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Financial & Estate Planning For Those With Special Needs Special Needs Trusts

Northern Kentucky Traumatic Brain Injury Conference
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APPROACH TO ESTATE PLANNING

- Analyze Your Assets
- Analyze Your Family Situation
- Discuss Your Goals
- Consider Any Tax Planning Needs

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COMMON DOCUMENTS IN ESTATE PLANNING

- Wills
- Trusts
- Powers of Attorney
 - Guardianship as Alternative
- Living Will/Health Care Surrogate
- HIPAA (Health Care Privacy) Release



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OTHER THINGS TO CONSIDER

- Beneficiary Designations
 - Life Insurance
 - Retirement Accounts
- Transfers on Death
- Title on Assets
- Special Planning for those with a Traumatic Brain Injury
 - Special Needs Trusts

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Why Consider a Special Needs Trust?

- Failure to do so may cause loved one to lose
 - SSI
 - Medicaid
 - Other Government Assistance or Grants

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Government Benefits

- SSDI
 - Unable to do any substantial gainful activity due to disability
- Medicare
- Means tested
 - Medicaid
 - SSI



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Medicaid Covered Services

- Long-term care
- Physician services
- Hospital
- Adult day care
- Home health care



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Medicaid Overview

- Federally based
- Limited state resources
- Administered through state or county agency
- Federal minimum standards, but states allowed flexibility

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Estate Planning Options/ 3rd Party SNTs

- Disinherit
- Gift to child with disabilities
- Distribute to sibling
- Supplemental Needs Trust

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Third Party Special Needs Trust

- Protects resources without sacrificing government benefits
- Wholly discretionary trust
- Individual with disabilities must be sole beneficiary of trust during his lifetime
- Payback provision

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Supplemental Needs Trust

- No payback requirement
 - Can direct corpus at death of beneficiary to any individual
- No age limit



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Trustee's Discretion

- Sole, absolute and unfettered discretion
- Income and principal
- No support standard
- Beneficiary – no right to compel
- Express intent
- Emergency clause

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Funding Third Party SNT

- Life Care Plan
- Life Insurance
 - ILIT
 - Crummey Powers
 - Beneficiary Designations

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First Party Special Needs Trusts For:

- Unplanned Inheritance
- Personal Injuries
- Matrimonial Action
- Etc.



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First Party Special Needs Trusts Options:

- Accept the money
- Transfer
- Spend down
- Pooled trust
- Self settled SNT

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42 USC 1396p

- First Party Special Needs Trust
 - (d)(4)(A) trust
 - Payback trust
 - First-party trust
- Pooled Special Needs Trust
 - (d)(4)(C) trust

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First Party and Pooled Special Needs Trusts

- Disregarded as available income and resources
- No SSI or Medicaid penalty period
 - Contributions after age 65 are subject to transfer penalty provisions

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Special Needs (d (4)(A) Trusts

- Established by the individual's parent, grandparent, legal guardian or court
- Created with the assets or income of the individual with disabilities when under age 65
- Inheritance
- PI lawsuit
- Matrimonial action

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Why Create a d(4)(A) Trust?

- Reimbursement is only for Medicaid, not all public benefits
- Reimbursement is based on actual Medicaid expenditures, not prevailing market costs
- No interest
- Some services not readily available in the private market

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Pooled Trust

- Non-profit 501(C)(3) organization as trustee
- Must be irrevocable
- Beneficiary may be any age
- Medicaid asset transfer issue after age 65



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Pooled Trust

- Created and managed by non-profit association
- May be established by the individual
- Separate accounts maintained for the benefit of individuals with disabilities
- Modified payback provision

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Moral of Our Story

- If you FAIL to PLAN ...

You are *PLANNING* to FAIL



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Solution

- PLAN to SUCCEED by considering a special needs trust for your child or other loved one with special needs



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