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Sole Benefit Trusts

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Sole Benefit Trust Template

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I. Introduction

Magdalena came to my office needing placement. [1]. She was skeptical. After all, she took care of her daughter, Dianda, in the home they shared. It wasn't just that Magda wouldn't be there to take care of Dianda- after all, there was the care-giver Dianda had through CLASS, and her sister came by every evening to get Dianda into bed. It's that Magda filled in all the gaps, no one knew Dianda better than her, and, most importantly, Magda paid for everything Dianda really needed. After all, Dianda only had a small income from the Childhood Disability Benefits (CDB) she received from her late father's work history.

"I can't let Dianda go without," Magda told me when I explained to her that her nursing home bill would be $7,000/monthly or we could get her Medicaid benefits. Magda knew that Medicaid would require her to have less than $2,000 in total countable resources. She'd been doing Dianda's Medicaid applications year after year, hadn't she? She just was not going to stay in a nursing home if it meant that Dianda wouldn't have the financial support to continue living in the home with all the help she needed. This was non-negotiable.

When Magda came to me with this problem, she already had a third-party settled special needs trust drafted for Dianda. The trust was to be funded on Magda's death. Being no dummy, and having been through the SNT primers and research, Magda wanted to just put all her excess funds into that third-party settled SNT and be done. I had to be the bad guy who told her no. I had to tell her that while third-party settled special needs trusts are excellent and useful devices, they are not a panacea for all the potential issues that might arise when a parent with a child with special needs needs care for themselves.

Fortunately, Magda didn't have to check herself out of the nursing home and go without the care she needed. Through the use of a sole benefit trust, we were able to ensure that Dianda was taken care of financially and Magda still obtain long-term care Medicaid benefits to pay for her care in the nursing facility. These underutilized trusts can be a game changer in these kinds of situations, and you too can be a hero to your clients by allowing them to get the care they need while protecting their adult children with disabilities.

II. The Problem

Most clients with family members with disabilities are like Magda. They want to ensure that their loved ones are provided for when they pass away or are no longer able to provide care for the child(ren). When the parent requires long-term care, that care is expensive. Even for people with significant available funds, paying privately for care can result in penury in

[1] Names and identifying details changed for client privacy, of course.

short order. HHSC calculates the average cost of care in Texas at $242.13/day or $88,330/annually. [2]. That is only the average cost of care. Prices vary depending on location. In my own practice, I've seen people at facilities that run to $600/day or $219,000/annually. Paying these fees can easily cut into or completely deplete the funds parents intend to leave for their children with disabilities.

Medicaid is often the best way to go then. Using Medicaid allows the client to pay only their monthly income less certain allowed deductions to the facility while Medicaid picks up the remaining cost of care. [3]. Medicaid, though, has strict resource limits. For a single person, that limit is $2,000 in 2025. [4]. [5]. There are, of course, exceptions as to what counts toward that $2,000 resource limit, a discussion of which is, by and large, beyond the scope of this paper. [6]. Most people needing long-term care Medicaid benefits, then will need to spend down to bring their resources to below the resource threshold.

Spending down can be done in a number of ways. It can be passively done by just paying the nursing facility until the person runs out of money. It can be aggressively done by purchasing exempt items, like homesteads, cars, and pre-need funeral plans. It cannot, in most cases, be done by making gifts, though.

Gifts presumptively trigger penalties if made within the five years leading up to a Medicaid application or anytime thereafter. [7]. In the context of nursing home Medicaid benefits, the transfer penalty is assessed by taking the total amount transferred, dividing it by the average cost of care per day in Texas, and beginning a penalty period on the first day of the

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[2] Medicaid for the Elderly and People with Disabilities Handbook Appendix L https://www.hhs.texas.gov/handbooks/medicaid-elderly-people-disabilities-handbook/appendix-l-2024-income-resources-reference-chart

[3] Except where indicated by gender specific antecedents, this paper uses the gender neutral they/their. It is both linguistically simpler and more inclusive.

[4] 42 U.S.C. §1382b(a)(3)(B) https://uscode.house.gov/view.xhtml?req=(title:42%20section:1382b%20edition:prelim) and Medicaid for the Elderly and People with Disabilities Handbook §F1300 https://www.hhs.texas.gov/handbooks/medicaid-elderly-people-disabilities-handbook/f-1300-resource-limits

[5] That amount has not changed since 1989 and is not currently set to change. The SSI Savings Penalty Elimination Act would increase the resource limit to $10,000 and then adjust it for inflation in subsequent years. That bill is not currently proceeding in Congress and may not be a priority for the 119th congress.

[6] The usual things are exempt, like a home (Medicaid for the Elderly and People with Disabilities Handbook §F-3000 https://www.hhs.texas.gov/handbooks/medicaid-elderly-people-disabilities-handbook/f-3000-home), a vehicle (Medicaid for the Elderly and People with Disabilities Handbook §F-4221 https://www.hhs.texas.gov/handbooks/medicaid-elderly-people-disabilities-handbook/f-4200-nonliquid-resources), but for a more complete listing of exemptions, you'll need to look at the entirety of Medicaid for the Elderly and People with Disabilities Handbook Chapter F.

[7] 42 U.S.C. §1396p(c) https://uscode.house.gov/view.xhtml?req=(title:42%20section:1396p%20edition:prelim) and Medicaid for the Elderly and People with Disabilities Handbook §I-1200 https://www.hhs.texas.gov/handbooks/medicaid-elderly-people-disabilities-handbook/i-1200-overview-transfer-assets

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