

Attorneys and Trustees Working Together:

The Changing Landscape and

Layers of Administration

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Introduction

Attorneys and Trustees of special needs and supplemental needs trusts sit at the intersection of trust law, public benefits administration, and the day-to-day realities of their clients' lives. Close collaboration between attorneys and Trustees are required to address the ever-shifting landscape of eligibility rules and administrative requirements for public benefit programs, availability of public supports and services, and managing Trustee risk, while simultaneously addressing the needs and improving the lives of individuals with disabilities.

Learning Objectives

This discussion is designed to identify the roles attorneys and Trustees each play in supporting individuals with disabilities who rely on government benefit programs, and to understand how changing eligibility requirements for SSI, Medicaid, HUD housing, and related programs may affect the trusts attorneys draft and administer. Attorneys and Trustees will also come away better equipped to evaluate the potential impact of H.R. 1/OBBBA on disability supports, services, and home and community-based care; to apply practical strategies for drafting and administering trusts in a shifting benefits environment; and to recognize ways to help Trustees minimize their liability while preserving beneficiary quality of life and access to and supplementing essential services.

1. Setting the Stage: The Changing Benefits Landscape

Special needs attorneys and Trustees of special needs trusts and pooled trust administrators are likely already seeing the current and emerging administrative pressures affecting government benefits eligibility, redeterminations, documentation, and service access for individuals with disabilities. Individuals with disabilities are seeing an increase in the sheer volume of paperwork required to maintain benefits, as well as shorter windows in which to respond to state and federal requests for information. The burden to navigate the complex government benefit programs falls disproportionately on individuals and their families, many who already face challenges in meeting their most basic needs. This means Trustees are increasingly required to assist individuals with disabilities beyond the scope of standard trust administration responsibilities, and having to rely more on the advice and counsel of attorneys to help them navigate an already complex system.

Of looming significance and impact on government benefits eligibility and the availability of supports and services for individuals with disabilities relate to the implementation of H.R. 1/One Big Beautiful Bill Act (OBBBA) and its anticipated effects on Medicaid, disability services, and home and community-based supports. This includes the increased administration burdens on state agencies that determine eligibility for Medicaid and related programs due to the new work requirements for Medicaid and food assistance recipients, and the shortened redetermination requirements.

New federal work and community engagement requirements take effect by the end of 2026 (with some states already moving forward with implementation of the requirements under H.R. 1), and they bring an added documentation and administrative burden in

proving disability-based exemptions. Even where an individual with disabilities clearly qualifies for an exemption, the process of demonstrating that qualification—often on a recurring basis—is or will be a barrier to obtaining and maintaining coverage they are entitled to without having to meet the work requirements.

For individuals with disabilities who are only able to access Medicaid services and supports by obtaining eligibility through the Medicaid expansion program offered in their state, attorneys will also need to advise Trustees on the shift to six-month redetermination cycles for the Medicaid expansion populations. This requirement under H.R.1 will increase the frequency of eligibility reviews Trustees may need to respond to.

Further, attorneys may also need to provide further advocacy and counsel to individuals with disabilities and their families to navigate the increasing administrative burdens and the resulting errors and incorrect determinations of ineligibility or imposition of work requirements when the individual with disabilities should be exempt. This will impact the Trustee's exercise of discretion for trust distributions for attorney fees and require the Trustees to budget time and trust resources to assist beneficiaries and their support networks accordingly.

Attorneys and Trustees will also need to monitor the implementation of the 1915(c)(11) waiver under Section 71121 of H.R.1, which permits individuals to access Home and Community Based Services (HCBS) services even if they do not meet the traditional institutional level of care requirements for other 1915(c) waivers¹. Disability advocates

¹One Big Beautiful Bill Act, Pub. L. No. 119-21, § 71121 (2025) (adding new standalone HCBS waiver authority under section 1915(c) of the Social Security Act); see also 6 Strategies for the Next Phase of HCBS Transformation: Honoring the ADA in Today's Fiscal and Operational Realities, Sellers Dorsey (2026),

express concern regarding whether states will broadly adopt this optional waiver. Many states face heavy administrative burdens with the implementation of H.R.1 and tightening Medicaid budgets, which could hinder full execution (particularly in light of its strict requirements) despite the long-term cost-efficiency of institutional diversion.

2. Trust Administration in a New Environment

Attorneys and Trustees must therefore be mindful of the impact on support and services for persons with disabilities due to the sunset of enhanced federal Medicaid matching funds for expansion states. Reduced matching dollars will translate into tighter state budgets, longer Home and Community Based Services (HCBS) waitlists, cuts in HCBS funding and affiliated supports and services, resulting in greater pressure on Trustees to fill gaps in care through trust distributions. The landscape of trust distributions will change considerably, shifting from trust distributions to enhance the quality of life for individuals with disabilities, to distributions required to maintain their most basic needs to be able to remain in their home and/or in the community.

Attorneys have likely counseled Trustees using a fairly traditional approach to supplemental needs distributions, but attorneys should be prepared to help Trustees reconsider that approach as service delivery shifts toward keeping beneficiaries in home and community-based settings. Historically, many Trustees have taken a conservative view, limiting distributions to discretionary extras that supplement, but never supplant, available public benefits. As the availability and reliability of public benefits becomes less

certain, Trustees will increasingly ask attorneys what "supplemental" really means for a given beneficiary.

Attorneys will need to help Trustees balance quality-of-life enhancements with the preservation of eligibility for public benefits, recognizing that these two goals can sometimes pull in different directions. A distribution that meaningfully improves a beneficiary's independence or well-being may, if handled incorrectly, jeopardize the very benefits that make community living possible in the first place. Attorneys should advise Trustees to document their decisions carefully in light of changing service availability and administrative requirements—a well-documented rationale for a distribution can be the difference between a defensible exercise of discretion and a costly dispute with a beneficiary, a family member, or a state agency.

3. Defining the Attorney–Trustee Partnership

Attorneys will want to be clear, with every Trustee, about respective roles and responsibilities, and about how they will communicate to support coordinated decision-making. Attorneys should recognize when a question calls for legal guidance, benefits expertise, or fiduciary judgment—and when it calls for all three. A single distribution request might raise a legal question about trust interpretation, a practical question about benefits eligibility, and a values-based question about what the beneficiary actually needs. Establishing a clear process with the Trustee for routing these questions to the right resource, at the right time, will prevent delay and reduce the risk of an uninformed decision.

Attorneys should think carefully about the classic “who is the client” and accompanying conflict-of-interest conundrum whenever advice touches both Trustee and beneficiary interests. At the outset of any engagement, attorneys need to be very clear who they represent and what they will do if the Trustee's and beneficiary's interests diverge. When representing the beneficiary, the attorney must also be mindful the dynamics involved when also interacting with others in the beneficiary's support circle (e.g., other family members).

Attorneys and their Trustee clients (along with attorneys drafting special needs trusts as part of an estate plan) should also clarify funding expectations early and often to ensure there are sufficient assets to meet the needs of the individuals along with the expectations of their families and other supports. For example, ensuring there are sufficient cash assets to maintain real estate and mortgages; setting realistic expectations regarding living in the home (particularly in light of impact of legislation like H.R.1 on HCBS services and staffing); and helping to identify “how much” is truly needed with respect to trust funding. These conversations are often uncomfortable, particularly when a family has an emotional attachment to a home or a living arrangement that the Trustee cannot realistically sustain. Attorneys and Trustees who raise funding questions early, and revisit them periodically as circumstances change, will be far better positioned to avoid a funding crisis later in the future.

4. Drafting Trust Agreements

Attorneys should keep flexibility and clarity in mind as drafting touchstones. How trust agreements are drafted can have a significant impact on whether the Trust can truly fulfill the intended purpose of the Settlor to provide for the needs of the individual, as well as

the Trustee's ability to fulfill their fiduciary duties and obligations in accordance with the terms of the trust agreement. Further, attorneys need to be effective in advising Trustees on challenges that frequently arise with administration of special needs trusts.

Attorneys should anticipate evolving benefit rules and service delivery models, and build maximum flexibility into distribution standards and Trustee authority. Trust documents drafted even a few years ago may not anticipate the pace of change now underway in Medicaid, HCBS, and related programs, and rigid language that made sense under a prior regulatory framework can become a Trustee liability under a new framework. At the same time, attorneys need to be sure that Trust Agreements are drafted to avoid anticipated issues or address current implementation of regulations related to government benefit programs.

Trust agreements should also be explicit in addressing documentation and reporting requirements, providing opportunities for advocacy by the Trustee, and ensuring coordination between the Trustee and the individual's care providers. The goal is to reduce ambiguity and conflict during administration, such as clear standards for what counts as a permissible distribution and clear procedures for resolving disagreements between co-trustees or between a Trustee and a beneficiary's care team.

Attorneys should also consider including provisions that are geared towards helping non-professional Trustees to understand various options to facilitate trust administration. For example, language can be included to permit funding of ABLE accounts with trust assets to facilitate ease of access to trust distributions for goods and services. For many beneficiaries, an ABLE account can serve as a useful complement to a special needs trust, offering more flexible day-to-day spending. The utilization of these tools, however,

will require further careful planning and implementation to avoid inadvertently affecting benefit eligibility while also ensuring the Trustee fulfills its fiduciary duties (e.g., determination of “early termination” in the transfer of balance of d4A Trust assets to an ABLE account).

In addition, provisions can be included to ensure the Trustee is able to act in the best interest of the beneficiary. Drafters should instead give the Trustee flexibility to change trust situs and governing law, amend the terms of the trust agreement to comply with changing government benefit eligibility rules and regulations, and distribute assets from a d4A trust to a pooled trust as circumstances require. Drafters should also include provision to anticipate or address any known issues with governmental agencies at the time of drafting. For example, there is lack of clarity by SSA regarding the treatment of decanting of a d4A/first-party Trust as early termination of the Trust under POMS SI 01120.199. Some SSA offices are rumored to take the position that the Trust Agreement must provide the Trustee to decant the Trust to avoid the determination that the distribution to the second trust is considered “early termination” of the first trust.

Additionally, attorneys should provide a streamlined successor trustee mechanism so administration can continue without interruption if a Trustee resigns or becomes unable to serve, such as the ability for a trust protector or trust director to appoint a successor trustee, or to permit the last-acting Trustee or another third party to appoint a successor Trustee. A trust without a workable and efficient succession plan can leave a beneficiary without needed distributions for months, particularly if the only remaining option is to seek court appointment of a successor Trustee.

Attorneys also need to avoid provisions that require Trustees to take action not permissible by law, or are not realistic. For example, Trustees cannot pursue government benefits. Attorneys should talk with Trustees about setting realistic expectations and parameters for the Trustee. For example, whether to require drug testing or leave the determination of when a beneficiary is “stable” to trustee discretion, along with the value of a comprehensive Letters of Intent and the choice between requiring Trustees to obtain annual evaluations versus simply recommending it. Any requirements to personally visit the individual with disabilities should be in reasonable intervals. Attorneys should walk clients and potential Trustees through the practical consequences of each approach, including the burdens of trust administration, rather than defaulting to boilerplate language.

5. Advising Trustees and Advocating for Beneficiaries

Attorneys should calibrate their advice to the type of Trustee they represent. A family member serving as Trustee for the first time will typically need more guidance than a corporate trustee with an established administrative infrastructure, since the standard of care, available resources, and beneficiary expectations often differ substantially between the two.

Much of an attorney's day-to-day work will involve determining what qualifies as a “supplemental” need and helping Trustees characterize distributions and provide an appropriate level of care when the mental health system falls short, especially given reductions in HCBS services. Attorneys will also help Trustees provide for a beneficiary's needs practically, particularly when there is no family or other support system, including the use tools such as prepaid gift or True Link cards, and will assist in developing trust

budgets and supplementing income as part of fulfilling the Trustee's broader responsibilities while also offering a sense of independence to the beneficiary.

Attorneys should help Trustees ensure that distributions are for the “sole benefit of” the individual in the administration of a d4A/self-settled/first-party special needs trust as defined by governmental agencies. For example, Social Security Administration’s Program Operations Manual SI 01120.201F.3.a., which reflects that a distribution is considered for the “sole benefit of” the trust beneficiary so long as it provides a **primary** benefit to the trust beneficiary, and acknowledging that any collateral benefit for others will not violate the “sole benefit of” rule. Guidance by attorneys may be further be required to ensure that the beneficiary is not being taken advantage by others by benefiting from trust distributions. Trustees should be encouraged to take a psychosocial approach to defining “needs” and “quality of life,” which can be a markedly different role when working with individuals with disabilities.

Attorneys may find themselves clarifying trust language directly with a beneficiary, since hearing an explanation of sole and absolute discretion from an attorney often carries more validity than hearing it from the Trustee alone. Attorneys should be prepared to help prove that a Trustee is acting in the beneficiary's best interest and to defend the Trustee when necessary. Counsel for Trustees may also be called upon to draft documents such as resignations and releases, and to negotiate with the Attorney General's office or the Social Security Administration when updating documents.

Another area attorneys must be well-versed in relates to the Medicaid payback and estate recovery mechanics when funding or terminating a first-party (d4A) or pooled special needs trust. Trustees frequently ask attorneys to walk them through how and why the

state may be entitled to reimbursement from remaining trust assets, along with the specific process to ensure Trustees properly satisfy these federal requirements.

6. Minimizing Trustee Liability

Attorneys will regularly be called on to advise Trustees about their fiduciary duties in the context of public benefits and disability supports, and about when to bring in other legal counsel or benefits professionals. A Trustee's fiduciary duty does not exist in a vacuum; it must be exercised against the backdrop of a beneficiary's specific benefit programs, medical needs, and support system, so a technically correct distribution can still be a poor exercise of discretion if it fails to account for its effect on eligibility. Attorneys should counsel Trustees to maintain clear records of decisions, advice received, and beneficiary needs, and to manage risk carefully when program rules or service availability are uncertain and advise whether and when the appointment of a trust protector or director as permitted under the terms of the trust agreement can be beneficial to the Trustee.

Attorneys should be prepared to help prove that a Trustee is acting in the beneficiary's best interest while fulfilling the Trustee's responsibilities (e.g., prudent investor rules), and to defend the Trustee when necessary. Attorneys should be effective in issue-spotting and know when a matter needs a referral or consultation with litigation or ethics counsel. Attorneys should also be attentive to their own malpractice and errors-and-omissions coverage, and to that of any professional Trustees they work with, as scrutiny of professional liability in this area continues to increase.

7. Resolving Trustee–Beneficiary Conflicts

Attorneys will encounter common sources of conflict between Trustees and beneficiaries, including distribution requests, benefit concerns, autonomy, and expectations, and can add real value by encouraging proactive communication to reduce misunderstandings before they escalate. Many conflicts do not arise from a single bad decision but from an accumulation of small misunderstandings about what the trust can and cannot provide for, and about how distribution decisions are made. Attorneys should help Trustees apply trust terms, fiduciary standards, and person-centered planning principles, and consider court guidance, mediation or other conflict resolution pathways when necessary. Litigation is rarely the best outcome for either party in an ongoing Trustee-beneficiary relationship.

When attorneys represent trust beneficiaries or family members instead of the Trustee, they face a related set of challenges: resolving disputes between Trustees and beneficiaries and others in the circle of support, ensuring realistic expectations of what a Trustee can and cannot do, pressing for timely responses from Trustees, and addressing concerns with accountings and Trustee fees. Many of these concerns can be resolved through clearer communication and better-documented processes, without formal legal action.

8. Advocacy for Individuals with Disabilities—Working Together

Attorneys play a central role in identifying a beneficiary's current and future support needs and in coordinating with families, care managers, service providers, agencies, and advocates. Effective advocacy requires an ongoing relationship among everyone

involved in a beneficiary's life, so that changes in circumstances—a new diagnosis, a change in housing, a reduction in available services—are communicated quickly and acted upon before they become a crisis.

Attorneys should help Trustees use trust resources strategically to preserve independence, housing stability, health care access, and community participation, and be ready to advise on how to respond to reductions, delays, or denials in public benefits and services, including when it makes sense for the attorney or the Trustee to advocate directly with an agency on a beneficiary's behalf

Key Takeaways

Maintaining an amicable relationship with Trustees is essential to effective representation. Attorneys and Trustees must work collaboratively to respond to evolving eligibility requirements and service systems, and attorneys should expect trust administration to require increasing attention to preserving access to housing, health care, and home and community-based supports.

Flexible drafting, careful documentation, and informed decision-making will help attorneys reduce Trustees' liability, while advocacy and conflict resolution remain essential parts of trust administration for individuals with disabilities. As the benefits landscape continues to shift, attorneys will serve Trustees best by investing in clear communication, realistic expectations, and well-documented decision-making, regardless of what changes come next.