#### Hosted by the Kentucky Autism Training Center:

## An Overview of Special Needs Trusts

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## **Topic Areas**

- Federal and Kentucky statutory framework
- The "nuts and bolts" of an SNT
- Planning Considerations
- Additional Documents
- Summary

### Federal and Kentucky Statutory Framework

#### • 42 USC 1396 Subsection D (4)(A)

[exempts SNT assets as a Medicaid resource]

- 42 USC 1382c (a)(3) [defines disability]
- **POMS** [Program Operations Manual]





#### **907 KAR 1:650** [Treatment of trusts and Medicaid]

## Kentucky Cabinet For Health and Family services:

http://chfs.ky.gov/dms/incorporated.ht m

## What are the requirements for establishing an Special Needs Trust (SNT)?

When is an SNT is appropriate?

## First Party versus Third Party SNTs

- Identical in operation
- Medicaid Recovery
- Source of funding
- Sometimes both are needed

# **B.** The "Nuts and Bolts" of an **SNT**

#### How does a SNT work in the real world?

#### Legal Document

Sole Benefit

Who can set up a SNT?

## **Typical SNT Provisions**

Declaration of Trust; appointment of Trustee and Successor Trustee(s)	Definitions; Purpose and Intent of Trust; Assets of the Trust
Amendments	Medicaid reimbursement
Provisions tailored to beneficiary; Spendthrift clause	Family/Home Living Arrangements
Ultimate distribution	Powers and duties of Trustee; Removal of Trustee
Tax provisions; generation skipping	Advisory Committee/Trust Protector
Misc; signatures and attachments	

## **Planning Considerations**

#### Who's in charge?

Frequently parents or a sibling; Parent issues, age, divorce, sibling rivalry

#### **Sole Benefit Trust**...Other siblings?

## **Planning Considerations**

- Medicaid Reimbursement
- Financial Planning
- Checks and balances
- Planning for the next generation

## Who should be the Trustee?

Consider...

- Fiduciary Responsibility
- Control within family
- Aging
- Co-trustees
- Distinguish: guardian and/or Social Security Payee

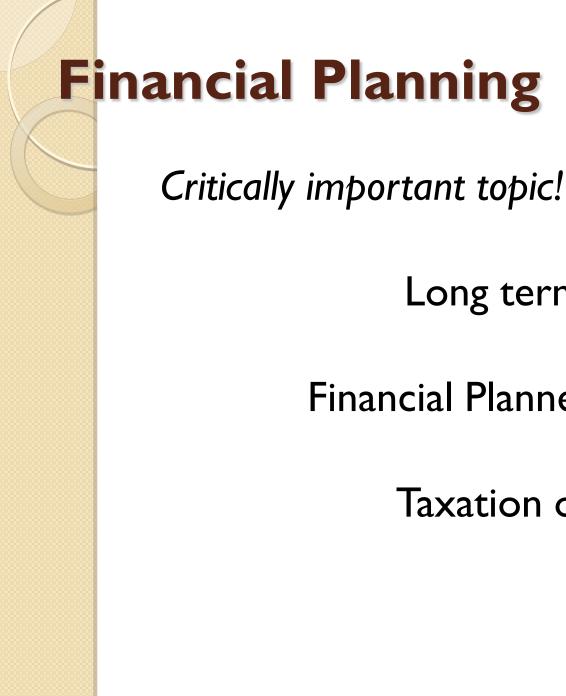
## Planning for the Next Generation

#### The "pool" of future Trustees

## **Corporate Trustees**

## **Checks and Balances**

- SNTs are Private documents
- Potential for error
- Advisory Committee
- Trust Protector
- Guardian/advocate



## Long term view

#### Financial Planner (vs CPA?)

Taxation of trust

## **Additional Documents**

- Last Will and Testament
- Power of Attorney
- Healthcare/Medical POA
- Living Wills (Kentucky)
- Living Trusts for Parents/siblings



#### Consequences of doing nothing

#### SNT "only game in town"

#### Unique to each individual and family

## Summary

#### **Plan** "crystal ball gazing"

# Get the best advice possible in all areas:

living arrangements, financial, legal, and others areas

## **Questions?**

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