Hosted by the Kentucky Autism Training Center:

An Overview of Special Needs Trusts

Richard N. Bush,
Attorney at Law

March 22, 2011
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]
Kentucky

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

Kentucky Cabinet For Health and Family services:

http://chfs.ky.gov/dms/incorporated.html
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

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

Critically important topic!

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
Summary

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