

The Great SNT Road Trip: First-Party SNT Beneficiaries Crossing State Lines

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I. Introduction

A. Beyond The Form – This Is How We Beat The Robots.

What separates an attorney who lists special needs planning on their website from a truly exceptional special needs attorney? The answer is not the quality of their first-party trust. Most attorneys can probably obtain an adequate form (and the AI robots will soon be able to do this, too).

Our actual value as special needs attorneys is in the counseling and our deep understanding of benefit systems. And the ultimate test of a special needs attorney's expertise may well be their ability to successfully transition a beneficiary moving into their state. Doing so requires an advanced ability to navigate every aspect of what is considered special needs law: understanding how to qualify for government benefits (Medicaid in particular), obtaining the appropriate community living supports and housing, understanding state trust law, navigating probate courts on guardianship and trust supervision, and just being an overall good counselor.

B. Medicaid's Original Sin – Navigating Medicaid's Federal-State Hybrid Complexity.

One of Medicaid's "original sins" is its structure as a federal-state hybrid program. Unlike Social Security and Medicare, which operate with relatively consistent nationwide standards, Medicaid presents unique challenges due to the extensive variations across states.

This creates some notable problems:

- **Clients start from scratch when they move to another state.** Medicaid does not transfer. Clients start from square one in the Medicaid process when they move to a new state.
- **Medicaid waiver programs are different from state to state.** When working across state lines for Medicaid, we literally speak different languages. It is not uncommon for two highly accomplished attorneys to talk past each other, not realizing they are

using entirely different terminology to describe the same services. Never assume Medicaid programs in your state work the same way in another state.

- **Waitlists.** Medicaid waiver programs can have waiting lists. Because beneficiaries are starting over, they must be prepared for the high likelihood of a long waitlist for services in the new state.

To navigate these complexities, a funded special needs trust can be a truly life-changing tool for an interstate move to help pay for the necessary team and likely gaps in services during the transition.

II. Drafting For Portability

Before discussing the transition of a beneficiary between states, we should first consider provisions to incorporate into our first-party special needs trusts that will facilitate easier transitions if our client needs to relocate in the future.

A. Authority To Relocate The Trust.

When a beneficiary relocates, it is advisable to relocate a first-party special needs trust due to state-specific Medicaid peculiarities. As such, if your jurisdiction permits it, it is almost always advisable to make it easy for the trust law and/or place of administration to move with the beneficiary.

This is a typical clause that we will use in Michigan:

Authority to Relocate Trust. Every Trustee shall have the authority to move the place of administration of this Agreement to such jurisdiction(s) as Trustee deems appropriate. Such relocation may be done for the convenience of the Trustee, or for any other purpose consistent with the purpose for which this Trust was created. Accordingly, Trustee may, but is not required to, register this Agreement in such court(s) and at such times as Trustee deems appropriate. The laws governing this Agreement shall be the laws of the jurisdiction in which the Agreement is being administered.

B. Authority To Amend The Trust.

While first-party trusts must be irrevocable, it is crucial to know whether your jurisdiction will allow some limited trust amendment language. This language can be essential in enabling the beneficiary to make any necessary technical changes to the trust to comply with unique trust requirements.

In Michigan, we have never had issues with the following language:

Ability to Amend. To further the purposes of the Trust, including complying with the laws governing discretionary and “special needs” trusts, a Trustee may amend any administrative provision of the Trust in a writing signed and dated by the Trustee and delivered to those individuals entitled to accountings. Trustee may amend the Trust to ensure continuing eligibility or to secure eligibility for public benefit programs including, but not limited to, Supplemental Security Income (SSI), Medicaid, or any other government benefit program. If the law or regulations governing eligibility change, Trustee may amend the Trust, or if any provision of this original Trust fails to meet requirements of SSI, Medicaid, or any other government benefit program, Trustee may amend the Trust to comply with any such provisions. If Beneficiary shall move to another jurisdiction, Trustee may amend the Trust to comply with the laws of such jurisdiction in order to maintain Beneficiary’s eligibility. A Trustee may not amend the dispositive provisions of this Trust or alter the discretionary nature of the Beneficiary’s interest in the Trust. The Trustee may not remove or alter the obligation of the Trustee to reimburse the state or states that have provided Medical assistance to the Beneficiary of this Trust. Any exercise of this power that causes a Beneficiary to no longer be eligible for Medicaid, SSI, or any other government benefit is void. Any valid exercise of this power of amendment shall take effect on the date the amendment is signed by the Trustee. Trustee shall notify Social Security Administration and Medicaid in writing of such Amendment.

C. Trustee Succession.

The rules regarding who can serve as a trustee differ significantly from state to state. For example, in Michigan, only individuals or banks are permitted to serve as trustees.¹ However, even among banks, not all possess national charters, which may further limit their ability to serve as trustees in every state.

Additionally, even if a trustee is eligible to serve in the receiving state, practical considerations may still make it unwise for them to do so. As we know, the administration of special needs trusts is governed by varying rules from state to state (and possibly county by county). Appointing a more local trustee who understands local regulations and practices may be the wiser choice.

Given these complexities, it may be prudent to ensure the special needs trust has sufficient flexibility for a trustee (or trust protector) to appoint successor trustees without requiring court approval. A sample provision that works in our jurisdiction:

Any acting Trustee shall have the authority, by a writing executed with the same formalities as this document, to appoint additional successor Trustees[options][after the named individuals above.]/[. This authority includes the option of naming

¹ MCL 487.11105(2).

successor Trustees to serve before those named above.] This notwithstanding, Beneficiary shall never be appointed Trustee.*

*In drafting such provisions, it is important to clarify that the beneficiary can never serve as trustee. This ensures that there is no potential for the beneficiary to gain control over the trust, which could lead to conflicts of interest or compromise the trust's purpose.

Additionally, the POMS now clearly allow for the transfer of a d4A to a d4C trust (or secondary d4A trust).² There may be situations in which transferring the trust to a pooled trust in another state is appropriate, especially if the trust corpus is modest or if there is no suitable individual or professional trustee available in the receiving state. Should you consider drafting a provision to allow transferring the trust to a pooled trust in case that is the best option if a beneficiary moves to a different state? Some sample language that might work in a first-party special needs trust:

If, at any time during the life of the Beneficiary, the Trustee determines it is in the best interest of the Beneficiary, the Trustee may transfer all or a portion of the trust assets to a trust established for the sole benefit of the Beneficiary that meets the requirements of 42 U.S.C. § 1396p(d)(4)(C) or a secondary trust that meets the requirements of 42 U.S.C. § 1396p(d)(4)(A).³ Such a transfer is permissible only if the receiving trust qualifies as a trust defined by the above-referenced statutes, is for the same Beneficiary, and complies with all Medicaid and Supplemental Security Income (SSI) rules and regulations, including those regarding state Medicaid paybacks, then in effect. Additionally, Trustee may only make the transfer if it is permitted under applicable federal and state law, including, but not limited to, relevant Social Security and Medicaid rules and regulations.

Caution: As with any drafting, such a clause should be used thoughtfully. Administrative rules can change quickly, and you are always at risk of being out of compliance. It may be better not to include such a clause and rely on other provisions (e.g., decanting laws) to make such a distribution *if* ever needed.

² See POMS 01120.199.E.2:

Exception for transfers to a secondary trust upon early termination

An early termination provision in a section 1917(d)(4)(A) special needs trust or section 1917(d)(4)(C) pooled trust does not need to meet the above criteria if the provision allows solely for a transfer of the beneficiary's assets to a secondary section 1917(d)(4)(A) or section 1917(d)(4)(C) trust of which the same individual is the beneficiary.

The early termination provision must contain specific limiting language that precludes the early termination from resulting in disbursements other than to the secondary section 1917(d)(4)(A) or section 1917(d)(4)(C) trust or to pay for the administrative expenses listed in SI 01120.199E.3 in this section and in SI 01120.201F.4.

³ The reference to a secondary d4A trust may or may not be desirable. See *also* discussion about decanting below.

III. Building And Defining The Team

As we know, administering a special needs trusts always take a village. And when a beneficiary moves to a different state, many members of that village need to be substituted. Therefore, the attorney and trustee must consider who the team will be and what role each team member will play.

Special needs planning attorneys will typically be the quarterbacks in a state-to-state transition. But in a transfer, there are commonly two attorneys, and each of their roles should be defined:

- **Originating attorney:** This is most normally the drafting attorney or the attorney who assists with the administration of the trust. The originating attorney's jobs are primarily: (1) find the receiving attorney; (2) set expectations for the trustee/beneficiary; (3) collect information necessary for it to be “translated” by the receiving attorney; and (4) assist with any local court actions that might be necessary to facilitate the transfer.
- **Receiving attorney:** This is the attorney in the state that the beneficiary is moving into, and who will be doing the bulk of the work. This role could include: (1) assisting in translating how the beneficiary’s services would convert in the new state; (2) advising on appropriate professionals in the receiving state to accept the trust; (3) reviewing the trust and advise if it requires modifications; (4) advising how best to make those modifications for the receiving state’s government benefits; (5) advising if any court petitions will need to be filed and leading those filings; (6) applying for government benefits; and (7) advising on ongoing administration.

Note: The originating attorney’s most important job is finding a qualified attorney in the receiving state. To this end, it is essential to remember that there can be significant differences within the state as well. In Michigan, what an attorney knows in the Detroit area is different from what they know in Grand Rapids, which is very different from what they know in the Upper Peninsula.

But once the originating attorney locates a qualifying receiving attorney, that originating attorney should defer to the receiving attorney as much as possible.

Beyond this, the attorneys should identify what other professionals might be useful:

- **Trustee:** As discussed above, is the trustee transitioning to the new state, or will a new trustee be required? And if a new trustee is required, what modifications will need to be made to the trust?

- **Accountant/CPA:** Because first-party trusts are grantor trusts, taxation is usually just passed through to the individual's tax return. Still, a local accountant is likely necessary to comply with state and local taxes, as well as potentially with trust accounting requirements.
- **Financial Planner:** It is generally easy for financial advisors to get registered in a new state, but this should not be assumed. A new financial planner may be required in the new state. It might also just be practical to have a financial planner closer to where the trustee or beneficiary lives.
- **Nonprofit Agencies:** It is always important to know what nonprofit agencies, such as the local Arc, may exist to help with transitions.
- **Care Manager / Government Benefits Advocate / Special Education Advocate:** It is usually *not* cost-effective for an attorney to do the on-the-ground legwork to assist with an interstate transfer, which could include assisting with the move itself, finding providers and caregivers, assisting with actual benefit applications, and navigating Individualized Education Programs (IEPs) in special education or person-centered plans in adulthood. One person or group may be able to do all of this, or it might require multiple people.
- **Guardian / Agents:** A new guardian and/or agents for powers of attorney may be required in the new state.

When you build a team, it is always best to make it economical, which usually means starting with natural supports (family/friends/neighbors), then looking at nonprofit resources, and then finally paid professionals.

III. Ten Steps For A Successful Move

A. Step One: Understanding The Reason For The Move.

The first step is seemingly obvious: *Why is the beneficiary moving?* A routine move—such as a parent's job transfer, relocating closer to extended family, or a planned transition to better services usually allows time to prepare and anticipate. It also typically means that a lot of natural family support will be in place, which may not require as extensive a team in the new state.

Crisis moves, by contrast, happen with little warning. Examples include a primary caregiver's death, a sibling's sudden assumption of care, or another unexpected change that forces relocation. In these cases, the transition may need to happen quickly, and the

individual's natural support may look very different from what existed in the original state. That shift, in turn, will drive what team needs to be built to fill gaps, stabilize care, and preserve continuity of benefits and services.

B. Step Two: Gather Originating State's Benefits And Services.

As noted earlier, Medicaid does not travel well across state lines and can be like speaking a different language from state to state. Families also often lack the language to describe what the individual actually receives.

For this reason, I highly recommend that the originating state attorney (or, if that attorney is not involved, the receiving attorney) assist the individual in articulating in plain English, what services are currently being provided and avoiding Medicaid jargon if possible. This will be of immense help to the receiving attorney in advising on services in the new state.

The first step is always identifying the benefits the individual already receives. Entitlement programs such as Social Security Disability (including the Childhood Disability benefit) will travel well. However, even an entitlement like Medicare, which is a national program, requires some reassessment because new Medicare Advantage plans or Dual Eligible Special Needs Plans may be necessary.

But Medicaid is different, and a family must effectively “start over” in the new state. What families are usually most concerned about are “community living supports,” which allow an individual to avoid institutionalization. In plain English, some examples of these services can include:

- Current housing arrangements
- Daily living skills
 - Help with cooking and meal preparation.
 - Laundry and other household chores (routine or heavy cleaning).
 - Bathing, eating, dressing, grooming, and personal hygiene.
 - Shopping for food and daily necessities.
 - Cooking.
- Assistance with budgeting and paying bills
- Community participation
 - Transportation to and from community activities (but not to medical appointments).
 - Support to attend classes, volunteer, vote, or enjoy recreation (movies, concerts, parks).
 - Help with socialization and building relationships.
- Medication management and health monitoring

- Family respite hours

Clearly, if someone has been involved in a person-centered planning process, the resulting document may provide most of this information. (It is called an Individualized Plan of Service (IPOS) in Michigan.) For minors, the Individualized Education Plan (IEP) may serve as a similar function.

Again, avoid jargon. Do not say “the client receives Habilitation Supports Waiver CLS hours.” Instead, say the beneficiary “has a worker who comes over for five hours a day to assist with meals and medications.” This will significantly assist the receiving attorney in aligning the supports in the new state.

C. Step Three: Start Translating The Originating State’s Services Into The Receiving State’s Services.

We are already on Step 3, and you haven’t had me review the trust? It is too easy for attorneys to focus on what we know best (usually trust drafting and financial eligibility) and lose sight of what clients care about – the services they need in their day-to-day lives.

Additionally, many of these services have waiting lists. Therefore, it is essential to establish expected timelines upfront. This may also include helping families understand both what is currently available (which is likely less ideal) and what better services might be available in the future. Upfront candor prevents later disappointment, and you can help the family find interim supports before the ideal Medicaid services take effect.

This is also where it might be best to introduce a care manager, or someone who typically charges less than you, to work with the family to coordinate the new services that are needed. This is especially important if the beneficiary lives in a different area of your state where you are less familiar with the service offerings.

D. Step Four: Review Financial Eligibility.

Never assume that the receiving state has the same non-trust financial eligibility requirements as the originating state. Odds are they do not.

Additionally, a special needs trust has limited control over income, but Medicaid income eligibility can vary significantly from state to state.

Income

Here are some income questions to consider:

- **Is the client going from a Section 1634 state to a Section 1634 state?**

If a client has Supplemental Security Income (SSI) and is moving between two Section 1634 states, the Medicaid eligibility process should be more straightforward because both states rely on the Social Security Administration to determine eligibility through SSI. In these states, qualifying for as little as \$1 of SSI results in automatic Medicaid eligibility, which should eliminate the need for a detailed Medicaid application.

This contrasts with the eight SSI Criteria States,⁴ where a separate Medicaid application may be necessary despite SSI eligibility, and the eight Section 209(b) States,⁵ where Medicaid eligibility rules can be more restrictive than SSI standards. If a client with SSI is moving into one of these states, the receiving attorney will likely have to conduct a more thorough financial review.

- **Client receives Childhood Disability Benefits (formerly DAC) benefits. Will this be disregarded in the receiving state?** Under 42 USC §1383c(c), states must disregard any increase in Social Security benefits in determining Medicaid eligibility when a child transfers from being an SSI recipient to receiving childhood disability benefits (formerly, DAC benefits) on a parent's Social Security record. But what if the beneficiary never received SSI? States vary widely on how they handle this (which is an issue the Special Needs Alliance is trying to address).

- **If a client does not have SSI, does the client meet the incoming state's Medicaid income requirements?**

If a moving client does not have SSI, Medicaid eligibility becomes more complex. Here is a quick breakdown of three categories to consider:

- **Does the state have a “categorically needy” category above SSI?** A state may have a “categorically needy” income cap that will allow a client to obtain full Medicaid at an income level *higher* than SSI income, usually up to the Federal Poverty Level of \$1,305/month (\$338/month higher than SSI).⁶

⁴ SSI Criteria States: Alaska, Idaho, Kansas, Nebraska, Nevada, Oklahoma, Oregon, and Utah.

⁵ 209(b) States: Connecticut, Hawaii, Illinois, Minnesota, Missouri, New Hampshire, North Dakota, and Virginia.

⁶ According to the Kaiser Family Foundation, in 2025, 28 states allowed Medicaid eligibility for seniors and people with disabilities at some amount above the federal SSI rate: Alaska, Arizona, Arkansas, California, Connecticut, the District of Columbia, Florida, Hawaii, Idaho, Illinois, Indiana, Maine, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, New Jersey, New York, North Carolina, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Utah, Vermont, Virginia, and Wisconsin. Kaiser Family Foundation, Medicaid Eligibility Levels for Older Adults and People with Disabilities (Non-MAGI) in 2025 (April 7, 2025).

- **Does the beneficiary qualify for a “medically needy” program?** States can create an optional “medically needy” Medicaid category where an individual’s income is otherwise too high for “categorically needy” coverage. Instead, these individuals qualify for Medicaid coverage by spending down (i.e., reducing their income by incurring medical expenses). States that elect to cover the medically needy populations do not have to offer the same benefit package to them as they offer to the categorically needy, so it is typically less ideal.⁷
- **Does the beneficiary qualify for a Medicaid Buy-In Program?** All but three states have some form of Medicaid buy-in program for working individuals. If a beneficiary has earned income (i.e., income from working), they may be eligible for a state’s Medicaid buy-in program. These programs typically have higher Medicaid asset and income limits to encourage individuals with disabilities to participate in the workforce. If there are few other options, it is often possible to find just enough work for an individual with a disability to qualify for these programs.

This is not an exhaustive list and may also include programs related to the expansion of Medicaid (where income is based on modified adjusted gross income (MAGI)) and special income groups typically designed for older adults, which may be suitable for your beneficiary.

- **If a client has too much income, what options might you have?** If a client has too much income under the receiving state’s policies, consider:
 - Can the income be assigned to a special needs trust? See POMS SI 01120.200(G)(1)(d).
 - Can a Miller Trust be used? About half of the states allow the use of a Miller Trust under 42 USC 1396p(d)(4)(B).

⁷ According to the Kaiser Family Foundation, in 2025, 34 states have medically needy programs for individuals with disabilities. These states include Arkansas, California, Connecticut, District of Columbia, Florida, Georgia, Hawaii, Illinois, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Montana, Nebraska, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Pennsylvania, Rhode Island, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, and Wisconsin. Kaiser Family Foundation, Medicaid Eligibility Levels for Older Adults and People with Disabilities (Non-MAGI) in 2025 (April 7, 2025).

- Can you work with an advocacy organization to earn just enough income to get into a Medicaid buy-in (i.e., work) program?
- Are the state's spend down rules reasonable, and are there tricks you can do to accelerate the spend down? In some states, the spend down limits might be very reasonable to meet. Alternatively, there could be strategies to accelerate the spend down in the receiving state, such as billing at the beginning of the month or submitting unpaid bills. So even if you cannot work around a spend down, there may be tricks to minimize its impact.

If you still have an income issue, consider what options might be available in the receiving state (or were relied upon in the originating state):

Assets

Because the beneficiary has a first-party special needs trust, assets will likely be less of an issue in the receiving states. Still, every state has variations. Examples:

- Does the originating state have a higher asset limit than the receiving state?
- Was the beneficiary on expansion Medicaid in the originating state?
- Again, is the state a 209(b) that might have different rules than SSI regarding assets?
- What is the receiving state's definition of a homestead?
- Are there retirement assets that the two states treat differently?
- Are there joint assets that the two states treat differently?
- Are there any other unusual asset issues in the originating state?

E. Step Five: Will Court Supervision Need To Be Transferred?

Is the SNT currently under court supervision? If not, then in most cases, the receiving state will not require court involvement simply because the beneficiary has moved, and you can skip this step. That said, each state has its own rules, and some states have statutes or court rules that can impose supervision even where the originating state did not require supervision.

If the trust is court-supervised, the analysis changes. Courts in the originating state will generally not release jurisdiction until the receiving court has acted either by formally assuming supervision or by issuing an order confirming jurisdiction.

There is no standardized procedure for transferring a court-supervised first-party trust. Typically, the transfer process will involve:

1. Petitioning the originating court for permission to transfer the trust.
2. Providing the originating court's order to the receiving jurisdiction.
3. Petitioning the receiving court to open a file and accept jurisdiction and/or supervision.
4. Submitting the acceptance order back to the originating court.
5. Filing a final accounting with the originating court so that it may close its file.

This process can vary in detail. Additionally, for the sake of efficiency, this process should be considered in conjunction with whether the trust requires modification by a court or whether a guardianship needs to be transferred.

It is also important to distinguish court supervision from reporting obligations to a state Medicaid agency. Medicaid agencies may have their own rules regarding trust reporting and approval, but these are separate from the question of whether a court has jurisdiction over the trust itself.

Transferring a court-supervised trust can be frustratingly costly and time-intensive, so attorneys need to ensure they set client expectations early.

F. Step Six: Review The First-Party Trust And Plan For Any Modifications.

When a beneficiary moves between states, the receiving state's attorney must clearly review the first-party d4A trust and evaluate:

- Whether the trust complies with that state's statutes governing first-party SNTs (if any) and the state's general rules regarding trusts.
- Any specific Medicaid agency policies that may affect exempting the trust from Medicaid qualification and the administration of the trust.
- If moving between Social Security regions, any variations between those Social Security regions.
- Regional or local requirements, particularly in counties where court supervision may be imposed.

The last point is important. Some counties within a state have their own expectations about trust requirements. For example, Michigan as a state does not impose detailed drafting requirements on first-party special needs trust, but Kent County (Grand Rapids) has very specific guidelines. For this reason, if supervision is going to be required, it is important to

involve an attorney not only licensed in the receiving state, but also familiar with the practices of the county or region where the beneficiary will reside.

If modifications are needed, the drafting should be handled by the receiving attorney, and the process should be coordinated between the originating and receiving attorney.

The types of changes that may be required include:

- Appointing a new trustee.
- Adding provisions required by the new state.
- Updating governing law or administrative provisions.

Where the trust already contains flexible drafting provisions such as those discussed above, these modifications can often be handled efficiently with limited effort. However, if the document lacks flexibility, other tools may be necessary. Options include:

- **Nonjudicial settlement agreements.** Under the Uniform Trust Code and in most states, a nonjudicial settlement might be an option to change certain provisions of the trust. This will, however, be limited to the types of revisions authorized explicitly by the state's nonjudicial settlement agreement statute. Additionally, a revision through a nonjudicial settlement agreement may not allow you to present a clean trust to a government agency for review.
- **Decanting.** Decanting, if permitted by your state, may allow you to have the best of both worlds: a clean trust for the receiving state without court involvement. But be careful! The concern with decanting is that, in most states, it effectively terminates a trust and pours those assets into a new trust. Remember, if a first-party trust terminates, it could trigger early termination, which would result in a Medicaid payback.

Luckily, in 2020, the Social Security Administration seems to allow a first-party decanting:

POMS SI 001120.199.D.7: Decanting

Trust decanting generally refers to the distribution or transfer of trust property from one trust to one or more other trusts, usually with more favorable terms. Decanting may involve the early termination of the first trust, or the effect of decanting may be materially the same as the effect of an early termination. In such a situation, ***we generally evaluate the decanting provision under the instructions on early termination in this section. However, decanting can***

be complex and can vary depending on applicable State law. It may be appropriate for the RO to seek input from OPLaw.

POMS SI 001120.199.E.2: Exception for transfers to a secondary trust upon early termination

An early termination provision in a section 1917(d)(4)(A) special needs trust or section 1917(d)(4)(C) pooled trust does not need to meet the above criteria if the provision allows ***solely for a transfer of the beneficiary's assets to a secondary section 1917(d)(4)(A) or section 1917(d)(4)(C) trust of which the same individual is the beneficiary.***

The early termination provision must contain specific limiting language that precludes the early termination from resulting in disbursements other than to the secondary section 1917(d)(4)(A) or section 1917(d)(4)(C) trust or to pay for the administrative expenses listed in SI 01120.199E.3 in this section and in SI 01120.201F.4.

It does seem that you can decant a first-party SNT. But as the POMS says, decanting “can be complex” and therefore risky. It may be better to do a court modification.

- **Court modification.** The gold standard remains court modification. With a court modification, you can likely restate the trust in a manner acceptable to the receiving state without issue. And if the trust is supervised and will require court petitions anyway, it probably is not much additional cost to ask for a modification.

Pooled trusts under 42 U.S.C. § 1396p(d)(4)(C) generally present fewer complications when a beneficiary moves to another state. For clients likely to move frequently, this may be a reason to recommend a pooled trust rather than a standalone d4A trust.

G. Step Seven: Does Legal Authority Over The Beneficiary Need To Be Transferred?

When a beneficiary relocates to a new state, one of the most significant questions is whether existing legal authority arrangements (i.e., guardianships, powers of attorney, or supported decision-making agreements) will need to be recognized or recreated.

Guardianship Transfers

If the beneficiary is subject to a guardianship, all but three states (Texas, Michigan, and Florida) have adopted the Adult Guardianship and Protective Proceedings Jurisdiction Act (UAGPPJA). In those states, the typical process involves:

1. Petition in the originating state and get a provisional order of transfer.
2. With the provisional order, petition the receiving state to accept the transfer.
3. The originating court then issues a final order terminating jurisdiction, and the receiving court issues a final order accepting jurisdiction.

In non-uniform states, however, no consistent process exists and the originating and receiving attorneys will have to work together on the transfer.

Powers of Attorney and Healthcare Documents

Although powers of attorney for finances and health executed in one state should, in theory, be valid in another under principles of full faith and credit, the practical reality is different. Local hospitals, banks, and service providers are far more likely to accept documents prepared under their own state's laws. Best practice, therefore, is to execute new powers of attorney and healthcare documents promptly after relocation.

Supported Decision-Making Agreements

Most states now have statutes governing supported decision-making arrangements, and yet there is almost no uniformity between the states! Thus, it is probably increasingly crucial for the originating and receiving attorneys to include support decision-making arrangements in their transfer discussions. What is being done in the originating state, and what might be required in the receiving state? In some states, probate courts will require proof that supported decision-making was attempted before granting a new guardianship.

H. Step Eight: Plan For Costs And Gaps In Transitions.

Even in the best-planned moves, there are almost always costs beyond the routine expenses of daily living. Substantial trust assets will often be needed for transition expenses. These typically include the direct costs of moving (transportation, packing, and relocation), professional fees (such as attorneys, care managers, and possibly court costs for guardianship or trust supervision transfers), and short-term funding of services while the beneficiary waits for new state programs to commence.

One of the realities to prepare families for is the near-universal challenge of service gaps. As emphasized, Medicaid services do not automatically transfer between states, and each new application requires its own approval process.

Planning for the gap requires addressing several considerations:

- **Waitlist duration:** How long before services are likely to begin in the new state? Some waivers maintain years-long waitlists.

- **Interim care arrangements:** Who will provide day-to-day support during the gap?
- **Financing strategy:** How will these interim services be funded? Is there family that will be providing additional financial or time support? Does the trust hold sufficient resources to bridge an extended gap in supports?

Medicaid can, of course, be retroactive for up to three months (to be reduced to two months under the Big Beautiful Bill). While this might help with medical expenses, it does little to get community living supports.

In practical terms, a transition often means that the trust is called upon to bear the financial burden. Attorneys should prepare families for this reality from the outset, ensuring realistic expectations regarding budgeting and the appropriate use of care managers.

I. Step Nine: Advise On Ongoing Administration.

Once the transfer of services has been completed and eligibility in the receiving state is secured, the receiving attorney's work is not finished. Clients must be advised on the ongoing administration of the trust and clarifying the scope of the attorney's role going forward.

Invariably, the receiving state's rules are going to be different than the originating state's rules. Even though a client may have been managing a first-party special needs trust for years, you cannot assume they are familiar with navigating administration in the new state. Clients need explicit advice on what to expect, particularly in relation to supervision and reporting requirements. Some states impose strict reporting obligations, including mandatory accountings to the Medicaid agency, while others are more hands-off.

Your approach will also depend significantly on the sophistication of the trustee. A sophisticated trustee with numerous first-party special needs trusts in the state will likely require minimal handholding, whereas a family member trustee will likely require more support.

Here, you, as the receiving attorney, need to decide if you are "in" or "out" of the representation, and make it clear to the client what you will be doing. Being "half in" is dangerous.

If you are "in," you will need to develop a system to track ongoing administration. This is not your typical administration. First, there's no definitive end date. Second, you must ensure that both your state's trust laws and government benefit rules are followed. In other words, you have to track both trust and Medicaid accounting and reporting requirements.

If you are “out,” you need to ensure that you clearly end the engagement. Because misunderstandings in this area can easily lead to client dissatisfaction or liability exposure, attorneys should consider providing a standardized letter or memo that outlines common pitfalls in ongoing trust administration before closing the file.

J. Step Ten: Minimize Payback And Estate Recovery.

Minimizing the potential state payback and/or estate recovery is frequently overlooked when dealing with a first-party special needs trust that includes a payback provision. Nevertheless, we cannot assume that the rules in the originating state will be the same in the receiving state, so common strategies need to be evaluated.

Some common considerations:

- Is there a house, and if so, are there strategies to avoid payback or minimize exposure under the receiving state’s estate recovery rules? (Also, are there strategies to give homestead property tax exemptions?)
- Has a prepaid funeral been purchased? (States vary on how strict they are on paying for a funeral before the payback, although you should always assume the state will be very strict and not allow it.)
- How should vehicles be titled (and insured) to remain compliant given the driver is usually different than the beneficiary?
- Does the receiving state have specific rules on caregiver contracts if the trust will pay for personal care?
- Does the state allow distributions from a first-party trust to an ABLE account regularly?

These are common issues, but this list is by no means exhaustive. Reviewing this with your client will ensure there are no unexpected surprises as different rules may apply in the originating state.

IV. Practical Tips For Your Practice

1. Build *YOUR* Team. I have emphasized the importance of building a team for the beneficiary, but you also need to start building your own team. Again, any attorney can market special needs planning by drafting a trust. What separates advanced practitioners is their ability to provide truly holistic services.

No attorney can know everything. Special needs planning is surprisingly nuanced and complex. That is why you must surround yourself with trusted professionals, whether you hire them internally or develop relationships with them externally. You will need:

- Care managers.
- Accountants who understand trust accounting.
- Special education experts.
- Adult community living supports advocates.
- Benefits specialists.
- Local nonprofit organizations (e.g., your local Arc).
- Administrative hearing experts.
- Social Security disability specialists.
- Quality financial planners.
- Professional guardians.

This is surely not a comprehensive list. Some of this can be done in-house. But I am not aware of any firm that can do all of this. You want to be the quarterback and the go-to resource for families. That requires having a team ready to handle most anything that comes your way.

2. **Respect Jurisdictional Boundaries.** Nothing frustrates a receiving attorney more than an originating attorney who undertakes all the work and then requests a quick review from the receiving attorney. Your role is to guide the client to a strong receiving attorney. The receiving attorney is licensed in that jurisdiction and will bear the legal liability for the work. They will also be responsible for the client's long-term needs in the new state. Stay in your jurisdictional lane. There is more than enough work to go around. By respecting boundaries, you will not only build better professional relationships but also gain valuable insights along the way.

3. **Outline the Plan in Advance.** In breaking down steps, I do not mean to suggest there is a strict sequence. In practice, the more effective approach is to review all steps upfront and develop a basic outline addressing all the stages. Some steps may require little or no attention, while others will need significant focus. By outlining everything in advance, you can identify efficiencies such as combining court appearances or selecting the right care management advisor.

Also, this presentation is an idealized world. In the real world, families and trusts are working with limited resources. By outlining everything in advance, you can allocate time and money where they matter most.

4. Manage Expectations Carefully. Families already know that moving is stressful, but most do not appreciate how complicated it is to move Medicaid and the accompanying services to a new state. Families should be frustrated. Attorneys should sympathize, but be candid about the time, cost, and potential challenges up front. Under-promise and over-deliver. If the client still does not understand the time and cost, this may not be the right client for you.

5. Differentiate Yourself Through Community Medicaid Expertise. For attorneys new to this field, one of the most effective ways to distinguish yourself is by developing a deep understanding of the labyrinth of adult community living services under Medicaid. Too few special needs attorneys dedicate the time to learn about these programs available, the governing regulations, and the appeals processes. This work is considerably more complex than nursing home planning, which is why too few attorneys undertake it, and precisely why there is a demand for knowledgeable advocates.

The children of baby boomers are now adults, and the combination of government funding pressures and a caregiver shortage has become a serious national humanitarian concern. By understanding this area, you stand to help desperate clients, set yourself apart in the special needs legal profession, and contribute to a better system for all.