

SHOULD I ESTABLISH A SPECIAL NEEDS TRUST

Presentation by:


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AGENDA

- What are Special Needs Trusts
 - Trust Considerations
 - STABLE Accounts and SNTs
 - Pooled Trusts
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WHAT IS A TRUST?

- A trust is a legal agreement used in estate planning to specify how a person's assets are to be distributed either during the grantor's lifetime or after the person's death.
- Trusts generally have:
 - A grantor: person who creates the trust
 - A trustee: person or entity legally responsible for administering the trust. Grantor may be the trustee.
 - A beneficiary: person(s) who to benefit from assets subject to the trust
- Trusts do not have to be funded while the grantor is alive

WHAT IS A SPECIAL NEEDS TRUST

- Trusts specifically made for the benefit of an individual with a disability
 - Beneficiaries of SNTs often lack mental capacity to manage their own financial affairs
 - Protects beneficiaries assets from disqualification of government benefits
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TWO POTENTIAL TYPES OF SPECIAL NEEDS TRUST

- **First Party SNT**
 - assets owned by beneficiary with a disability
 - **Third Party SNT**
 - assets owned by anyone other than beneficiary with a disability
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1ST PARTY SNT

- Must be created by the parent, grandparent, the trust beneficiary or guardian
- Disabled beneficiary must be under age of 65 at time trust is created.
- Assets held within the trust do not impact a SSI or Medicaid eligibility
- Distributions must be planned to avoid reduction of or disqualification for public assistance benefits
- Must contain a payback clause that requires any assets remaining in the trust upon the death of the beneficiary to be paid to Medicaid in an amount equal to the amount of the Medicaid benefits received by the beneficiary


WHOLLY DISCRETIONARY 3RD PARTY BENEFICIARY

- Must contain appropriate language to avoid eligibility issues
 - No payback provisions required
 - Grantor is able to distribute trust assets to other family members besides the individual with a disability
 - Remaining assets can be distributed to other family members upon the death of the beneficiary
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WHOLLY DISCRETIONARY 3RD PARTY BENEFICIARY

- Requires *precise* drafting
- Avoid “health, support, education, maintenance, welfare” or any combination of these
- Include “Poison Pill”

ADVANTAGES OF SETTING UP A SPECIAL NEEDS TRUST

- Distribution of assets according to wishes of the grantor
 - Plan for taking care of loved one after your death
 - Safeguarding of individual's access to government benefits
 - PEACE OF MIND!
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DISADVANTAGES IN SETTING UP SNT

- **Costs in Drafting a Trust**
 - \$750 to \$3,000 to set up depending on complexity and lawyer hired
 - **Overall complexity of setting up trust**
 - **Need to a Have Designated Trustee**
 - Not necessary for Pooled Trusts SNTS
 - **Costs in Maintaining SNT**
 - when funded
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CHOOSING THE RIGHT ATTORNEY

- Need to work with estate planning attorney familiar with Medicaid regulations on trusts
- Trusts that are not drawn properly may disqualify your loved one from Medicaid services
- SNTs need approval from local county of Job and Family Service
- SNTs need to comply with legal requirements or the assets may be counted as an available resource by local county JFS

CHOOSING A TRUSTEE

- One of the most difficult decisions families need to make in setting up an SNT
 - Trustee should understand unique needs of individual and someone who can be depended on to carry out demands of the trust
 - often a family member or trusted friend
 - **Ideal characteristics**
 - Willingness to serve
 - Likely to outlive the beneficiary
 - Willingness to get help
 - **Don't underestimate time commitment!**
 - Consider paying for trustee for services
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TRUST ADMINISTRATION/DUTIES OF TRUSTEE

- Record Keeping – Receipts of Distributions, Investment Statements
- Tax Filings
- Knowledge of Medicaid and Social Security
 - want to avoid making individual ineligible for these programs
 - want to avoid penalties and taxes on distributions
- Setting investment Plan for Trust
- Naming an institution as a co-trustee
 - institution responsible for paperwork and managing investments
 - Guardian


CHOOSING A PROFESSIONAL TRUSTEE

- Often banks
 - Lessens responsibilities of surviving family members
 - Services of Corporate Trustee
 - Record Keeping
 - Bill Paying
 - Providing Account and Investment Statements
 - Tax filings
 - Portfolio and Asset Management
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CHOOSING A PROFESSIONAL TRUSTEE

- **Cost of services**
 - .25% to 1% of assets for trust administration
 - PLUS
 - .5% to 1.25% of assets for managing investments
 - Usually asset minimums- (e.g. \$500K)
 - Cost usually don't include tax filings – separate hourly fee
- **Corporate trustee selection makes more sense as size of trust increases**

TRUST TAXATION

- **Grantor vs. Non Grantor Trusts**
 - Grantor trusts taxed at the grantor's individual tax rate
 - Non grantor trusts taxed at trust taxation rates
 - **1st party (individual) trusts**
 - Usually grantor trusts taxed at individual's tax rate
 - **3rd party (Family) trusts**
 - Can be grantor or non grantor trusts
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TAXATION OF NON GRANTOR TRUSTS

- Marginal tax rates of 39.6% with low standard deduction and exemption amount
- Want to manage trust in way that minimizes taxable income so as to protect trust assets
- Two main ways to avoid taxation:
 - Minimize trust income earned from investments
 - Distribute income earned to the individual with special needs

BENEFICIARY DESIGNATIONS

- Common mistake is to designate investment accounts, IRAs and other assets directly to the beneficiary –DON'T DO THIS!
 - Designations to the individual will jeopardize his or hers social security and Medicaid benefits
 - Designations should be made directly to the trust
 - Example "Gates Family Trust, dated January 19, 2015."
- Make sure each of your investment and cash accounts are properly designated


PUBLIC ASSISTANCE BENEFITS AND SNTS

- Main benefit of SNTs is to shelter assets so as not to impact either Medicaid or Social Security benefits
- If trust not drafted properly, all assets are counted for Medicaid and Social Security purposes
- Withdrawals from SNTs
 - \$\$\$ need to be used in the same month withdrawal is made
 - Can affect SSI if for food and shelter
 - Penalty up to 1/3rd SSI monthly benefit

TRUST WITHDRAWALS

- SNTs are often used to supplement living expenses with Social Security and Medicaid paying for basic living expenses
- Need to produce income and make withdrawals to maximize returns, minimize taxes and meet the ongoing needs of the individual
- Need to estimate what and to what degree the Trust will be paying for the individual expenses over their life time
 - Example: The SNT will provide \$2,000 a year in entertainment expenses and \$5,000 in travel expenses for 40 years time. SNT would need approximately \$165K to fund these expenses.


FUNDING A TRUST

- Trusts don't have to be funded once established
 - Estimating trust expenses over the lifetime of the individual
 - Designating assets to the SNT upon death of the parents
 - Life Insurance
 - Whole life
 - Second to die
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SNTS AND STABLE ACCOUNTS

- Both shelter assets in order to maintain Social Security and Medicaid benefits
- Taxes
 - STABLE accounts grow tax free
 - Trusts pay taxes depending on how account is managed
- Limitations
 - SNTs – no limit in how much can be funded at once. No asset limit.
 - STABLE - \$14K per year contribution limit. $\$ > \$100K$ SSI affected. Overall \$445K limit for 2017
- Withdrawals
 - SNTs – stricter rules; SSI can be affected;
 - STABLE –most withdrawals ok. Rent payments allowed if within the same month
- Dispensation of assets upon death
 - STABLE – assets used to pay for Medicaid expenses
 - SNT – depending on type of SNT, assets can be sheltered from Medicaid claw back

POOLED TRUSTS

- What are they?
 - What is their purpose?
 - What are the costs? Upfront and ongoing?
 - Pooled Trusts advantages and disadvantages versus self established SNT.
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POOLED MEDICAID PAYBACK TRUST

- Separate accounts (“sub-trusts”) for each beneficiary but the funds are pooled for investment purposes
- Created by parent, grandparent, guardian, court, OR competent person with disability
- Must be funded with assets belonging to person with disability
- Remaining amount must payback Medicaid

POOLED MEDICAID PAYBACK TRUST

- At beneficiary's death: Repayment to state Medicaid agency and remainder, if any, to named secondary distributees *OR* elect for assets to remain in Pooled Trust and there is no Medicaid payback

POOLED MASTER TRUST

- Separate accounts (“sub-trusts”) for each beneficiary but the funds are pooled for investment purposes
 - Created by parent, grandparent, guardian, court
 - Must be funded with assets NOT belonging to a person with a disability (parent or grandparent)
 - No Medicaid payback
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ESTABLISHING CFMF TRUST

- Joinder and Trust Documents on website (www.cfmf.org)
- Must have your own attorney assist you
- Submit documents with payment/deposit
- Should select Designated Advocate (can be the beneficiary with the disability if competent)

REQUESTING DISTRIBUTIONS FROM CFMF

- Forms and instructions on website
- Requests reviewed to maintain eligibility
- Can request 6 months of regularly scheduled payments for items like cable TV

QUESTIONS???



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