

# 19<sup>TH</sup> ANNUAL CHANGES & TRENDS AFFECTING SPECIAL NEEDS TRUSTS

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## CHALLENGES FROM THE SNT FAIRNESS ACT — ASSESSING CAPACITY

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# 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?

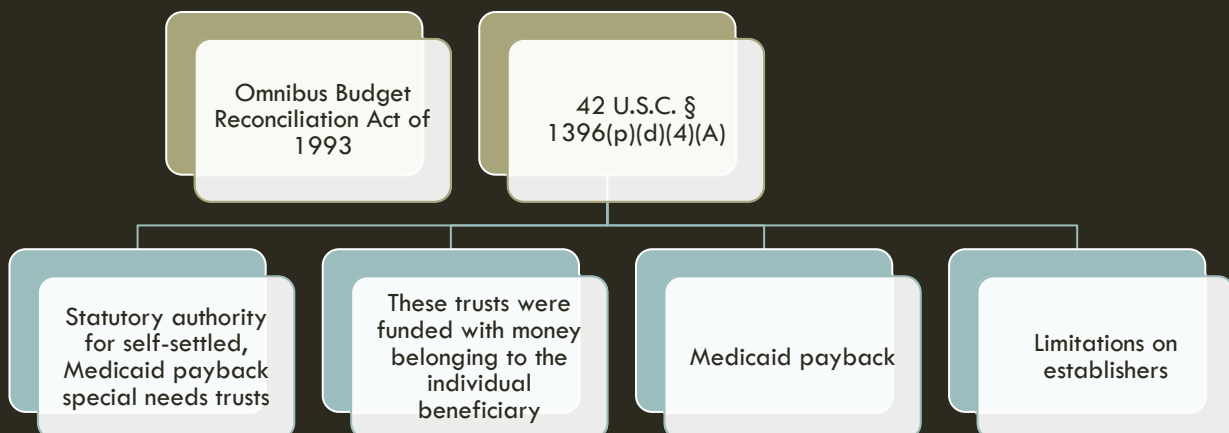


HOW DO WE ADDRESS THE NEW CHALLENGES?



THE ETHICAL DILEMMAS FACED BY THE PRACTITIONER.

## WHAT WAS THE PROBLEM



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

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### 42 U.S.C. § 1396P(D)(4)(C)

Pooled Special Needs Trusts

Single Master Trust

Agreement

Establishers sign a “Joinder Agreement”

(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?*

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## 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  
19<sup>th</sup> Annual Changes and Trends Affecting Special Needs Trusts session  
"Hazards of the Special Needs Trust Fairness Act - Assessing Beneficiary Capacity to  
Establish a SNT"