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# Disability Planning and Supplemental Needs Trusts

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# Planning for Disability

- Parents can nominate guardians for their minor children or unmarried adult disabled children, in the event they are unable to serve
- Nomination can be in will or stand-alone document
- Spouse can also nominate guardian for incapacitated spouse
- Guardians nominated by a parent or spouse are given priority of appointment by the probate court




# Planning for Disability

When disabled person turns 18:

- Do they have legal capacity to make decisions about personal affairs or healthcare?
- Do they have money that needs management?



A woman with dark hair, wearing a light green long-sleeved shirt, is sitting on a blue couch. She is looking down at a piece of paper on a wooden table in front of her, holding a green marker. To her right, a young girl with blonde hair in pigtails, wearing a light brown shirt, is also looking at the paper and holding a green marker. Further right, a young boy with brown hair, wearing a grey and white striped polo shirt, is looking at the paper and holding a white marker. The background is a bright, modern living room with a white wall decorated with several orange circular wall art pieces. A potted plant is visible on the left side of the frame.

# Can Guardianship and Conservatorship be avoided?

If disabled adult has capacity:

- **Durable Power of Attorney** to appoint agent to make financial decisions
- **Health Care Proxy** to appoint agent to make health care decisions



# Planning for Guardianship and Conservatorship

If a guardian or conservator is needed:

- Start process before they turn 18
- Talk with their medical providers
- Consider consulting with an attorney to assist with the process
- If developmentally disabled, will need Clinical Team Report completed
- If other disability, will need Medical Certificate completed



# Planning for Guardianship and Conservatorship

- If parents are serving as guardian or conservator for adult disabled child, may appoint co-guardian or co-conservator to provide for continuity as the parents age.



# Planning for a Disabled Person's Inheritance



Outright  
inheritance vs.  
inheritance in  
trust

Maintaining  
eligibility for  
public benefits

Management of  
inherited assets



# Solution

Estate plan should direct a disabled person's inheritance to a supplemental needs trust (SNT) for the disabled person's benefit.

- Assets in the SNT will be available for disabled person's benefit, and allow them to maintain eligibility for public benefits such as MassHealth and SSI





# Why not leave everything to the sibling?

- Lack of control
- Creditors
- Divorce
- Increases the sibling's assets (e.g. income taxation, financial aid, taxable estate)



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# How is SNT created?

- Parents or other relatives can create a SNT by working with an attorney who specializes in disability planning
- Non-profit agencies manage pooled disability trusts
  - PLAN of Massachusetts and Rhode Island
  - ARC of Bristol County
  - Guardian Trust



# First-Party vs. Third-Party Trusts

## First-Party / “Self-settled” trust

- Funded with the disabled person’s own money – e.g. savings, employment income, outright inheritance, legal settlement, lottery winnings



# First-Party vs. Third-Party Trusts

## First-Party / “Self-settled” trust

- (d)(4)(A) Trust
  - Established by the disabled person, disabled person’s parent or grandparent, or a court
  - Must be established and funded before disabled person turns 65
- (d)(4)(C) Pooled Trust
  - Managed by non-profit agency
  - No age limit to apply for trust account.





Self-settled trusts must include a **Medicaid payback provision:**

Upon beneficiary's death, state Medicaid agency can recoup money from the trust up to the amount of Medicaid benefits it paid out during the beneficiary's life.



# First-Party vs. Third-Party Trusts

## Third-Party Trust

- Funded with funds from a third party (e.g. a parent or other relative)
- No Medicaid payback requirement
- Disabled person's own funds cannot be contributed to a third-party trust





# ABLE Accounts

- Similar to 529 plans for education
- Must have “qualifying disability” that began prior to age 26.
- Funds can be contributed by the disabled individual or anyone else.
- Up to \$16,000 per calendar year. If more than \$100,000 accumulates in the account, SSI benefits are suspended.





# ABLE Accounts

- “Qualified expenses” include: assistive technology, housing, basic living expenses, education, transportation and more.
- If ABLE account funds are used on unqualified expenses, may incur penalties.
- Disabled beneficiary may be able to manage account themselves; otherwise, parent or authorized representative can manage for them.
- Funds in ABLE Account are subject to estate recovery upon the beneficiary’s death





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# Supplemental Needs Trust as Beneficiary of Retirement Assets

## **SECURE Act**

- Impacts inherited retirement accounts
- Restricts the ability for beneficiaries to “stretch” retirement distributions over their lifetime
- Now, most non-spouse beneficiaries of inherited retirement benefits must withdraw all retirement funds within 10 years



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# Supplemental Needs Trust as Beneficiary of Retirement Assets

## SECURE Act

- Exception to the new SECURE Act rules: retirement benefits payable to a Supplemental Needs Trust
- If retirement benefits are payable to a SNT, distributions can be stretched over the life expectancy of the disabled individual.
  - Example: if disabled individual is 40 when IRA owner dies, IRA funds can be stretched over 42 years (female) or 38 years (male).
- **SNT must be carefully drafted** and include certain terms in order to qualify for this exception
- Important to consult with attorney who specializes in disability planning if you are planning to name a SNT as beneficiary of a retirement account



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# Supplemental Needs Trusts: General Rules

- Discretionary trust. Trustee must have sole discretion to make payments of income or principal to the disabled person (“beneficiary”) or on their behalf.
- Beneficiary can have no right to amend, revoke, or demand payment from the trust.
- Beneficiary cannot serve as trustee.
- Trustee can be a relative, trusted friend, or professional/independent trustee, such as a lawyer or bank.



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# Supplemental Needs Trusts: Administration

- Assets held in properly-drafted and administered SNT are not countable
- Income generated by SNT is countable only to the extent distributed to the beneficiary
- Best practice: funds in the trust can be paid to vendors or other third-parties directly, rather than distributing money out to the beneficiary directly.
- Special rules when beneficiary receives Supplemental Security income (SSI).



# Supplemental Needs Trusts: Administration

## Examples of Permissible Distributions for SSI:

Automobile/van	Accounting fees	Acupuncture	Appliances	Public transportation costs
Clubs and club dues	Dental work not covered by Medicaid	Home furnishings	Fitness equipment	Funeral expenses
Gasoline	Haircuts/salon services	Home improvements	House cleaning	Laundry service
Legal fees	Musical instruments	Non-food grocery items (toiletries, paper products)	OTC medications and supplements	Personal care services not covered by Medicaid
	Pet care and supplies	Travel / vacations	Utility bills	



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# Supplemental Needs Trusts: Administration

## Examples of Distributions that will Reduce SSI Benefits:

- Paying for rent/shelter expenses
- Paying for food (e.g. groceries or restaurant meals)
- Cash distributions to the beneficiary
- Paying for a service already paid for by another source
- Distribution not for the beneficiary (i.e., made primarily for the benefit of another person)



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# Supplemental Needs Trusts: Administration

- Once trust is funded, must provide notice of the trust to any public agencies from which the disabled person receives benefits (e.g. MassHealth, Social Security, housing authority).
- Once funded, trust will receive its own tax ID number and trustee will need to file income tax returns each year.



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# Supplemental Needs Trusts: Choosing a Trustee

- Family member
- Trusted friend
- Legal/financial experience is helpful, but not necessary (can hire advisors)
  
- Professional trustee (bank, law firm)
- Pooled trust







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## Q & A & THANK YOU

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