



FLEMING & CURTI PLC

Special Needs Planning

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“Disability”

- Social Security
 - Adult: inability to perform ‘substantial gainful activity’
 - Minor: ‘marked and severe functional limitations’
- Diagnosis: necessary but not sufficient
- (For comparison: Americans with Disabilities Act might cover 1 in 4 adults)

Means-tested

- Insurance model: Social Security Disability (and Dependent Adult Child benefits) (SSD/SSDI, DAC), Medicare
- Social model: Veterans medical benefits, Indian Health Services
- “Welfare”/poverty model: Supplemental Security Income (SSI), Medicaid (AHCCCS/ALTCS), housing assistance (§8), Temporary Assistance for Needy Families (TANF), etc

Assets and Income

- SSI/Medicaid rules:
 - Asset limitation of \$2,000 “available” (plus house, car, personal effects, etc), but some variation by state
 - Income limits vary more by program and state
- NO resource (asset or income) test for SSD/SSDI or Medicare
- Different and quirky rules for other programs

Public Benefits Primer (Disabled Beneficiary)

- Social Security Disability Insurance (SSD / SSDI)

- Covered by Social Security, and
- Unable to perform any substantial gainful activity (\$1,690/mo)

- Medicare

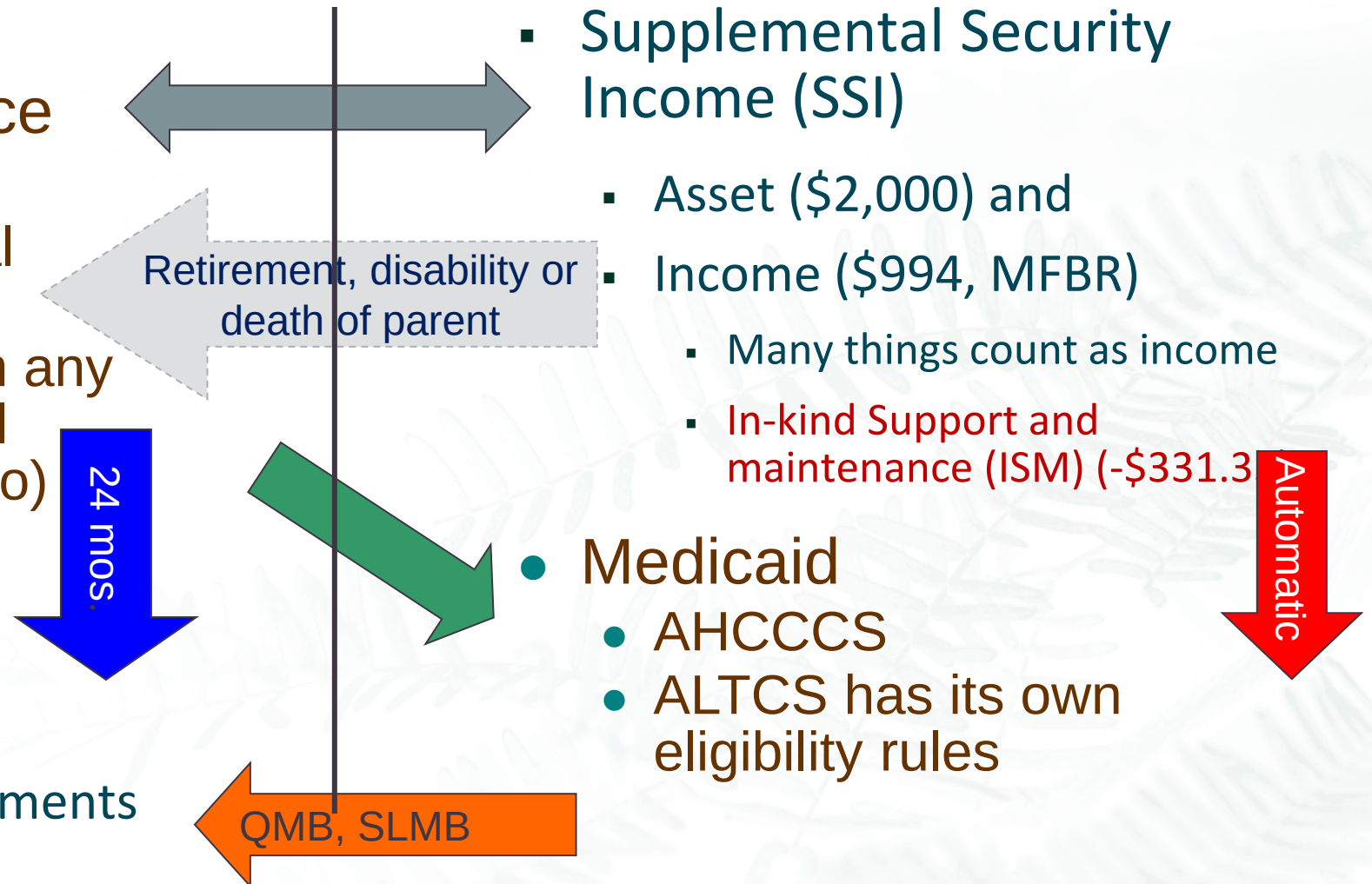
- No long-term care
- Premiums, co-payments and deductibles

- Supplemental Security Income (SSI)

- Asset (\$2,000) and
- Income (\$994, MFBR)
 - Many things count as income
 - In-kind Support and maintenance (ISM) (-\$331.3)

- Medicaid

- AHCCCS
- ALTCS has its own eligibility rules



The TWO Kinds of SNTs

1. Third-party SNT – funded with third-party's funds, created by third-party (not necessarily same person)
2. Self-settled SNT – funded with beneficiary's funds (including by representative), regardless of establishor
3. Pooled trusts – could be self-settled or third-party
4. “Miller” trusts – ONLY relevant for income in Medicaid cases
5. “Sole benefit” trusts – rare hybrid

Estate Planning Considerations (3rd-party)

- Universal savings language for unknown disability
- Trustee should have broad discretion, avoid distribution standards
- No need to be hyper-restrictive
- Include ABLE Act authority
- Flexibility: trust protector, power to amend, description of material purpose
- It's all about trustee selection

Administering a SNT

- Know the beneficiary: living situation, supports, routines and, yes, benefits
- Document, document and document
- The perfect trustee and the multidisciplinary practice
- Payback provision $\equiv$ state as remainder beneficiary
- Read the trust. Again. Also next year

Distributions and Benefits

- Avoid cash distributions
- Understand SSI's ISM rules
- True Link / administrator-managed prepaid cards help
- Travel is surprisingly easy: airfare, hotels, meals
- When beneficiary “graduates” SSI/AHCCCS → SSDI/DAC rules may change

Accounting, Reporting and Payback

- Trust accounting rules still apply
- Self-settled SNT: AHCCCS is a beneficiary, not just a creditor
- Annual AHCCCS reporting (DE-312/313 for “special treatment” trusts) and acknowledgment (DE-522)
- Payback triggered by “termination” – which AHCCCS defines differently from you
- Multiple-state payback → apportionment

Alternatives to SNTs

- Benefits not means-tested? Perhaps do nothing
- Spend down or convert to exempt resources
 - Pay off legitimate loans (not family “loans”)
 - Fix house, buy car
 - Direct payments to vendors
- ABLE account

ABLE Accounts: Key Points

- IRC §529A account “owned” by the beneficiary
- Disability onset before 46 (used to be 26)
- One account per beneficiary
- Annual total contribution limit (\$20,000 in 2026)
- Medicaid payback, but with some state variations (no variation in Arizona)
- \$100K balance suspends SSI but not AHCCCS/ALTCS

Better Together: ABLE + SNTs

- ABLE is not a mini-SNT
 - SNT for management, protection, larger assets
 - ABLE for autonomy, immediacy, fewer transactions
- SNT can fund ABLE account, whether 3rd or 1st party
- Housing payments through ABLE can avoid ISM problems

Taxation Issues

- Self-settled SNTs are *always* Grantor Trusts
- 3rd party SNTs might be Grantor Trusts *to the grantor* if still living
- Qualified Disability Trust (IRC §642(b)(2)(C)) status might reduce tax liability
- Retirement accounts, “eligible designated beneficiary” status and multi-beneficiary trusts

Planning Principles

- Identify the actual problem
- Match the tool(s) to the problem
- Build in flexibility
- Choose the right fiduciary
- Then administer the trust like the beneficiary matters