

# Estate and Trust Planning For Relatives of Family Members With a Developmental Disability

**Stewart Home School**

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# APPROACH TO ESTATE PLANNING

- Analyze Your Assets
- Analyze Your Family Situation
- Discuss Your Goals
- Consider Any Tax Planning Needs

# COMMON DOCUMENTS IN ESTATE PLANNING

- Wills
- Trusts
- Powers of Attorney
  - Guardianship as Alternative
- Living Will/Health Care Surrogate
- HIPAA (Health Care Privacy) Release



# OTHER THINGS TO CONSIDER

- Beneficiary Designations
  - Life Insurance
  - Retirement Accounts
  
- Transfers on Death
  
- Title on Assets
  
- Special Planning for those with a Developmental Disability
  - Special Needs Trusts

# Why Consider a Special Needs Trust?

- Failure to do so may cause loved one to lose
  - SSI
  - Medicaid
  - Other Government Assistance or Grants

# Government Benefits

- SSDI
  - Unable to do any substantial gainful activity due to disability
- Medicare
- Means tested
  - Medicaid
  - SSI



# Medicaid Covered Services

- Long-term care
- Physician services
- Hospital
- Adult day care
- Home health care



# Medicaid Overview

- Federally based
- Limited state resources
- Administered through state or county agency
- Federal minimum standards, but states allowed flexibility



# Estate Planning Options/ 3rd Party SNTs

- Disinherit
- Gift to child with disabilities
- Distribute to sibling
- Supplemental Needs Trust (a/k/a 3<sup>rd</sup> Party SNT)

# Third Party Special Needs Trust

- Protects resources without sacrificing government benefits
- Wholly discretionary trust
- Individual with disabilities must be sole beneficiary of trust during her lifetime

# Third Party Special Needs Trust

- No payback requirement
  - Can direct corpus at death of beneficiary to any individual
- No age limit



# Trustee's Discretion

- Sole, absolute and unfettered discretion
- Income and principal
- No support standard
- Beneficiary – no right to compel
- Express intent
- Emergency clause

# Funding Third Party SNT

- Life Care Plan
- Life Insurance
  - ILIT
  - Crummey Powers
  - Beneficiary Designations

# First Party Special Needs Trusts For:

- Unplanned Inheritance
- Personal Injuries
- Matrimonial Action
- Etc.



# First Party Special Needs Trusts Options:

- Accept the money
- Transfer
- Spend down
- Pooled trust
- Self settled SNT

# 42 USC 1396p

- First Party Special Needs Trust
  - (d)(4)(A) trust
  - Payback trust
  - First-party trust
- Pooled Special Needs Trust
  - (d)(4)(C) trust



# First Party and Pooled Special Needs Trusts

- Disregarded as available income and resources
- No SSI or Medicaid penalty period
  - Contributions after age 65 are subject to transfer penalty provisions

# Special Needs (d (4)(A) Trusts

- Established by the individual's parent, grandparent, legal guardian or court (Also see KRS 387.855 - .910)
- Created with the assets or income of the individual with disabilities when under age 65
- Inheritance
- PI lawsuit
- Matrimonial action

# Why Create a d(4)(A) Trust?

- Reimbursement is only for Medicaid, not all public benefits
- Reimbursement is based on actual Medicaid expenditures, not prevailing market costs
- No interest
- Some services not readily available in the private market

# Pooled Trust

- Non-profit 501(C)(3) organization as trustee
- Must be irrevocable
- Beneficiary may be any age
- Medicaid asset transfer issue after age 65



# Pooled Trust

- Created and managed by non-profit association
- May be established by the individual
- Separate accounts maintained for the benefit of individuals with disabilities
- Modified payback provision

# New Kentucky Statutes (Effective July 12, 2012)

- KRS 387.855 – 387.910
- Broad flexibility for Requesting “Court” to establish SNT for disabled person

# Potential Reductions of SSI

- Generally, paying for Food or Shelter may reduce SSI, but SSI may only be reduced a maximum of \$236.67 per month
- First \$20 of SSI is an allowance
- Unearned income/Cash (or cash equivalents) given to beneficiary reduces SSI dollar-for-dollar
- First \$65 of earned income is exempt
- Then, every \$2 of (gross) earned income reduces SSI by \$1

## **Effect:**

Person may earn up to \$1,500 per month and still receive at least \$1 SSI

- SSI yields auto Medicaid eligibility
- See attached article

# Example Uses of SNT Funds:

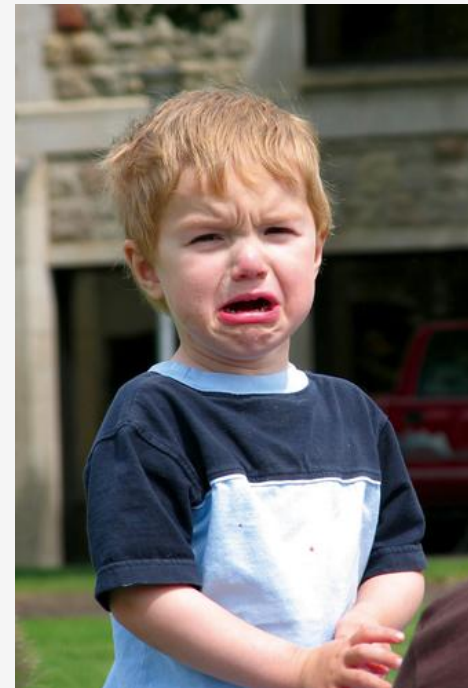
- Out-of pocket medical and dental expenses
  - medical equipment not provided by Medicaid
  - eyeglasses
  - exercise equipment
  - annual independent checkups
  - transportation
  - motor vehicles
  - vehicle maintenance
  - vehicle insurance premiums
  - life insurance premiums
  - physical rehab. services
  - essential dietary needs
  - materials for hobbies
  - tickets for rec. & cultural events
  - musical instruments
  - costs related to attending meetings
  - memberships in book, health, etc. clubs
  - home improvements
  - computers, etc.
  - cable TV
  - telephones, TVs, radios
  - cameras
  - trips and vacations
  - visits to friends
  - entertainment
  - newspaper & magazines
  - athletic training & comp.
  - personal care attendants
  - voc. rehab. or hab.
  - professional services
  - tuition & related exps.
  - cosmetics
  - conferences & seminars
- **Key: Pay directly to providers; not to Beneficiary or in reimbursement of Beneficiary.**



# Moral of Our Story

- If you FAIL to PLAN ...

You are *PLANNING* to FAIL



## Solution

- PLAN to SUCCEED by considering a special needs trust for your child or other loved one with a developmental disability





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