



SPECIAL NEEDS TRUSTS AND PLANNING FOR CHILDREN WITH DISABILITIES

Complexities and Recent Developments

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LEAVING A LOVING LEGACY

Exciting new special needs laws and options

- ◇ Basics of benefits and SNTs
- ◇ Military Survivor Benefit Plan
- ◇ SNTs and IRAs
- ◇ Income and estate tax issues
- ◇ ABLE Accounts
- ◇ New fixes for SNT fails

Lizzie



PUBLIC BENEFITS

- ◇ Federal Programs
- ◇ Administered by States
 - ◇ Federal and state law
 - ◇ Administrative law
 - ◇ POMS

PUBLIC BENEFITS

- ◇ SSI: \$943/month for food and shelter
- ◇ Medicaid: Health care
- ◇ Requirements:
 - ◇ Disabled
 - ◇ Low income/limited resources

PUBLIC BENEFITS

- ◇ Monthly income:

 - ◇ < \$2K

 - ◇ Income = food and shelter, cash, assets that can be converted to food and shelter

- ◇ Deeming—parents' income deemed income of child under 18

PUBLIC BENEFITS

- ◇ Unearned income reduces SSI dollar for dollar
- ◇ Earned income reduces SSI by 50¢ per dollar
- ◇ If receive 0 in SSI, not eligible for Medicaid

PUBLIC BENEFITS

- ◇ In-kind support and maintenance
- ◇ If someone provides food and shelter, reduces SSI check by 1/3
- ◇ $\$943 - \$314 = \$629$

PUBLIC BENEFITS

- ◇ To avoid 1/3 reduction:
 - ◇ Child pays rent
 - ◇ Child pays pro rata share
 - ◇ Run through ABLE account

PUBLIC BENEFITS

- ◇ Resources, assets:

- ◇ < \$2,000 countable resources

- ◇ Not countable: home, car, personal items

- ◇ UTMA is resource at 21

- ◇ 529 account not resource

PUBLIC BENEFITS

◇ Special Rules:

◇ \$1 of SSI = Medicaid eligibility in Texas

◇ Income in month received

◇ Becomes a resource if retained next month

◇ Transfer penalty < FMV

PUBLIC BENEFITS

◇ Child Support

◇ Child under 18 or under 21 and attending school: 2/3 of child support is income

◇ Adult child: 100% of child support is income

◇ Regardless of name on check or how funds used

◇ Result

PUBLIC BENEFITS

◇ Child Support

- ◇ Not income if paid into self-settled SNT
- ◇ Court order must irrevocably require payment to SNT

PUBLIC BENEFITS

- ◇ Change in benefits:
- ◇ Parent receives SS retirement, SSDI or dies
- ◇ Disabled Adult Child benefits if disability began prior to age 22
- ◇ After 2 years, get Medicare
- ◇ Dual-eligible

PUBLIC BENEFITS

- ◇ Medicaid Waiver Programs

 - ◇ CLASS, MDCP, HCS, STAR+ Waiver

- ◇ Provide services in the home or community so that nursing home not required

- ◇ Parents' income not deemed

- ◇ Wait lists over 15 years long

PUBLIC BENEFITS

◇ Services:

◇ In-home nursing, attendant care, respite

◇ Supplies, equipment

◇ Home modification

◇ Therapies, day programs, job training

◇ Housing

PUBLIC BENEFITS

- ◇ 40 Medicaid programs in Texas
- ◇ Different eligibility requirements
- ◇ Provide different services
- ◇ Rules more complex

PUBLIC BENEFITS

- ◇ Need Government Benefits?
 - ◇ Services only through Medicaid
 - ◇ What programs/services available years from now?
 - ◇ Medical insurance
 - ◇ Leverage assets/Keep options open

SPECIAL NEEDS TRUSTS



SPECIAL NEEDS TRUSTS

- ◇ SNT not countable resource
 - ◇ Properly drafted
- ◇ Distributions not income
 - ◇ if made properly

SPECIAL NEEDS TRUSTS

- ◇ Parents can leave unlimited amount to SNT
- ◇ Supplements gov't benefits
- ◇ Leverage assets
- ◇ Better quality of life
- ◇ For anyone who may need public benefits

SPECIAL NEEDS TRUSTS

- ◇ SNT not just benefits planning
 - ◇ Financial plan to pay for child's care
 - ◇ Support team in place
 - ◇ Instructions for care
 - ◇ Advocacy and protection

SPECIAL NEEDS TRUSTS

◇ Need SNT?

- ◇ Child will not be able to provide for own lifetime care
- ◇ Child may not be able to advocate for self

SPECIAL NEEDS TRUSTS

◇ Need SNT?

- ◇ Gov't benefits be a tool to assist child?
- ◇ Could beneficiary manage assets without assistance?
- ◇ Flexibility for changed circumstances

SPECIAL NEEDS TRUSTS--TYPES

- ◇ First-party (self-settled) (d4a):
 - ◇ Money that belongs to beneficiary
 - ◇ Bank account, child support, inheritance, gift, PI settlement
 - ◇ Irrevocable, sole benefit, under 65
 - ◇ Medicaid payback

SPECIAL NEEDS TRUSTS

- ◇ First-party (self-settled):
 - ◇ In past created by parent, grandparent, guardian or court
 - ◇ New: beneficiary can create own SNT if mentally competent
- ◇ No transfer penalty if made prior to age 65
- ◇ Sole benefit

SPECIAL NEEDS TRUSTS

- ◇ First-party trust killers:
- ◇ Beneficiary has power to:
 - ◇ Direct distributions
 - ◇ Revoke
 - ◇ Serve as trustee or hire/fire trustee
 - ◇ General power of appointment

SPECIAL NEEDS TRUSTS

- ◇ Third-party SNT:
 - ◇ Someone else's money
 - ◇ Gift, will, life insurance, retirement benefits
 - ◇ No Medicaid payback
 - ◇ Not subject to d(4)(a)

SPECIAL NEEDS TRUSTS

- ◇ Third-Party exempt if:
 - ◇ Beneficiary has no authority to revoke trust
 - ◇ No authority to direct use of trust for own support
 - ◇ Can't sell beneficial interest

SPECIAL NEEDS TRUSTS

- ◇ Third-Party SNT language:
 - ◇ Draft with SSA in mind
 - ◇ Spendthrift-labeled
 - ◇ Beneficiary no authority to revoke or direct
 - ◇ Beneficiary cannot be/hire/fire trustee
 - ◇ Early termination-with care

SPECIAL NEEDS TRUSTS

- ◇ Distribution standard
 - ◇ Strict SNT standard
 - ◇ Fully discretionary w/precatory language (Texas)
 - ◇ Supplement, not supplant benefits
 - ◇ Authorize in-kind distribution if better serves

SPECIAL NEEDS TRUSTS

- ◇ Trust Protector or Advisor
- ◇ Power to amend and/or decant
- ◇ Trust advisory committee

SPECIAL NEEDS TRUSTS

- ◇ Trust Advisory Committee:
 - ◇ Safety net team
 - ◇ Advises Trustee re distributions
 - ◇ Amend trust or replace trustee
 - ◇ Care manager

SPECIAL NEEDS TRUSTS

- ◇ Third Party SNT Revocable:
 - ◇ Flexibility for changed abilities or rules
 - ◇ Grantor trust

SPECIAL NEEDS TRUSTS

- ◇ 3rd Party SNT Irrevocable:
 - ◇ Serve as beneficiary of ILIT or other tax-planning trusts
 - ◇ Can draft as IDGT

SPECIAL NEEDS TRUSTS

- ◇ Arc of Texas Pooled Trust
- ◇ 1st or third party
- ◇ Arc is trustee
- ◇ Payback to Arc instead of Medicaid
- ◇ www.thearcoftexas.org/trust

SPECIAL NEEDS TRUSTS

- ◇ Qualified Income Trust
 - ◇ “Miller Trust”
 - ◇ If monthly income exceeds limits
 - ◇ Income transferred to trustee
 - ◇ Administered per statute

SPECIAL NEEDS TRUSTS

- ◇ Court-created Trusts

- ◇ § 142 Management Trust

- ◇ § 1301 Management Trust

 - ◇ Self-settled with Medicaid payback

 - ◇ Corporate trustee

SPECIAL NEEDS TRUSTS

◇ SNT Distributions:

- ◇ Everything parents would pay for

- ◇ No cash/debit cards/gift cards

- ◇ True Link Card

- ◇ www.truelinkfinancial.com

SPECIAL NEEDS TRUSTS

◇ Military Survivor Benefit Plan

- ◇ Coverage for spouse and/or child up to 55% of retirement pay at death
- ◇ In past could not name a trust
- ◇ Had to choose between SBP and SSI/Medicaid

SPECIAL NEEDS TRUSTS

◇ Military Survivor Benefit Plan

- ◇ New law—can now direct payment to SNT for child
- ◇ Self-settled with Medicaid payback (not parents' third party SNT)

SPECIAL NEEDS TRUSTS

- ◇ Military Survivor Benefit Plan
 - ◇ Attorney must fill out Attorney Certification Form that SNT is sole benefit and complies with federal/state laws
 - ◇ Obtain tax ID for trust

SNTs AND IRAs



SNTs AND IRAs

- ◇ Inherited IRA/401(k)s
- ◇ Most non-spouse beneficiaries must cash out within 10 years under SECURE Act
- ◇ Exception to 10-year payout for disabled beneficiaries

SNTs AND IRAs

- ◇ Disabled beneficiaries get lifetime stretch
- ◇ Tax-deferred growth for beneficiary's lifetime
- ◇ RMDs based on life expectancy of beneficiary
- ◇ Resource/income to child if inherit outright

SNTs AND IRAs

- ◇ Some trusts qualify for stretch—see through trusts
- ◇ Draft SNT with accumulation trust provisions so that distributions don't disqualify beneficiary
- ◇ Beneficiary pays income tax on distributions

SNTs AND IRAs

- ◇ Some parents leave IRAs to SNT and other assets to other children
- ◇ Disabled child gets lifetime stretch
- ◇ Child in lower tax bracket than other children

TRADITIONAL TAX PLANNING PITFALLS



TRADITIONAL TAX PLANNING PITFALLS

- ◇ Disclaimers—resource, even if unexercised
- ◇ ILIT—pour into an irrevocable SNT
- ◇ Annual exclusion gifts
 - ◇ Crummey withdrawal powers are income/resource
 - ◇ Consider Cristofani powers

ABLE ACCOUNTS



ABLE ACCOUNTS

◇ ABLE Account

- ◇ Up to \$100,000 not resource

- ◇ Contributions up to \$18,000 per year

- ◇ Medicaid payback

- ◇ 26 U.S.C. 529A

ABLE ACCOUNTS

- ◇ Person disabled prior to age 26 (46 in 2026)
- ◇ Tax benefits of 529 education account
- ◇ Distributions for Qualified Disability Expenses not income for SSI
- ◇ Can distribute for food/shelter

ABLE ACCOUNTS

- ◇ Useful for:
- ◇ Paying for food/shelter without 1/3 reduction
- ◇ Use for overpayment of benefits
- ◇ Allow person to save earnings
- ◇ Small gifts/inheritance

ABLE ACCOUNTS

- ◇ Compare to third-party SNT
 - ◇ ABLE has Medicaid payback/SNT does not
- ◇ Compare to self-settled SNT
 - ◇ SNT Medicaid payback for lifetime expenditures
 - ◇ ABLE payback from date account created

ABLE ACCOUNTS

- ◇ [Texasable.org](https://texasable.org)
- ◇ Other states allow non-residents to open
- ◇ Example: Ohio (with debit card)
 - ◇ [Stableaccount.com](https://stableaccount.com)

NEW FIXES FOR SNT FAILS



NEW FIXES FOR SNT FAILS

- ◇ Will or trust does not contain SNT
- ◇ Beneficiary with disabilities may lose SSI/Medicaid
- ◇ Create self-settled SNT w/Medicaid payback

NEW FIXES FOR SNT FAILS

- ◇ Will modification or reformation in order to qualify distributee for government benefits
 - ◇ Tex. Estates Code 255.451
 - ◇ Changes will to create SNT
 - ◇ Personal representative is applicant
 - ◇ Filed within 4 years of admission to probate

NEW FIXES FOR SNT FAILS

- ◇ Will modification or reformation in order to qualify distributee for government benefits
 - ◇ May be retroactive to date of death
 - ◇ Avoids need for Medicaid payback SNT

NEW FIXES FOR SNT FAILS

- ◇ Trust modification or reformation in order to qualify distributee for government benefits
 - ◇ Tex. Prop. Code 112.054
 - ◇ Prior law allowed if not anticipated by settlor
 - ◇ Trustee or beneficiary is applicant
 - ◇ Order may be retroactive

NEW FIXES FOR SNT FAILS

- ◇ Trust modification or reformation in order to qualify distributee for government benefits
 - ◇ Self-settled SNT may be able to be modified or reformed in the event of law changes

NEW FIXES FOR SNT FAILS

◇ Decanting

- ◇ Move property from one trust to another
- ◇ Pour into new SNT
- ◇ If provided in trust or allowed by statute

NEW FIXES FOR SNT FAILS

- ◇ How will SSA interpret transfer?
 - ◇ If original trust third party, will second trust be self-settled?
 - ◇ Transfer resulting in penalty? Not if spendthrift

NEW FIXES FOR SNT FAILS

- ◇ Beneficiary designation modification
 - ◇ No statutory remedy for beneficiary of life insurance or IRA without trust
 - ◇ Disclaiming is a disqualifying resource

NEW FIXES FOR SNT FAILS

- ◇ Beneficiary designation options
 - ◇ Create self-settled SNT w/Medicaid payback if under 65
 - ◇ Spend down in month of receipt on non-countable resources
 - ◇ Put in ABLE account if under \$18,000

NEW FIXES FOR SNT FAILS

- ◇ If modification/reformation/decanting is not an option:
 - ◇ Spend down on non-countable resources
 - ◇ Pay off debt
 - ◇ Pre-pay services
 - ◇ ABLE account
 - ◇ Arc Pooled Trust

TAXATION OF SNTs



TAXATION OF SNTs

- ◇ Self-settled SNT—grantor trust
- ◇ Third-party SNT
 - ◇ Revocable may be grantor trust
 - ◇ Irrevocable as complex trust w/compressed tax rates
 - ◇ Unless IDGT

TAXATION OF SNTs

- ◇ Qualified Disability Trust
- ◇ May reduce taxable income
- ◇ Entitled to individual exemption of \$5,000

TAXATION OF SNTs

- ◇ Qualified Disability Trust
 - ◇ Third-party SNT
 - ◇ Irrevocable
 - ◇ Sole benefit
 - ◇ Beneficiary under 65
 - ◇ Grantor is not trustee

SPECIAL NEEDS PLANNING



SPECIAL NEEDS PLANNING

- ◇ Growing number of individuals with special needs
- ◇ Disability due to mental illness/substance abuse increasing
- ◇ Child will likely outlive parents

SPECIAL NEEDS PLANNING

- ◇ Younger parents plan for care of young children
- ◇ Aging parents of children with special needs
- ◇ Grandparents wish to leave assets to grandchild with disabilities
- ◇ Siblings

SPECIAL NEEDS PLANNING

- ◇ Government benefits in flux
- ◇ How much will care cost?
- ◇ Planning is vital for child's well-being

SPECIAL NEEDS PLANNING

- ◇ Team to create comprehensive legal and financial plan
 - ◇ Attorney
 - ◇ Care manager
 - ◇ Financial advisor
 - ◇ Trust officer
 - ◇ CPA

SPECIAL NEEDS PLANNING

- ◇ Life plan or person-centered plan
- ◇ Life stage plan
- ◇ Parents' Letter of Intent
- ◇ Special Needs Trust alone not enough

Lilly



Lilly

Attorney

Financial
Advisor

Lilly/Family

Care Manager

Trust Officer

Life Plan

Lilly

Wills

Life Insurance/
ILIT

Special Needs
Trust

IRAs

House

Lilly



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