

# Supplemental & Special Needs Trusts

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# Medicaid as Life Line

- For medical care
  - Doctors
  - Hospital
  - Prescriptions
  - Durable medical supplies
  - Durable medical equipment
  - Dental services
- For long-term supports
  - Home & Community Based Waiver
  - Acquired Brain Injury waiver (s) (KY)
  - Supports for Community Living waiver (KY)
  - Michelle P waiver (KY)

# Resource Limits

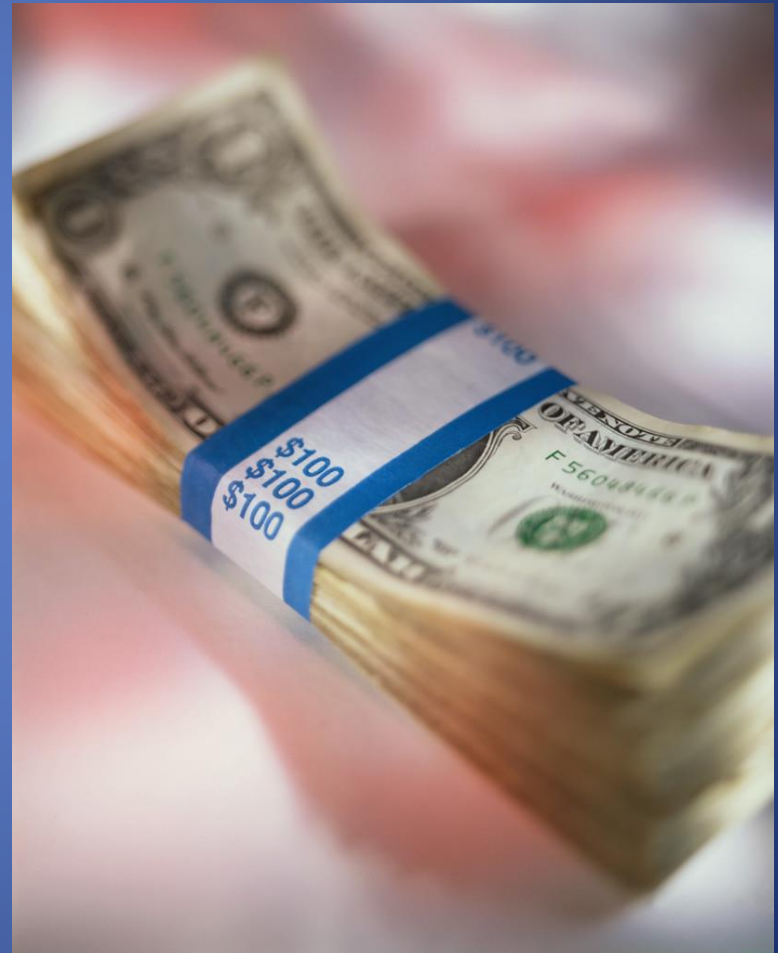
- ▶ Individual's **COUNTABLE** resources must not exceed \$2000 as of the first day of a given month
- ▶ Eligible couple's **COUNTABLE** resources must not exceed \$3000 as of the first day of a given month

# Common Resource Exclusions

- Household goods and personal effects
- Medical devices and adaptive equipment
- Term life insurance policy or cash value policy if OWNED by someone else
- Home in which beneficiary lives
- ABLE Accounts when can be opened
- One automobile per household
- Some burial funds, burial spaces and life insurance assigned to funeral provider
- Property essential to self-support (PESS)
- Resources held by a Supplemental or Special Needs Trust

# Some Sources of Excess Resources

- Back payment from Social Security
- Beneficiary of life insurance policy
- Inheritance
- Personal injury settlement
- Repayment of patient liability



# What is a Trust?



- ▶ A separate legal entity regulated by a State's laws
- ▶ Attorney "crafts" trust document (s) based on your instructions, situation and state and federal laws
- ▶ Can own assets, e.g., a home, CD, stocks, etc.
- ▶ Can be the owner and beneficiary of life insurance, retirement accounts, personal property



# What is a Supplemental or Special Needs Trust?

- ▶ Living/Testamentary
- ▶ Contains specific language which protects person's eligibility for government benefits, particularly SSI/Medicaid
- ▶ Funds used to supplement, not supplant, governmental benefits
- ▶ If Living and funded, has to file tax return (Form 1040 or 1041)
- ▶ Has to be funded to be of any benefit!!!



- Social Security
- Medicaid
- Medicare

Trust

Funded by Family member(s) or Person with a Disability

Typically provide for

Room and Board

Basic Personal Needs

Care and Supervision

Employment Services

Medical Care

Medical/Dental Care excluded from social benefits

Adaptive equipment

Technology

Vacations & Trips

Basic care if social benefits cutbacks

Personal Hygiene/Grooming Costs



## Third Party Supplemental Needs Trust (what parents or other family members need to do)

### ▶ Third Party Supplemental Needs Trust

- Set-up and FUNDED by someone other than person with a disability, typically parents or other relatives
- As of 2016, Medicaid does not have a claim against the remainder
- Grantor, meaning the person who set up the trust, determines where remainder is distributed after beneficiary dies

# First Party Special Needs Trust

- ▶ Self-Settled, First Party or Pay back – money or countable asset first passes to person with disability – what now?!!!!
- Parent, grandparent, legal guardian or court establishes OR
- If competent, person with disability may set up a First Party account with pooled trust
- Medicaid may be able to make a claim against remainder

# Third Party vs. Self-Settled Special Needs Trust a/k/a Whose Money is it?

## ▶ Third Party Trust

- Set-up and FUNDED by someone other than person with a disability, typically parents or other relatives
- As of 2016, Medicaid does not have a claim against the remainder
- Grantor determines where remainder is distributed after beneficiary dies

## ▶ Self-Settled or First Party - \$ first passes to person with disability

- Parent, grandparent or legal guardian or court must establish OR
- If eligible, set up a First Party account with pooled SNT
- Medicaid may be able to make a claim against remainder

# Supplemental & Special Needs Pooled Trust Options

- Operated by non-profit, tax-exempt organizations
- All states, regional area, or single state
- Multiple accounts – JOIN the trust or OPEN
- Third Party or First Party accounts
- Fee to open and management fees



# Pooled Trusts Serving Kentucky

- Family Network on Disabilities National Pooled Trust – Florida
- Life Plan of Kentucky – only Kentucky
- Midwest Special Needs Trust – seven states, - Missouri
- National Foundation for Special Needs Trust Integrity – National Trust - Indiana
- Center for Special Needs Trust Administration – National Trust - Florida

# Potential Advantages to Pooled Trusts

- Professional management of funds
- Distributions will be for the beneficiary (Sole Benefit rule for First Party distributions)
- Distribution requests will be reviewed to make sure do not jeopardize beneficiary's eligibility for benefits
- Account could be opened up quickly
- Less expensive, most likely, than establishing one's own Trust
- Accept smaller amounts to open and maintain than corporate Trustee



# Helpful Websites

- [www.kyhope.org](http://www.kyhope.org)
- <http://www.sntcenter.org/>
- <http://www.fndfl.org/>
- <http://lifeplanofky.org/>
- <http://www.midwestspecialneedstrust.org/>
- <http://www.specialneedsintegrity.org/>

# WHAT IS GUARDIANSHIP?

- Guardianship is a legal tool that grants someone the legal authority to make decisions for an adult who has been found legally unable to manage his or her affairs.

# QUESTIONS TO ASK

- What are the abilities of the person?
- Can he/she take care of his or her own personal care needs for food, clothing, shelter and health care?
- Can the person manage his or her own financial resources?
- Is the person likely to be taken advantage of?
- Are there alternatives available that will protect this person?

# POWERS OF ATTORNEY

- A legal tool that allows someone else to act for you, on your behalf
- Types:
  - May be durable or non-durable
  - May “spring” or not “spring”
- Most important tool to protect you if something happens to you

# POA ALLOWS SOMEONE TO:

- Pay your bills out of your accounts
- Buy and sell real property on your behalf
- Sign contracts on your behalf
- File tax returns on your behalf
- May also allow your agent to speak with doctors on your behalf

# REGARDLESS OF TYPE

- Power of attorney takes no power away from grantor of the power
  - Can be a problem if not cooperative or if easily influenced by others
  - Can be a problem if grantor enters into legal contracts that are not understood or for which there are no funds to pay
  - Can be good because there is no need to have a person declared disabled in order to act for grantor



# MEDICAL POWER OF ATTORNEY

- Also called a health care surrogate designation
- A separate document from your POA that allows the person you have named to make medical care decisions for you
- Contains all the HIPAA releases
- Sometimes can be combined into your POA

# ADVANCE DIRECTIVES

- Sometimes called a living will
- Applies only when you are terminally ill, permanently unconscious
- Informs medical care givers about your wishes with respect to life support
- Identifies who will talk to doctors on your behalf

# YOUR WILL

- A statement of your last wishes
- In it, you may:
  - Name a guardian for a minor child
  - Give specific items of property to whomever you name
  - Give the rest to whomever you name
  - Create a trust
  - Name your executor