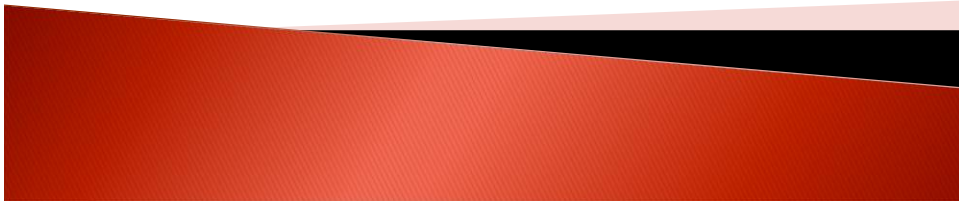


Planning for Persons with Disabilities Using a Special Needs Trust

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What is Special Needs Planning?


- ▶ Special needs planning is planning for the future finances, care, advocacy, and protection for a person with a disability
- ▶ When presented with a client who has a disability, proper plan can be a daunting task. The issues that generally arise concern:
 - Lifetime financial and personal care for the person
 - Understanding what public benefits are being used to meet the person's current care needs
 - Maintaining the ongoing care



Do All Persons with Disabilities Require Special Planning?

- ▶ No!
 - ▶ Persons with disabilities come in all shapes, sizes and severity. Only those who are so severely disabled that they meet the definition of disabled for public benefit programs require planning
 - ▶ Even if disabled and receiving public benefits only certain public benefit programs require planning
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Defining Disability

- ▶ Someone could be substantially disabled in the commonly understood sense (*e.g.*, if the person must use a wheelchair for mobility). However, that individual would not be considered disabled under the SSI or Medicaid (in California Medi-Cal) rules however if he or she holds a full-time job and earns a living wage
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Defining Disability For Public Benefits


- ▶ “Disability” for an adult is defined as the inability to engage in any “substantial gainful activity” (SGA) due to any medically determinable physical or mental impairment, or combination of impairments, that has lasted or can be expected to last for a continuous period of at least 12 months, or result in death.




Public Benefit Programs for Persons with Disabilities

- ▶ Needs-Based Public Benefits:
 - Supplemental Security Income (SSI)
 - Medicaid (Medi-Cal in California)
 - In Home Supportive Services (IHSS)
 - ▶ Entitlement Public Benefits:
 - Social Security Disability Income (SSDI)
 - Social Security – Adult Disabled Survivor
 - Medicare
 - ▶ Other benefit programs
 - Section 8
 - Veteran Benefits
 - Food Stamps
 - General Assistance
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Entitlement Benefits

- ▶ If only public benefit programs are SSDI, Social Security, or Medicare No “special” planning is required
 - ▶ However, watch out for dual eligibles, meaning that person with a disability receives both SSDI and SSI or Medicare and Medicaid
 - ▶ There is often lots of confusion from the person with a disability and their families as to what types of benefits the person receives
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Needs-Based Public Benefits

- ▶ SSI and Medicaid (Medi-Cal in California) require a plan
 - ▶ Eligibility Requirements
 - Disabled
 - Income Test
 - Earning \$1,000/month generally means exceed income requirements
 - Resource Test
 - Owning \$2,000 or more in assets will disqualify from SSI and Medicaid
 - Are exempt assets such as one home and one car
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What SSI Provides

- ▶ SSI provides a modest monthly cash grant for food and shelter to disabled, blind, or aged (65 or older) persons
 - In 2011, the SSI federal government maximum payment is \$674 a month for an individual
 - Some States supplement this amount. For example, California provides a supplement of \$156 a month to the payment
 - Eligibility for even \$1 of SSI (in most States) means automatic eligibility for Medicaid
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What Medi-Cal Provides

- ▶ Primary medical care coverage, such as doctor visits, diagnostic testing, emergency services, surgery, hospitalization, prescription drugs, dental services, and optometry services.
 - ▶ Ongoing care and recovery, such as in-home medical care services, personal care services, occupational and physical therapy, outpatient drug abuse services, nursing facility stays, intermediate care facilities for developmentally disabled individuals, and adult day health care.
 - ▶ Other medical-related costs, such as medical supplies, durable medical equipment, and transportation for doctor visits.
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Why “Special” Planning is Needed

- ▶ If an inheritance/litigation recovery pays directly to a person with a disability then would eliminate eligibility for SSI and Medi-Cal
 - Counted as income in month of receipt
 - Counted as resource first day of next month
- ▶ Loss of SSI generally acceptable, however loss of Medi-Cal can be devastating




Private Paying for Medical Care


- ▶ Medical Costs are skyrocketing. For example, one coronary bypass operation in the Bay Area costs between \$150,000–\$330,000 or for an operation involving multiple trauma as if in an automobile accident costs between \$175,000–\$400,000
 - ▶ Prices from <http://www.vimo.com/hospital/cost.php>
- ▶ One trip to the emergency room could destroy a person with a disability’s inheritance if forced to privately pay for it




Protecting Public Benefit Eligibility

- ▶ A Third Party SNT is usually best method for gift/inheritance to person with a disability
 - This type of trust is often called a third party SNT because it is established with the assets of someone other than the disabled person
 - ▶ A First Party SNT is usually best method for planning for assets already received by person with a disability usually from
 - Litigation recovery
 - Inheritance/gift received or not planned for
 - Existing assets
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Third Party SNT

- ▶ SSA defines a third party trust as "a trust established by someone other than the beneficiary as grantor."
 - ▶ The regulations impose basically two requirements for third party SNTs
 - (1) The beneficiary cannot have authority to revoke the trust; and
 - (2) The beneficiary cannot direct the use of trust assets for his or her support and maintenance under the terms of the trust.
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Third Party Pooled SNT

- ▶ A pooled SNT is a preexisting trust administered by a nonprofit institution that receives and manages the assets for the beneficiary.
 - ▶ It is a useful alternative to a third party SNT when, for instance, no one is able to act as trustee of a separate third party SNT or the settlor wants professional management of the trust.
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Other Arrangements Not Recommended

- ▶ Outright inheritance – loss of SSI and Medi-Cal
 - ▶ Left in non-qualifying trust – loss of SSI and Medi-Cal
 - ▶ Disinheritance – no money legally available for child with a disability
 - ▶ Leaving assets to brothers or sisters with request to take care of sibling with disability – Not wise
 - ▶ Subject to their creditors
 - ▶ What if they die who then has assets
 - ▶ May not want to take care of brother/sister if have own family
 - ▶ Could be lost in divorce
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Creation of Third Party SNT

- ▶ Generally created by Will, Living Trust or as a standalone document
 - ▶ Should have an excellent management team, we recommend professional fiduciary with advisory committee and trust protector
 - ▶ Should not only take into account future financial needs but also future care and advocacy needs
 - ▶ Should be coordinated with other family members
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Funding the Third Party SNT


- ▶ Funding a third party SNT is a wonderful opportunity to leverage the expertise of several advisors, attorneys, investment and insurance advisors, and CPAs
 - ▶ When working with other advisors, it is important to find professionals who understand the unique planning needs of persons with disabilities.
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First Party Special Needs Trusts


- ▶ Used to hold Person with a Disability's own assets
- ▶ There are two types of First Party SNTs in use in California
 - (d)(4)(A) SNTs or Payback SNTs or
 - Pooled SNTs or (d)(4)(C) SNTs




(d)(4)(A) SNT

- The (d)(4)(A) SNT is authorized by 42 U.S.C. §1396p(d)(4)(A) and has the following characteristics:
 - Grantor: Must be established by parent, grandparent, legal guardian, or court
 - Beneficiary: The trust must be for the sole benefit of a disabled person who is under the age of 65.
 - Payback Provision: The trust must provide that on the death of the beneficiary, the trustee must repay Medicaid for all benefits received by the beneficiary during his or her lifetime to the extent that funds remain in the trust at the beneficiary's death.
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Pooled SNT

- The Pooled SNT is authorized by 42 U.S.C. §1396p(d)(4)(C) and has the following characteristics:
 - Grantor: Must be established and managed by a nonprofit association
 - Joinder: May be joined by the beneficiary, the beneficiary's parent, grandparent, or legal guardian or a court
 - Beneficiary: The beneficiary may be of any age, but must be disabled and the trust must maintain a separate account for the beneficiary
 - Trustee: The trustee must be the establishing nonprofit association or supervised by the nonprofit association.
 - Payback Provision: In most states, after the initial beneficiary's death, excess funds may remain in the pooled trust for other beneficiaries with disabilities; excess funds are subject to repayment only if they do not remain in the pooled trust.
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Important Facts to Consider in Establishing First Party SNT

- ▶ Age
 - ▶ Capacity
 - ▶ Amount of Funds Needed to Protect
 - ▶ Whether Conserved or has a Guardian
 - ▶ Money Coming from Litigation or Inheritance
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What Can an SNT Pay For?

- ▶ Just about anything. For example:
 - Clothing, telephone (cell phone or land line), Internet, television (cable or satellite), hair and nail care, bedding, laundry, furniture, audio equipment, video equipment, computer equipment, adaptive equipment, toys, musical instruments, electronic devices, maintenance of equipment and household, vehicles, improvements and maintenance of such vehicles, newer and more effective medications than allowed by Medi-Cal, more sophisticated medical or dental or diagnostic work or treatment for which funds are not otherwise available, other nonessential medical procedures (such as massage therapy or acupuncture), periodic outings and vacations (and other items to enhance the Beneficiary's quality of life, self-esteem, or situation), pre-need funeral and burial expenses, and taxes
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What Can't an SNT Pay For?

- ▶ A SNT cannot give cash directly to Beneficiary
 - ▶ If SNT pays for food, shelter or medical care already being provided by SSI or Medi-Cal it may reduce (or eliminate) public benefits. Shelter is defined as:
 - ▶ Food, gas, electricity, water, sewer, heating fuel, garbage removal, real estate taxes, rent or mortgage
 - ▶ Sophisticated planners may still authorize such disbursements however if it is in the best interests of person with a disability
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How Much to Fund

- ▶ To determine "how much," the practitioner must ascertain, as fully as possible:
 - The availability of other private support;
 - The cost of ongoing care and treatment plans;
 - The availability of public benefits; and
 - The best possible integration of the estate plan with public benefits.



Conclusion

- ▶ Special needs planning professionals find working for persons with disabilities very satisfying and beneficial. Some of these benefits include:
 - Preserving public benefits;
 - Providing lifetime financial support by purchasing items and services that make life more rewarding;
 - Providing a system of advocacy to preserve civil rights;
 - Establishing an efficient, knowledgeable, and long-term management team;
 - Providing a safe and clean living arrangement; and
 - Providing avenues for enjoying all social and recreational activities that enhance the quality of life



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