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Respite Care Through Special Needs Trusts
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• Darlene is also a faculty member at the University of Phoenix - Nashville, TN campus in the College of Natural Sciences, Health Care Management.

• Darlene Kemp holds the following degrees:
  – Masters of Public Health (concentration in Gerontology), University of Tennessee
  – Masters in Business (concentration in Health Care Management), University of Phoenix
  – Bachelors degree in Family & Consumer Science (concentration in Gerontology), University of Tennessee
Agenda

• Topics we will cover today include:
  – What is a Special Needs Trust?
  – Who qualifies for a Special Needs Trust?
  – How is this type of trust established?
  – When is the trust used to pay for needed services and items?
  – Where does any remaining money go after the beneficiary dies?
Your First Question

Have you heard of Special Needs Trusts?

- Yes
- No
Think About This….
What Should He Do?

Young man has cerebral palsy.
His grandfather dies.
Young man inherits $100,000.

His Medicaid pays for all of his medical care – totally over $85,000 per year.

If man accepts the inheritance he will lose his Medicaid benefits.
He will use the $100,000 to pay for his food, clothing, shelter, and all health-related needs.

Young man will have a waiting period, after the money is spent to qualify for Medicaid again.

**Other Option** – Renounce the inheritance and keep his Medicaid.
Inheritance Question

• Should the young man renounce his inheritance or should he keep his inheritance and lose his government benefits?

• A = Renounce Inheritance

• B = Keep Inheritance
Reasons to Establish a Special Needs Trust
Seniors: Special Needs

- Scams
- Gifts to Strangers
- Donations
- Abuse
Adults: Physical & Mental Illnesses

- Manage financial assets
  - Overspending in manic phases
  - Giving items away to please others
  - Losing, hiding, misplacing money
Children: Birth Defects & Accidents

• Peace of mind for individual and family
  – Assets are protected
  – Public benefits are preserved

• Comfortable lifestyle
  – Funds from the Special Needs Trust pay for “extras” – supplemental needs

• Professional management of Trust fund
Wills

Inheritances CAN Cause Problems
Willing Money & Assets

• Giving a Gift
  – Properly gift assets to relatives with special needs
  – Legally “will” assets to relatives with special needs
Inheritances & Legal Settlements

Keeping the assets …

– Lose public benefits
– Use personal assets to pay for basic care and extras
– Must reapply for public benefits after personal assets are exhausted
– Have waiting period for benefits to begin

Selling or giving away assets and…

– No money for the extras that enhance quality of life
– Remain eligible for public benefits to pay for basic care
Specific Writing in a Will

• Relatives with a Disability
  – If assets are left to “all surviving grandchildren in equal shares” the grandchild with special needs is automatically included.
  – A Will should specifically “exclude” the grandchild by name.
    • “We leave nothing to our grandson, Matthew Smith.”
Not a Disinheritance

• The grandchild is not slighted or disinherited.

• The Will document should state specifically the percentage of asset designated for the grandchild.

  – “22% shall go to the Matthew Smith Special Needs Trust, dated February 12, 2011.”
Special Needs Trusts Defined
Permitted by Law

• Legal contract under Federal law.

• A third party (trustee) agrees to hold assets for the beneficiary’s use.

• An attorney-in-fact (family member, guardian, or Power of Attorney - POA,) is responsible for overseeing the welfare of the beneficiary.

• Assets are preserved for “special needs” not covered by public benefits.
Special Needs Trust - Defined

• Created for the Public Benefits Recipient

  – Special Needs Trusts, Third-party Trusts, and Pooled Special Needs Trusts are usually established to protect:
  – savings
  – proceeds of a personal injury settlement
  – inheritance
  – financial windfall
Pooled Special Needs Trust - Defined

- Created for the Public Benefits recipient.
- Operated by a nonprofit organization.
- Money is pooled under an “umbrella” Trust.
- Each trust account is considered a sub-account of the main Trust.
- Higher interest earned on money.
- Medicaid Estate Recovery required when beneficiary dies.
Five Step Process – Trust Establishment

- **Creation** –
  - Using an attorney the “Joinder Agreement” is completed.

- **Funding** –
  - Money is deposited into the Trust. Money can be added to the Trust at any time.

- **Administration** –
  - The trustee oversees each Trust account, ensuring that only approved services or items are paid for from the Trust; interest is applied to the Trust, tax forms are prepared, etc.

- **Distribution** –
  - The trustee makes distributions from each Trust after a request has been reviewed by two parties and approved.

- **Tax Recognition** –
  - Each year, a K-1 Tax Form is prepared. The form shows the amount of interest the Trust earned over the past year. The trustee has a fiduciary responsibility to assist each Trust client in earning the most interest while keeping the investment safe.
Protection

• Special Needs Trusts:

- Protects personal assets
- "Quality of life" is maintained
- Government benefits remain effective
- "Peace of mind" for everyone in the family
Distribution

– Developing a Care Plan for the Beneficiary
  • Initial Case Management Assessment
  • Letter of Intent

– What are Special Needs or Supplement Needs?
Suggested Uses of Trust Funds

- Respite Care
- Entertainment
- Pre-paid funeral arrangements
- Medication*
- Electronic equipment
- Vacations
- Home modification
- Independent therapy
After the Beneficiary Dies
How is Remaining Money Disbursed from Trust

- In a Self-Settled or Pooled Special Needs Trust, payback to Medicaid is required for services used.

- In a Third-Party Special Needs Trust, no payback to Medicaid required.
Now, what do you think?
Helping Friends
Scenario

Is everyone that helps really a friend?
Helping Friends Scenario

- 34 year old male – mentally retarded
- Lives alone in apartment
- Receives food stamps and monthly government check.
- “Friends” offer to assist man with errands, shopping, and cleaning.
- Man trades, upon request from friend, food stamps, furniture, and personal clothing for rides to store.
- One month, man was left $25.00 of food stamps to last the month.
- Man does not understand he is being used.
Helping Friends Question

• Because the man is independent, should he be left alone to fend for himself?

• A = YES; he has the ability to live on his own and make independent decisions.

• B = NO; he needs someone to step in and help him with day-to-day needs.
Special “Friend” There to Help

Is there an ulterior motive or hidden goal to this new-found friendship?
**Special “Friend” There to Help**

- Woman has Trust - $25,000.
- Friend offers to be POA to “help” beneficiary.
- Within a few days, Requests for Disbursements arrive.
- No receipts. No proof of purchase. Only a list of items to reimburse the POA. Receipts later received, but are suspicious in nature.
- Upon investigation of each Request, fraudulent activity is suspected but research unable to prove there is a deceptive charge.
Special Friend Question

• Does the Trust pay each request without further investigation?
  
  • **A = YES**; all receipts have been received and no evidence of foul play is found.
  
  • **B = NO**; further research need to be performed before a Request is approved for payment.
Adult son wants Motorcycle
Adult Son Wants Motorcycle

- Father is disabled and has a Pooled Special Needs Trust.

- Son’s 30th birthday is approaching.

- Son wants father to purchase a beautiful, brand new Harley Davidson motorcycle.

- Son says he will take father to doctor on motorcycle. Son will install special seat and seatbelt - if father’s Trust will pay for his birthday gift.
Motorcycle Question

• Is this a qualified expenditure from the Trust?
  – Why or Why not?

• **A = YES**; a Trust is permitted to purchase a vehicle and there is no restriction preventing a motorcycle from being purchased.

• **B = NO**; the motorcycle is not benefiting the father who has the trust. The motorcycle is benefiting the able-bodied son.
Ex-spouses

Ex-spouse wants rights to Special Needs Trust Fund
Ex-Spouse Wants Trust Funds

- Wife disabled from car accident.
- Husband and wife have three young children.
- Husband divorces spouse.
- Wife establishes a Pooled Special Needs Trust for money received from divorce settlement and alimony payments.
- Husband makes a request to Trust for money to pay for children’s vacation.
Vacation Question

• Should money from the Trust pay for the children’s vacation?
  
  • A = YES; after all, these are the mother’s biological children and they deserve a vacation.
  
  • B = NO; the money in the trust is only for the benefit of the beneficiary.
Conclusion
Special Needs Trusts

- A Trust containing the assets of an individual who is living with a disability who meets certain criteria.
- A Pooled Trust is established and managed by a non-profit association.
- Other Special Needs Trusts are established on an individual basis.
- A separate account is maintained for each beneficiary of the Trust.
Providing Assistance

• Learn more about Special Needs Trusts and how they can help residents and their families.

• Locate a lawyer who can create a Special Needs Trust to meet the beneficiary’s needs.

• Administer a Special Needs Trust using Vista Points, Inc. as the professional trustee.
Moral of the Story
Accept or Renounce Inheritance

Young man living with cerebral palsy
• Becomes aware of Special Needs Trusts after he renounced his inheritance.
• Found he could have kept his inheritance and maintained his Medicaid coverage.
• Asked that people keep talking about Special Needs Trusts and the benefits a Trust can give someone living with a disability.
References

• Omnibus Reconciliation Act of 1993 (OBRA’93)

• POMS = Program Operations Manual System
  – https://secure.ssa.gov/poms.nsf/home!readform

• United States Code: 42 U.S.C. 1396p

• Vista Points Special Needs Trust and Resource Center
  – http://www.vistapoints.org
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The End

Questions?