

# Overview of Supplemental Needs Planning



*Presentation by Denise R. Kaplan for*

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Rivkin, Rivkin, & Kaplan LLC  
— ESTATE PLANNING —

475 Half Day Rd., Suite 100 • Lincolnshire, IL 60069  
PHONE: (847) 793-2484 • FAX: (847) 793-2485 • WEB: [www.rivkinlaw.com](http://www.rivkinlaw.com)



# PUBLIC BENEFIT PROGRAMS

	<u>Non-Means Tested</u>	<u>Means Tested</u>
Income	SSDI	SSI
Medical	Medicare	Medicaid

*To be eligible for any of the programs above, with the exception of Medicare, a person under the age of 65 must be unable to engage in substantial gainful activity (SGA) due to a disability that is expected to last at least one year.*



## EXEMPT ASSETS

- \$2,000
- Homestead property
- Personal effects and household goods
- Motor vehicle
- Life insurance (with restrictions)

*(continued ...)*



## EXEMPT ASSETS

- Burial funds (with restrictions) and burial space
- Property used in a trade or business
- ABLE account (up to \$100,000 in the case of SSI)
- §529 accounts (parent is owner, child is beneficiary)
- Properly-crafted supplemental needs trust



# HISTORICAL CHOICES FOR PARENTS OF A CHILD WITH A SIGNIFICANT DISABILITY

- Lose benefits
- Disinherit child



## SOLUTION FOR THIRD-PARTY FUNDED TRUSTS

- 760 ILCS 3/509 (previously 760 ILCS 5/15.1)
- Authorizes SNTs for funds outside control of person with disability
- Trust assets exempt
- No Medicaid reimbursement at death



# SOLUTION #1 FOR SELF-FUNDED TRUSTS

- OBRA Payback Trust (d-4-A Trust) (Aug. 1993)
- Authorizes SNTs for funds of person with a disability (if under age 65)
- Created by parent, grandparent, legal guardian, or court (with passage of the 21st Century Cures Act, may also be created by person with a disability)
- Trust assets exempt during life
- Medicaid reimbursement at death



## SOLUTION #2 FOR SELF-FUNDED TRUSTS

- Pooled Trust (d-4-C Trust) (Aug. 1993)
- Funds pooled for management purposes
- Created by person with a disability or their parent, grandparent, legal guardian, or court
- Needs to be funded before age 65
- Trust assets exempt during life
- Medicaid reimbursement at death





# PRIMARY TERMS OF SUPPLEMENTAL NEEDS TRUSTS

- Irrevocable
- Grantors' intent important
- Distributions for “supplemental needs” only
- Distributions in trustee's sole discretion  
(no standards)

*(continued ...)*



# PRIMARY TERMS OF SUPPLEMENTAL NEEDS TRUSTS

- Distributions to providers of goods and services, not directly to person with a disability
- Avoid in-kind support and maintenance (will reduce SSI)
- Trustees and successor trustees
- Remainder beneficiaries at death  
(after Medicaid reimbursement for d-4-A trust)



# EXAMPLES OF PERMISSIBLE DISTRIBUTIONS

- Dental care
- Optical care
- Supplemental nursing care
- Computers and other electronic devices
- Expenditures for travel, recreation, or educational or cultural experiences



# COURT INVOLVEMENT WITH D-4-A TRUSTS

- In creation of trust if no other qualified settlor
- In ordering irrevocable assignment of child support to trust
- In approval of settlement award to be placed in trust
- In oversight as part of guardianship of estate



# COORDINATION WITH OTHER ESTATE PLANNING DOCUMENTS

- Wills of parents, grandparents, etc.
- Insurance and retirement plan beneficiary designations
- No assets should pass directly to person with a disability
- All assets for person with a disability should be allocated to third-party SNT
- Usefulness of stand-alone third-party SNTs
- Common third-party SNT challenges: coordination with ILITs and spray family trusts



## ALTERNATIVES TO SUPPLEMENTAL NEEDS TRUSTS

- Trust for health, support, and education of person with a disability
- Trust for person with a disability with total trustee discretion, without reference to specific standards like health and support
- ABLE account



# ABLE ACCOUNTS

- Tax-advantaged accounts for individuals with “marked and severe functional limitations” beginning before age 26
- Earnings are exempt from income tax if account is used only for “qualified disability expenses”
- Similar to Section 529 college savings plans
- Annual contribution limit (\$15,000 for 2021), with higher limit if funded with beneficiary’s employment earnings

*(continued ...)*



# ABLE ACCOUNTS

- May receive rollover from 529 plan in 2021-2025, subject to annual contribution limit
- IL state income tax deduction, with limits, for IL ABLE account contributions in 2021-2022
- First \$100,000 in account exempt from SSI resource limit
- Medicaid reimbursement at death in most cases