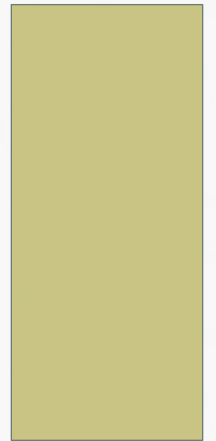


SPECIAL NEEDS PLANNING

Presented by Claudia Inés Pringles, Esq.



QUESTIONS TO ASK YOURSELF

- Is your son or daughter currently on Medicaid or SSI?
 - Medicaid includes Dr. Dynasaur and Katie Beckett Waiver
- Is there a chance your son or daughter will ever be on Medicaid and/or SSI?
- Is there a chance your son or daughter will not be able to sustain a full time job as an adult?

QUESTIONS TO ASK YOURSELF

- Is there a chance that your son or daughter will not have sound money management skills?
- Is your son or daughter easily persuaded by others?
- Do you have a vulnerable child? Do you feel you have the appropriate checks and balances in place?



my inspiration



**Special Needs Planning (or lack of)
Impacts All Family Members**

INTRO TO SPECIAL NEEDS PLANNING

Agenda

- Organizing your documents
 - Letter of Intent
 - Childhood Disability Benefits
- Last Will & Testament
- Special Needs Trusts
 - Third Party SNT
 - Self Settled SNT
- Other questions?

ORGANIZE & RECORD

- Organize key documents as child enters adulthood
 - ✓ IEP 3 year evaluations from high school and up
 - ✓ Guardianship evaluations (if any)
 - ✓ SSI/Medicaid evaluations
 - ✓ Other Medical evaluations
 - ✓ School records
 - ✓ Contact information of therapists/medical providers

Schedule appointment for *transition to adulthood* consultation

LETTER OF INTENT

- Information that you, as parent or caregiver, organize
- Provide guidance to future caregiver or others in circle of support
- Background info, family traditions, hopes & dreams, goals, future events, etc.
- Update annually by your child's birthday

LAST WILL & TESTAMENT

- Intestacy laws: If you don't decide who gets what, the state will decide for you.
- A Will is essential to direct assets to a special needs trust.
- Simple wills are inexpensive (even with help from a lawyer).
- Selection of Guardian for minors or adults.

GUARDIANSHIP

- Legal Process which allows an adult to make certain decisions on behalf of another adult.
- Different types of Guardianship:
- Involuntary Guardianship
 - Contains safeguards to make sure process is done correctly and that person is indeed in need of guardianship
- Voluntary Guardianship
 - Initiated by person who feels he or she is in need of guardianship. Simpler process.

GOVERNMENT BENEFITS

- Government Benefits are important for many people with disabilities --kids and adults
 - Medicaid
 - SSI (monthly cash benefit)
- SSI & Medicaid have a **countable resource limit** of \$2,000 for individual
 - Includes bank accounts, savings bonds, other Trusts, accumulated SSI checks, mattress money...
- Not SSDI (non issue as no resource limit with SSDI)
- Note: some people receive both SSI and SSDI

SPECIAL NEEDS TRUSTS & GOVERNMENT BENEFITS

- Assets placed in a properly drafted SNT **are not counted** as resources for SSI and Medicaid.
- No minimum. No maximum amount in SNT.

- Are special needs trusts only for rich families?

SNTS are for individuals who will likely need or are already receiving government benefits.



TRUSTS 101

A **Trust** is a legal document where a Trustee manages property or carries out tasks for the benefit of another person.

3 roles

- (1) **Trust creator**
 - Initiates the trust and sets parameters
- (2) **Trustee**
 - Carries out instructions under the trust
 - Can be held personally liable
 - Trustee has duty to do what is best for Beneficiary
- (3) **Beneficiary**
 - Receives the benefits of the trust
 - Can be more than 1 (depending on type of trust)
 - Subsequent beneficiaries can be named

SPECIAL NEEDS TRUSTS

- **Third Party Special Needs Trusts**
 - Planning tool to provide for disabled person
 - Usually set up by family members: parents or grandparents
 - Anyone can chip in to trust (except disabled person)
- **Self-Settled Special Needs Trusts**
 - Necessity to set up due to certain event leading disabled person to not qualify for benefits or losing benefits due to excessive resources.
 - Anyone can chip in, but typically set up using disabled person's assets.
 - Payback!

WHAT CAN A SPECIAL NEEDS TRUST BUY?

- This is just a partial list of “extras” that can be purchased by the SNT directly to a vendor for your child’s benefit:

summer camp computer vacation legal fees schooling
recreation ball games camping trips
pizza parties vitamins funeral expenses TV set

Computer cable TV internet appliances bottled water bus passes
plane tickets video games concerts CLOTHING

musical equipment personal care items cleaning supplies
a house swim lessons **telephone service** club membership non-food
groceries incontinence supplies *haircuts* furniture housecleaning

horseback riding movie tickets a car

TRUSTEES

- **Trustees**
 - **Make all the decisions** regarding the Trust including purchases made with Trust funds.
 - Usually, parent(s) name themselves as trustees
 - Person creating trust can name successor trustees and can allow successor trustees to name their successors.
- **Trust Protector**
 - Trust “watchdog”
 - Good choice for siblings or trusted family friend
 - optional

THIRD PARTY SPECIAL NEEDS TRUST

- Funded by someone other than the person with the disability
- Typically set up by parents or grandparents who wish to leave the disabled individual some assets through **their wills** or **life insurance policies**, although funds can be added any time.
- Trust creator can name future beneficiaries, such as other children.

FUNDING THIRD PARTY SNT

- Open bank account in the name of the Trust
 - \$25 usually enough to open an account
 - Savings and/or checking
- Add funds at any time
- Fund with life insurance
- Fund through your will
- Funds from family members
 - Gifts
 - Through their wills and life insurance policies

HOW ARE ASSETS PLACED IN A TRUST?

- Title of asset: savings accounts, deed, business
 - Owner = “The Ben E. Fisher Special Needs Trust”
- Point to SNT via Beneficiary Designations: wills, pensions, life insurance, etc.
 - “If wife predeceases me then :
 - 50% to my daughter, Cybil Ling
 - 50% to Ben E. Fisher Special Needs Trust”

WHO ELSE CAN CHIP IN?

ANYONE can add assets to a third party special needs trust **except** the individual with a disability.



WHY BOTHER WITH A SPECIAL NEEDS TRUST?

- Rather than set up a Special Needs Trust for my disabled son, **can't I just leave funds with my non-disabled, oldest son** with the understanding that the funds are for the **care of his disabled brother?**

MORAL VS. LEGAL OBLIGATION

- Moral Obligation:
 - The sibling is the legal owner of the property and has no *legal* obligation to share with disabled brother or sister;
 - The sibling may now be disqualified from getting financial aid, even though intent is for funds to belong to sibling;
 - The sibling may marry someone who is not sympathetic to the sibling with special needs;
 - The sibling may lose the money in a divorce or bankruptcy;
 - **Potential Conflict of Interest?**

MORAL OBLIGATION WOES...

CONTINUED

- How do you know your wishes will be followed 10, 20, 30 years after you have died?
- What happens if the sibling predeceases the disabled child?
 - A judge cannot create a moral obligation on the part of someone else.
 - A judge can appoint a trustee for an existing trust.
- A Trust is a legal obligation vs. “doing someone a favor”.
- Avoid asking family members to commit fraud

SPECIAL NEEDS TRUSTS

Why are SNTs so important?

- **Protects government benefits** for individual with special needs
- Allows parents and other family members to contribute to **lifelong needs** of individual
- Provides **lifetime protection** for the person with the disability

SPECIAL NEEDS TRUSTS

- Why are SNTs so important?
- **Flexibility: many types of purchases** can be made with funds in the SNT, including a TV, furniture, a house, vacation, clothing, video games, gym membership, etc. Trustee decides.
- Creates a **legal obligation** on the part of the Trustee to do what is best for person with a disability vs. a non-binding moral obligation to help out.

SELF-SETTLED SPECIAL NEEDS TRUSTS

When a disabled individual already has more than \$2,000 in resources in his/her name or otherwise considered “accessible”.

Other options

SELF-SETTLED SPECIAL NEEDS TRUST

- Set up by parent, grandparent, guardian or via court order.
- Typically set up when individual receives windfall sum from accident settlement or a direct inheritance. Also accumulated savings, other trusts (not special needs trusts), savings bonds, etc.
- Less common reasons to set up Self Settled SNT
 - to receive **child support** payments (not counted against SSI)
 - to receive assets from family member- who needs to qualify for Medicaid-before going to a **nursing home**.

SELF-SETTLED SPECIAL NEEDS TRUST

- When disabled individual dies, any remaining funds in the trust go to **State of Vermont to pay back all Medicaid.**
- Often a better option than spend down to \$2,000
- NOTE: SSA office will not tell claimants about SNTs. They will tell you to spend down!

SELF-SETTLED SPECIAL NEEDS TRUST

- *ANYONE* can add assets to a self-settled special needs trust, but remaining funds will be subject to **payback** at the end of life of the beneficiary.

OTHER TYPES OF TRUSTS

- If Medicaid/SSI not an issue, other trust besides SNT
- Want to have some control over funds received and used by your child
- Trusts are very flexible documents that can be drafted in many ways according to your child's needs.
- Can be drafted to last a lifetime or choice given to Trustee to release all funds
- Family home giving disabled child right of occupancy

ABLE ACCOUNTS

- Bank account that does not count towards \$2,000 limit
- Can add up to \$14,000 per year. One account per person.
- Payback to State regardless of source of funds.
- Does not offer protection of Trust
- Great option for mildly disabled person who has a little bit too much over allowable limit.

REMEMBER

Better to have a
good plan today
than a
perfect plan tomorrow.

ABOUT THE PRESENTER

Claudia Inés Pringles

- Claudia has a private law practice with a focus area of special needs law. She received her Juris Doctorate from the University of Wisconsin Law School in 1998 and an undergraduate degree in economics from Pitzer College (Claremont Colleges). Claudia is active in many advocacy initiatives in Vermont and won a national award for her advocacy from Autism Speaks. Claudia is a parent of two children, including a daughter on the autism spectrum. She and her family live in Montpelier.

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