

Darlene A. Kemp, MPH, MBA-HCM

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Lifespan Respite Conference**



Respite Care Through Special Needs Trusts



Presenter Biography

- **Darlene A. Kemp** is the Executive Director of Vista Points, Inc. – *The Special Needs Trust & Resource Center* - providing education, advocacy, referrals, and services related to special needs trusts. The company serves as Trustee for the Tennessee Pooled Trust, Special Needs Trusts, and Third-Party Trusts.
- 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.

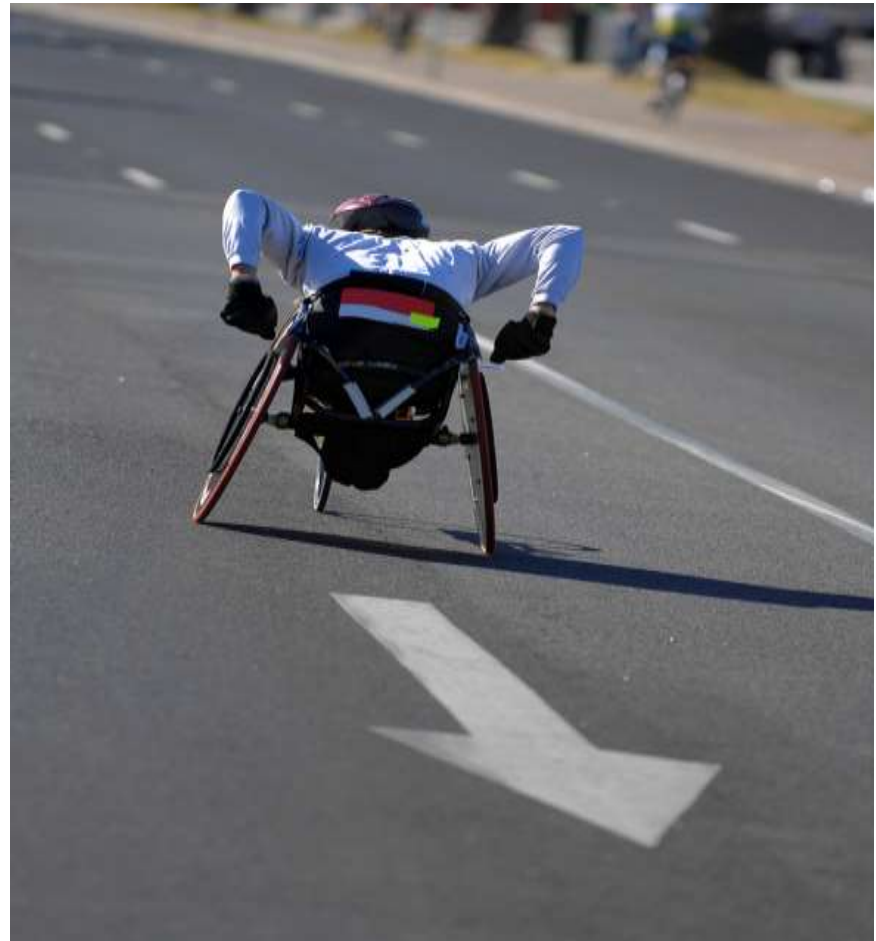
His Medicaid pays for all of his medical care – totally over \$85,000 per year.

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.

GIFT Scenario



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.



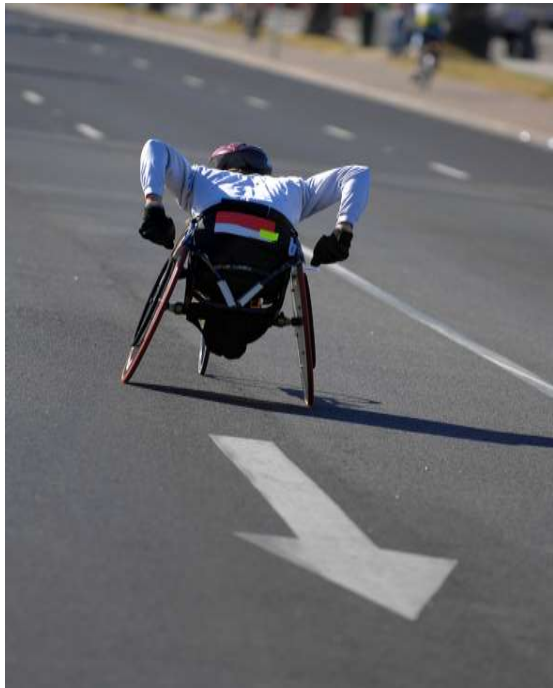
Providing Assistance

- 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)**
 - <http://www.gpo.gov/fdsys/pkg/BILLS-103hr2264enr/pdf/BILLS-103hr2264enr.pdf>
- **POMS = Program Operations Manual System**
 - <https://secure.ssa.gov/poms.nsf/home!readform>
- **United States Code: 42 U.S.C. 1396p**
 - <http://www.gpo.gov/fdsys/granule/USCODE-2010-title42/USCODE-2010-title42-chap7-subchapXIX-sec1396p/content-detail.html>
- **Vista Points Special Needs Trust and Resource Center**
 - <http://www.vistapoints.org>



VistaPoints

The Special Needs Trust & Resource Center

1550 N. Mount Juliet Road, Suite 203

Mount Juliet, TN 37122

615-758-4660 (office)

info@vistapoints.org (email)

www.vistapoints.org (website)

<https://www.facebook.com/VistaPointsInc> (Facebook)

The End



Questions?

