

19TH ANNUAL CHANGES & TRENDS AFFECTING SPECIAL NEEDS TRUSTS

UNIVERSITY OF TEXAS CLE
FEBRUARY 9-10, 2023
AUSTIN, TX

1

CHALLENGES FROM THE SNT FAIRNESS ACT — ASSESSING CAPACITY

Presented by:
Mary Alice Jackson
Boyer & Boyer, P.A.
Sarasota, FL

2

TODAY'S PRESENTATION



WHAT WAS THE
PROBLEM?



WHY DID IT MATTER?



HOW WAS IT SOLVED?



WHAT NEW ISSUES
WERE RAISED WHEN
THE SOLUTION WAS
FOUND?



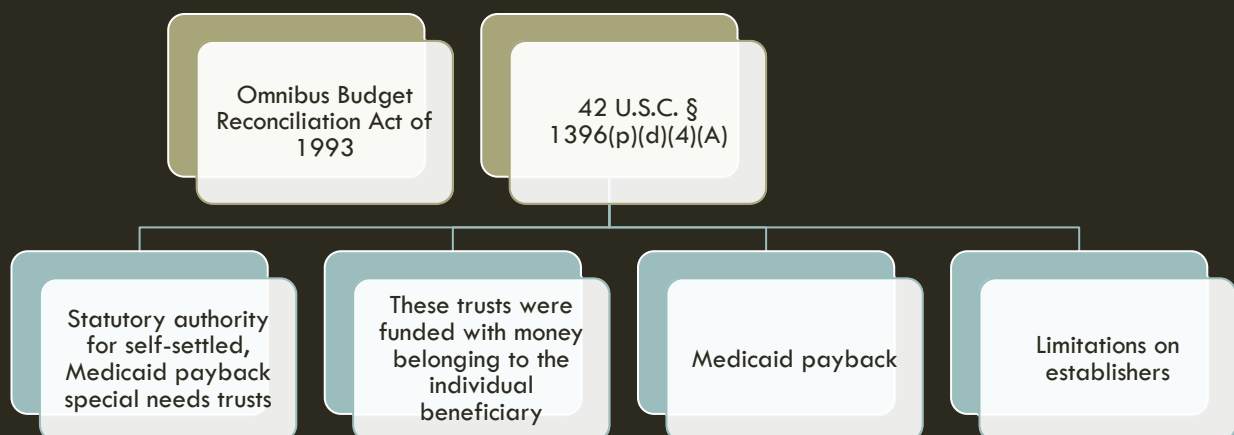
HOW DO WE ADDRESS
THE NEW CHALLENGES?



THE ETHICAL DILEMMAS
FACED BY THE
PRACTITIONER.

3

WHAT WAS THE PROBLEM



4

A trust containing the assets of an individual under age 65 who is disabled...and which is established for the benefit of such individual by a *parent, grandparent, legal guardian of the individual, or a court...*”

PROBLEMATIC LANGUAGE

5

42 U.S.C. § 1396P(D)(4)(C)

Pooled Special Needs Trusts
Single Master Trust
Agreement
Establishers sign a “Joinder Agreement”

D (4) C Accounts in the trust are established solely for the benefit of individuals who are disabled (as defined in section 1396p(d)(2)(A) of this title) by the parent, grandparent, or legal guardian of such individual, by such individual, or by a court.

(iii) Accounts in the trust are established solely for the benefit of individuals who are disabled ...by the parent, grandparent, or legal guardian of such individuals, **by such individuals**, or by a court.

What's right with this picture?

(iii) Accounts in the trust are established solely for the benefit of individuals who are disabled (as defined in section 1396p(d)(2)(A) of this title) by the parent, grandparent, or legal guardian of such individual, by such individual, or by a court.

(iii) Accounts in the trust are established solely for the benefit of individuals who are disabled (as defined in section 1396p(d)(2)(A) of this title) by the parent, grandparent, or legal guardian of such individual, by such individual, or by a court.

6

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](https://utcle.org/elibrary)

Title search: Hazards of the Special Needs Trust Fairness Act – Assessing Beneficiary Capacity to Establish a SNT

Also available as part of the eCourse

[2023 Special Needs Trusts eConference](#)

First appeared as part of the conference materials for the

19th Annual Changes and Trends Affecting Special Needs Trusts session

"Hazards of the Special Needs Trust Fairness Act – Assessing Beneficiary Capacity to Establish a SNT"