID REVIEW

- a separate decision-maker and separate appeal path
- state-specific payback and long-term-care rules
- court approval, notice, and continuing jurisdiction
- caregiver, housing, vehicle, retirement, and MSA issues
- a change for SSA may create a state-law problem

Do not solve an SSA problem by creating a Medicaid problem.

The Bot, the Trust, and the Barbell Threat

42 U.S.C. § 1396p(d)(4)(A); (C); PCMS 50 01/02/2023

21

29

Using AI without letting it practice law

BOTH

HIGH-VALUE USES

- break the agency letter into propositions
- trace each citation to the exact proposition
- compare the trust and amendment provision by provision
- build a role-and-authority chart
- flag inconsistent terms, citations, and cross-references

NON-NEGOTIABLE GUARDRAILS

- use an approved, secure system
- redact or anonymize confidential information
- understand retention, training, and access terms
- verify every quotation, citation, and legal proposition
- never treat model output as authority

Let AI do the clerical lifting. Do not let it make the legal judgment.

The Bot, the Trust, and the Barbell Threat

ABA Formal Opinion 513 (2020)

22

30

10

What we would do tomorrow morning

1

Preserve every trust version, notice, email, and response.

2

Calendar amendment, appeal, continuation, court, and Medicaid deadlines separately.

3

Build a provision-by-provision response chart.

4

Collect prior approvals, comparator reviews, and evidence of actual administration.

5

Fix easy drafting points without conceding disputed legal theories.

6

Prepare beneficiary-specific appeals before the master-trust discussion consumes the file.

7

Audit the entire instrument after any amendment.

8

Keep asking: Who decided, on what authority, and how does the conclusion follow?

"The next reader may be a lawyer, a claims representative, a judge—or a machine. Draft so the lawful administration is unmistakable."

The Bot, the Trust, and the Benefit Threat

Practitioner practice checklist

23

31

WHAT WE WANT YOU TO REMEMBER

1

Separate suspicion from proof.

2

Control and execution are not the same thing.

3

Concede the easy point; clarify the ambiguity; contest the overreach.

4

Build the beneficiary's appeal record before the amendment erases the history.

5

Draft for the person whose benefits depend on the document being understood correctly.

QUESTIONS

What would you change?

What would you refuse to change?

What evidence would you preserve today?

Victoria Blair Struse

Bridget O'Brien Swartz

The Bot, the Trust, and the Benefit Threat

32

11