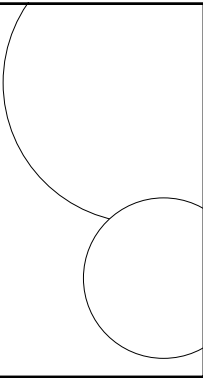


# Attorneys and Trustees Working Together

*The Changing Landscape and Layers of Administration*

Kerry Tedford Coles | Roxanne J. Chang



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INTRODUCTION

## Where Attorneys and Trustees Meet



Trust law



Public benefits  
administration



Clients' day-to-day lives

Close collaboration is required to address shifting eligibility rules, administrative requirements, the availability of public supports, and Trustee risk—while improving the lives of individuals with disabilities.

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LEARNING OBJECTIVES

## What Attorneys and Trustees Will Take Away

- 1 Identify the roles attorneys and Trustees each play in supporting individuals who rely on benefit programs
- 2 Understand how changing SSI, Medicaid, and HUD rules affect the trusts attorneys draft and administer
- 3 Evaluate the impact of H.R. 1/OBBBA on disability supports and home and community-based care
- 4 Apply practical drafting and administration strategies for a shifting benefits environment
- 5 Help Trustees minimize liability while preserving the trust beneficiary's quality of life and access to essential services

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1 · SETTING THE STAGE

## Administrative Pressure Is Mounting

-  **More paperwork**  
Greater volume of documentation needed to maintain benefits
-  **Shorter response windows**  
Less time to answer state and federal requests for information
-  **Burden falls on families**  
Many already struggle to meet the individual with disabilities' most basic needs
-  **Trustees stretched beyond standard administration**  
Greater reliance on the advice and counsel of attorneys

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1 · SETTING THE STAGE

## H.R. 1/OBBBA: What Is Changing

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| <br><b>Work and community engagement requirements</b><br>Take effect by end of 2026; some states already implementing | <br><b>Six-month redeterminations</b><br>For Medicaid expansion populations—more frequent eligibility reviews | <br><b>Heavier state agency burden</b><br>Eligibility agencies absorb new work requirements and shorter cycles |
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1 · SETTING THE STAGE

## Exempt Is Not the Same as Easy

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| <br><b>Proving the exemption</b> <ul style="list-style-type: none"><li>Disability-based exemptions must be documented—often on a recurring basis</li><li>The process itself can become a barrier to coverage the individual is entitled to</li></ul> | <br><b>Expanded advocacy role</b> <ul style="list-style-type: none"><li>Errors and wrongful ineligibility or work-requirement determinations will increase</li><li>Affects Trustee discretion over distributions for attorney fees</li><li>Trustees must budget time and trust resources to assist</li></ul> |
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1 · SETTING THE STAGE

Watch: The New 1915(c)(11) HCBS Waiver

§ 71121

Permits access to HCBS without meeting the traditional institutional level-of-care requirement

Advocates are concerned about adoption

- The waiver is optional for states
- States face heavy H.R. 1 implementation burdens and tightening Medicaid budgets
- Strict requirements could hinder full execution—despite the long-term savings of institutional diversion

Source: OBBBA, Pub. L. No. 119-21, § 71121 (2025); Sellers Dorsey (2026)

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2 · TRUST ADMINISTRATION IN A NEW ENVIRONMENT

How Funding Cuts Reach the Trust

Enhanced federal Medicaid match sunsets

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Tighter state budgets

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Longer HCBS waitlists and service cuts

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Pressure on trust distributions to fill gaps

The shift in distributions

From: enhancing quality of life

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To: meeting basic needs so the beneficiary can stay home and in the community

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2 · TRUST ADMINISTRATION IN A NEW ENVIRONMENT

Rethinking What "Supplemental" Means

Traditional approach

- Conservative view of discretion
- Discretionary "extras" only
- Supplement—never supplant—public benefits

Emerging reality

- Public benefits are less available and less reliable
- Service delivery is shifting toward home and community-based settings
- Trustees will ask what "supplemental" really means for this beneficiary

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2 · TRUST ADMINISTRATION IN A NEW ENVIRONMENT

## Balance the Goals, Document the Decision



**Two goals can pull in different directions**

A distribution that improves independence or well-being may, if mishandled, jeopardize the benefits that make community living possible.



*A well-documented rationale can be the difference between a defensible exercise of discretion and a costly dispute with a beneficiary, family member, or state agency.*

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3 · DEFINING THE ATTORNEY-TRUSTEE PARTNERSHIP

## Counsel on Three Kinds of Questions



**Legal**

How should the trust be interpreted?



**Benefits**

How will trust terms and distributions affect eligibility?



**Exercise of Trustee Discretion**

What does the beneficiary actually need?

**Clarify the scope and expectations of representation** - Getting each question to the right resource at the right time prevents delay and uninformed decisions for the Trustee.

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3 · DEFINING THE ATTORNEY-TRUSTEE PARTNERSHIP

## Who Is the Client?



Trustee

OR



Beneficiary

**The classic conflict-of-interest conundrum**

- Arises whenever advice touches both Trustee and beneficiary interests
- At the outset of every engagement, be clear about whom the attorney represents
- Decide in advance what happens if their interests diverge
- Dealing with others in the beneficiary's support circle (e.g., family members)

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3 • DEFINING THE ATTORNEY–TRUSTEE PARTNERSHIP

Clarify Funding Expectations Early and Often.

For example:

Carrying real estate

Are there sufficient cash assets to maintain the home and mortgage?

Living arrangements

Set realistic expectations, given H.R. 1's impact on HCBS services and staffing

"How much" is truly needed

Right-size trust funding—including in estate plans

Hard conversations now—revisited as circumstances change—prevent a funding crisis later.

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4 • DRAFTING TRUST AGREEMENTS

Touchstones: Flexibility and Clarity

Flexibility

- Anticipate evolving benefit rules and service models
- Build maximum flexibility into distribution standards and Trustee authority
- Rigid language from a prior framework can become a Trustee liability

Clarity

- Documentation and reporting requirements
- Room for Trustee advocacy and coordination with care providers
- Clear standards for permissible distributions and for resolving disputes

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4 • DRAFTING TRUST AGREEMENTS

Consider Provisions Worth Including

Fund ABLE accounts

with trust assets

Ability to Decant

to avoid determination of early termination for d4A Trusts

Change situs

and governing law

Amend terms

to track changing benefit rules

Move d4A assets

to a pooled trust as needed

Streamline succession

via trust protector/director, or last Trustee

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4 · DRAFTING TRUST AGREEMENTS

### Avoid Problematic Provisions

**Not permissible or not realistic**

Example: Trustees cannot pursue government benefits.

**Talk through the practical choices**

- Drug testing vs. Trustee discretion on when a beneficiary is "stable"
- Value of a comprehensive Letter of Intent
- Annual evaluations: required or recommended?
- Personal visits at reasonable intervals
- The real burdens of administration—not boilerplate

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5 · ADVISING TRUSTEES AND ADVOCATING FOR BENEFICIARIES

### Calibrate Advice to the Trustee

**First-time family Trustee**

- Typically needs more guidance
- Fewer administrative resources
- Standard of care and expectations differ

**Corporate Trustee**

- Established infrastructure
- Different standard of care
- Different beneficiary expectations

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5 · ADVISING TRUSTEES AND ADVOCATING FOR BENEFICIARIES

### The Day-to-Day Work

- Defining "supplemental" needs**  
 Characterizing distributions as "supplemental" while HCBS and mental health services fall short
- Practical tools**  
 Prepaid gift and True Link cards—especially when there is no family support
- Budgets and income**  
 Developing trust budgets and supplementing income
- Independence**  
 Offering the beneficiary a genuine sense of autonomy

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5 · ADVISING TRUSTEES AND ADVOCATING FOR BENEFICIARIES

### The "Sole Benefit Of" Rule for d4A & Pooled Trusts

#### Primary Benefit

to the beneficiary satisfies the SBO rule; collateral benefit to others does not violate it

*SSA POMS SI 01120.201F.3.a*

#### Attorneys help Trustees

- Apply agency definitions to first-party/self-settled/d4A and pooled trusts
- Guard against others taking advantage of trust distributions
- Take a psychosocial approach to defining "needs" and "quality of life"

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5 · ADVISING TRUSTEES AND ADVOCATING FOR BENEFICIARIES

### Explaining, Defending, and Paying Back

#### Explain

Clarify "sole and absolute discretion" directly with the beneficiary—it carries weight from the attorney

#### Defend

Show the Trustee acts in the beneficiary's best interest; draft resignations and releases; negotiate with the AG or SSA

#### Payback

Walk Trustees through Medicaid payback and estate recovery when funding or terminating d4A and pooled trusts

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6 · MINIMIZING TRUSTEE LIABILITY

### Fiduciary Duty Doesn't Exist in a Vacuum

*A technically correct distribution can still be a poor exercise of discretion if it ignores the effect on eligibility.*

#### Keep clear records

Decisions, advice received, and beneficiary needs

#### Manage uncertainty

Take care when program rules or services are in flux

#### Consider a protector

Appoint a trust protector or director where the trust permits

#### Bring in help

Know when to involve other counsel or other professionals

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6 • MINIMIZING TRUSTEE LIABILITY

## Defending Trustees—and Protecting Everyone



**Prove best interest**

Show the Trustee meets prudent investor responsibilities or is acting in the best interest of the beneficiary; defend when necessary



**Spot issues early**

Know when to refer to or consult litigation or ethics counsel



**Check coverage**

Review malpractice and E&O coverage—the attorney's and professional Trustees'—as scrutiny increases

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7 • RESOLVING TRUSTEE–BENEFICIARY CONFLICTS

## Where Conflict Comes From—and Where It Goes

Common sources

Distribution requests

Benefit concerns

Autonomy

Expectations

Resolution pathway

Proactive communication



Trust terms, fiduciary standards, person-centered planning



Mediation, court guidance, other pathways

*Litigation is rarely the best outcome in an ongoing relationship.*

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7 • RESOLVING TRUSTEE–BENEFICIARY CONFLICTS

## When the Client Is the Beneficiary



Disputes across the circle of support



Realistic expectations of what a Trustee can do



Timely responses from Trustees



Accountings and Trustee fees

*Many concerns resolve through clearer communication and better-documented processes—without formal legal action.*

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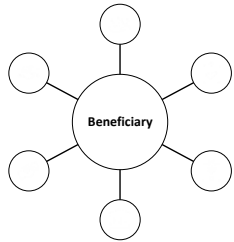
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8 • ADVOCACY—WORKING TOGETHER

### An Ongoing Circle of Support



#### Around the beneficiary

Families, care managers, service providers, agencies, advocates, and the attorney and Trustee

#### Why it matters

Changes—a new diagnosis, a housing change, a service reduction—must be communicated quickly and acted on before they become a crisis.

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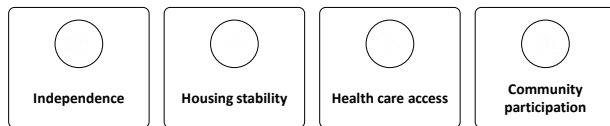
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8 • ADVOCACY—WORKING TOGETHER

### Using Trust Resources Strategically



#### When benefits are reduced, delayed, or denied

Advise on the response—including when the attorney or Trustee should advocate directly with the agency.

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### Key Takeaways

- ☐ An amicable attorney–Trustee relationship is essential to effective representation
- ☐ Expect administration to demand more attention to housing, health care, and HCBS access
- ☐ Flexible drafting, careful documentation, and informed decisions reduce Trustee liability
- ☐ Advocacy and conflict resolution are core parts of trust administration
- ☐ Clear communication and realistic expectations serve Trustees—whatever changes come next

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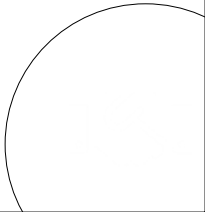
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# Questions?

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