

Special Needs Trusts and Planning Alternatives

Gregory L. Kenyon

Bradshaw, Fowler, Proctor & Fairgrave, P.C.

Sponsored by the HOA Fellows Institute
Kansas City Program
November 30, 2018

Methods of Payment for Long-Term Care

Three ways to pay for long-term care:

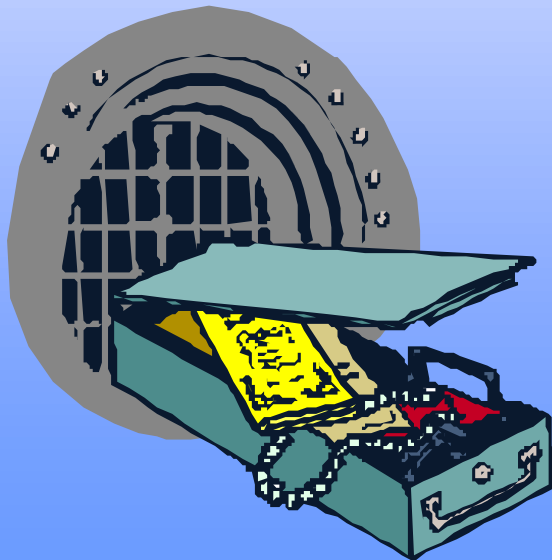


- Private financial resources and income
- Long-term care insurance
- Governmental assistance such as Medicaid (Title XIX)

Eligibility for Medicaid

Eligibility for Medicaid is based on:

- Age or disability
- Financial eligibility



Noncountable Resources

- Home
- Auto
- Household goods
- Health aids
- Prepaid burial
- Life insurance - limited to \$1,500 death benefit
- Assets used for self support



Noncountable Resources (cont'd)

- Annuities which satisfy Medicaid regulations
- Special Needs Trusts under 42 U.S.C. § 1396p(d)(4)(A)
- ABLE Trust Savings Account

Planning Worksheet

Income	Resources	Noncountable Resources
Pension	Cash, investments, etc.	Home, household goods, health equipment, auto, prepaid burial accounts, ABLE accounts, Special Needs trusts, Medicaid qualified annuity
Social Security		
SSI Eligibility	SSI Eligibility	
XIX Eligibility	XIX Eligibility	

Using Trusts in Long-Term Care Planning

Revocable Trust - no value for eligibility but may be of value for management of assets and other traditional trust purposes

Non-Revocable Trust - if established prior to the lookback period, only actual distributions from a trust will be counted

OBRA 1993 Trusts

- ➔ Special Needs Trusts
- ➔ Charitable Foundation Trusts
- ➔ Income Assignment Trusts (Miller Trusts)

COMMON CHARACTERISTICS

A “self-settled trust” must meet OBRA 1993 requirements in order for an individual to be eligible. On the death of the individual, any remaining portion of the trust must be paid to the payor’s state to reimburse it.

Special Needs Trust Attributes

Type	Statutory Authorization	Who Establishes?	Whose Funds?	Payback Provision	Age Limit	Frequently Used For
Payback Trust	42 U.S.C. § 1396p (d)(4)(A)	Parent Grandparent Legal Guardian Court Individual	Individual with Disability	Yes	Funded by 65	Personal injury settlement or inheritance
Qualified Income (Miller Trust)	42 U.S.C. § 1396p (d)(4)(B)	Individual	Pension, Social Security, etc., plus earned income of Individual with Disability	Yes	No	To qualify for Medicaid in Income Cap States
Pooled Trust	42 U.S.C. § 1396p (d)(4)(C)	Parent Grandparent Legal Guardian Court Individual	Individual with Disability	Depends on Joinder Agreement	No, but penalty period if 65 or older in some states	Smaller amounts of personal injury settlements or inheritance
Third-Party SNT	Not Specifically Authorized	Third-Party (Not Individual)	Third-Party (Not Individual)	No, but estate recovery must be addressed	No	Parent planning for child Testamentary gift to disabled individual; Coordinate testamentary gifts

Special Needs Trust Attributes

Type	Statutory Authorization	Who Establishes?	Whose Funds?	Payback Provision	Age Limit	Frequently Used For
Payback Trust	42 U.S.C. § 1396p (d)(4)(A)	Parent Grandparent Legal Guardian Court Individual	Individual with Disability	Yes	Funded by 65	Personal injury settlement or inheritance

Special Needs Trust Attributes

Type	Statutory Authorization	Who Establishes?	Whose Funds?	Payback Provision	Age Limit	Frequently Used For
Qualified Income (Miller Trust)	42 U.S.C. § 1396p (d)(4)(B)	Individual	Pension, Social Security, etc., plus earned income of Individual with Disability	Yes	No	To qualify for Medicaid in Income Cap States

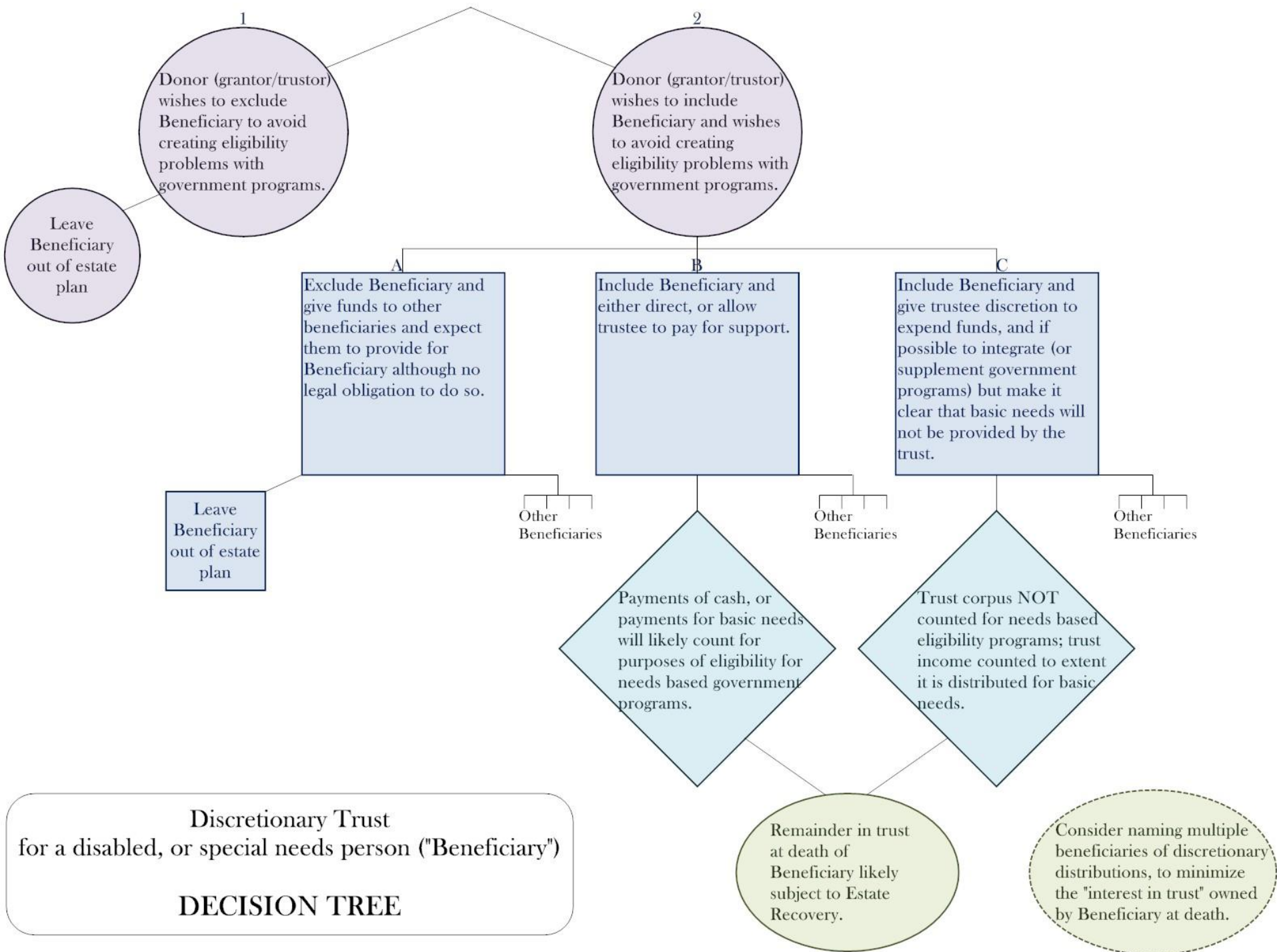
Special Needs Trust Attributes

Type	Statutory Authorization	Who Establishes?	Whose Funds?	Payback Provision	Age Limit	Frequently Used For
Pooled Trust	42 U.S.C. § 1396p (d)(4)(C)	Parent Grandparent Legal Guardian Court Individual	Individual with Disability	Depends on Joinder Agreement	No, but penalty period if 65 or older in some states	Smaller amounts of personal injury settlements or inheritance

Special Needs Trust Attributes

Type	Statutory Authorization	Who Establishes?	Whose Funds?	Payback Provision	Age Limit	Frequently Used For
Third-Party SNT	Not Specifically Authorized	Third-Party (Not Individual)	Third-Party (Not Individual)	No, but estate recovery must be addressed	No	Parent planning for child Testamentary gift to disabled individual; Coordinate testamentary gifts

Husband's Income (IS)	Wife's Income (CS)	Countable Resources		Noncountable Resources
SS & Pension \$1,500 This is less than income eligibility limit	SS & Pension \$900	Cash, investments, etc. \$150,000		Home, household goods, health equipment, auto, prepaid burial accounts Special Needs Trust Annuities which satisfy Medicaid regulations
	Minimum monthly Needs allowance is \$3,090	Attribution: Divide countable resources equally between IS and CS, so IS will be allocated \$75,000	CS will also be allocated \$75,000	
		Eligibility will be granted when IS has countable resources of \$2,000 or less. Spend down of IS resources is necessary.		
		Spend down options: (1) Pay for care and living expenses; (2) Pay down debt; (3) Pay for services; (4) Purchase noncountable resources including annuity which meets regulations; (5) Consider special needs trust CS The result reduces IS resources to \$2,000	CS retains countable resources of \$75,000 CS retains resources of \$75,000	Resulting in: Debt is reduced; Burial funds purchased; Annuity purchased for benefit of CS



Thank you
for your kind attention.

Gregory L. Kenyon

Bradshaw, Fowler, Proctor & Fairgrave, P.C.