

# Cotting School Conference 2014

## Special Needs Planning An Overview

Presented By:

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*"A commitment that lasts a lifetime."*

Fletcher Tilton PC  
Framingham, Hyannis & Worcester

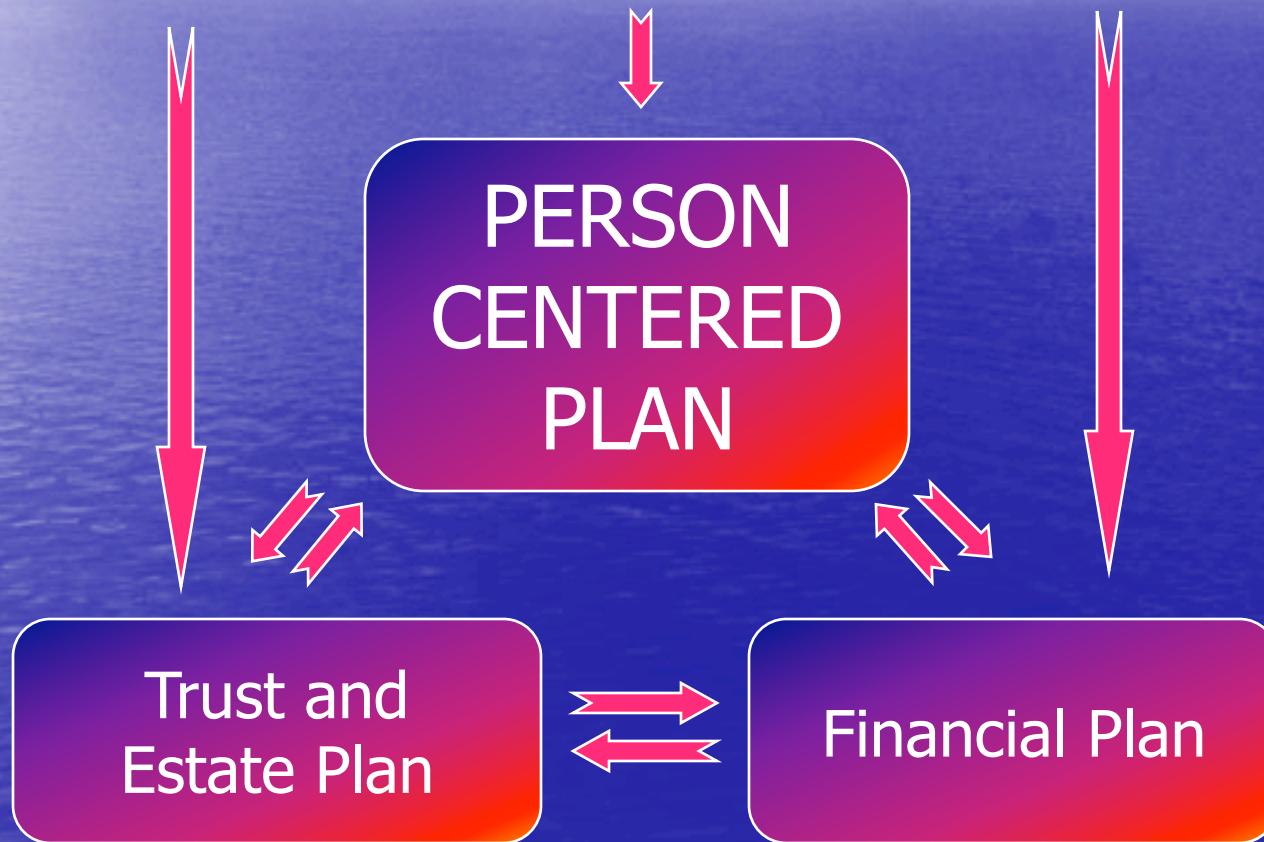
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# Agenda

- Special Needs Planning Overview – why it's important now more than ever
- Government Benefits Overview
- Special Needs Trust Basics
- Child Support and Special Needs Trusts
- Selected Issues
- Questions & Answers



# Special Needs Planning Creating a Legacy



# **OBJECTIVES**

## **Special Needs Planning**

- Maximize government benefits, e.g. Medicaid, SSI, and other means tested benefits
- Promote an enjoyable standard of living
- Protect assets from waste, theft and/or misuse
- Guidance on future decisions through Letter of Intent or an Ethical Will



# Government Benefits Overview

- Means-tested benefits  
(Supplemental Security Income/Medicaid)
- Entitlement benefits  
(Special Education, Survivor Benefits, Childhood Disability Benefits)
- Sliding Scale  
(Housing vouchers, some state welfare benefits)

# Eligibility Criteria

Supplemental Security Income (SSI)  
Social Security Disability Income (SSDI)

SSI

Needs based

SSDI

Entitlement based on  
contributions paid to Social  
Security Administration

DAC Benefits

SSDI benefits to a person with a  
disability, onset prior to age 22,  
with a parent covered by Social  
Security who has died, retired or  
become disabled



# Home and Community-Based Services Waiver

- Permanently and totally disabled
- Would be institutionalized unless receiving waiver services
- Countable income less than or equal to 300% of the federal benefit rate (\$2,163 for 2014)
- Countable assets of less than \$2,000 and have not transferred resources for sole purpose of attaining MassHealth

# Two Types of Supplemental Needs Trusts

## Self-Settled Trusts

- Receive irrevocable assignment of support payments
- Contains assets owned by SSI applicant or by son/daughter with a disability

## Third Party Trusts

- Receives assets gifted by third parties
- Beneficiary of life insurance on parent(s) plan
- Inheritance at the time of parent's death



# **Self-Settled Trusts under 42 USC 1396p(d)(4)(A)**

- Irrevocable
- Beneficiary meets federal definition of disability
- Created by a parent, grandparent, guardian or by a court
- Assets held for the sole benefit of the beneficiary
- Beneficiary is under 65 years old
- Contains payment provisions providing for reimbursement to State Medicaid agency for benefits provided to the beneficiary upon the death of the beneficiary

# Third Party Trusts

- Common law discretionary trust
- Grantor's intention is to supplement available government benefits
- Revocable if left unfunded
- Irrevocable upon the death of parent or upon funding
- No pay back provision



# **Common Elements of Both Self Settled and Third Party Trusts**

- Full discretion given to trustee, hence, need for Person Centered Plan
- No right of withdrawal given to beneficiary
- Identify successor trustees and method of selection of future trustees
- If state law permits, add spendthrift and creditor protection provisions
- Consideration should be given to persons who are entitled to receive annual accountings and who are entitled to object thereto

# Typical Benefits Paid by Supplemental Needs Trust

- Companionship, entertainment, cultural and educational expenses
- Case manager, service providers, and advocacy services
- Birthday, holiday and special event gifts
- Exercise, health club and physical therapy
- Vacation related expenses



# Trustee Selection



- Siblings, Family Members or Individuals
- Banks and Trust Companies
- Professional Advisors
- Non-Profit Corporations
- Co-Trustee Options

# Assignment of Child Support for Government Benefits Planning

General Rule: A legally assignable payment that is assigned to a trust/trustee is income for SSI purposes **unless** the assignment is irrevocable.

For example, irrevocable child support or alimony payments paid directly to a trust/trustee as a result of a court order, is not income for SSI purposes.



# Questions & Answers

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