



First Things First: Wills and Special Needs Trusts

Session Seven
ADMH Webinar Series for Families

Wellness without Barriers



Our Mission:

ADMH provides comprehensive, coordinated, person-centered healthcare for teens and adults with developmental disabilities. We strive to empower individuals and their families to become advocates for their own health and wellness needs.



What is a Medical Home?



- a model of primary care that is **patient-centered**, comprehensive, **team-based**, coordinated, accessible, and focused on quality and safety
- a place where **patients are treated with respect, dignity, and compassion**, and enable strong and trusting relationships with providers and staff
- a model for achieving **primary care excellence** so that care is received in the right place, at the right time, and in the manner that best suits a patient's needs



First Things First: Estate Planning for A Child With A Disability

Kim C. Martin, Esq.

September 21, 2023

Disclosure & Legal Disclaimer

- ▶ This workshop is for educational purposes only. It is not legal advice, nor should it be construed as such.
- ▶ Any opinions expressed in this presentation do not constitute official opinions of any office of the State or County.
- ▶ This meeting does not substitute for meeting with an attorney who can give you specific advice and recommendations concerning your particular circumstances, and therefore should not be relied upon for such purposes.

ABOUT

KIM MARTIN



EDUCATION:

- The University of Virginia; Charlottesville, Va. B.A., English Literature, 1990
- The University of North Carolina at Chapel Hill; Chapel Hill, N.C. Juris Doctor, 1999

PRACTICE AREAS:

- Trusts & Estates, with a specialization in estate planning for families with a special needs family member
- Guardianship & Conservatorship
- Divorce issues that involve support for a child with special needs

Is a Special Needs Trust Appropriate?

The 2 Magic Questions:

1. Is your child **disabled** for public benefits purposes?

- ▶ **Under age 18:** medically determinable physical or mental impairment that results in “marked and severe functional limitations.”
- ▶ **18 and over:** unable to engage in **Substantial Gainful Activity (SGA)** by reason of impairment
 - ▶ Impairment can be expected to result in death or to last for at least 12 months
 - ▶ Impairment must be so severe that the child cannot do any type of paid work that exists in the national economy
- ▶ **2023 SGA:** \$1,470 or
 \$2,460 (if statutorily blind)

Is a Special Needs Trust Appropriate?

The 2 Magic Questions:

2. Does your child receive, or expect to receive, **means-tested benefits?**

- ▶ SSI
- ▶ Medicaid
- ▶ SNAP
- ▶ Section 8 Housing
- ▶ Brain and Spinal Injury Trust Fund (BSITF) (TBI/SCI Fund)

What is SSI?

- ▶ \$914/M in 2023
- ▶ FAMILY RESOURCES COUNT until age 18
- ▶ INCOME TEST APPLIES
- ▶ CAN BE REDUCED/ELIMINATED by too many resources/too much income
- ▶ LINKED TO MEDICAID

What is Medicaid?

- ▶ FAMILY RESOURCES COUNT until age 18
(can be overridden by KBDW)
- ▶ Many types of benefits
 - ▶ KBDW Medicaid
 - ▶ NOW/COMP Waivers
 - ▶ Family Support
 - ▶ Nursing Home Medicaid
- ▶ Subject to ESTATE RECOVERY

WHAT DOES ALL THIS HAVE TO DO WITH SPECIAL NEEDS PLANNING?

SPECIAL NEEDS TRUSTS: First Party vs. Third Party

First Party SNT

- ▶ *AKA Self-Settled Trust, d4A Trust*
- ▶ Holds first party funds
- ▶ Subject to Medicaid payback

Third Party SNT

- ▶ *AKA Supplemental Needs Trust*
- ▶ Holds third party funds
- ▶ No Medicaid payback (great for super-funding)

FIRST PARTY TRUSTS: *Characteristics*

- ▶ Damage control trust
- ▶ Created by statute
- ▶ Only certain people can be Grantor
- ▶ Subject to the Sole Benefit Rule
- ▶ Must be irrevocable
- ▶ Must be *inter vivos*
- ▶ Cannot be created or funded after age 65
- ▶ Can be used for Medicaid planning for an older family member
- ▶ Estate recovery at death

Why would we use a First Party SNT?

- ▶ Intestate distributions
 - ▶ Non-SNT trust funds
 - ▶ Tort settlements
- ▶ Surprise income (PPP checks)
 - ▶ Child support
- ▶ Pension remainder interests

THIRD PARTY TRUSTS: *Characteristics*

- ▶ Estate planning tool
- ▶ Created by trial and error
- ▶ Anyone can be Grantor
- ▶ No Sole Benefit Rule
- ▶ Can be revocable or irrevocable (flexibility vs. tax planning)
- ▶ Can be testamentary or *inter vivos* (consider who will contribute)
- ▶ Can be created and funded regardless of beneficiary's age

FUNDING THE 3P SNT:

What is the best source of funds?

- ▶ Estate assets
- ▶ Life insurance
 - ▶ Term vs. permanent life
 - ▶ Room and board payments could pay premiums
- ▶ Inherited IRAs
- ▶ Friends and family
 - ▶ Lifetime gifts
 - ▶ Testamentary gifts
 - ▶ Tax planning (if irrevocable)

KIM'S FAVORITE THIRD PARTY SNT PROVISIONS

- ▶ Trustee can **own a home** and charge rent (or not)
 - ▶ Money laundering
 - ▶ Trustee oversight
 - ▶ No estate recovery
- ▶ Trustee has discretion to fund an **ABLE Account**
 - ▶ ISM prevention
 - ▶ Beware the Medicaid payback
- ▶ **SECURE Act** language
 - ▶ Income tax planning

SNTs vs. ABLE ACCOUNTS

SNTs

- ▶ All assets are exempt
- ▶ No limit on the number of SNTs a beneficiary can have
- ▶ Can receive assets of any value
- ▶ Can receive assets of any type
- ▶ No Medicaid estate recovery if assets are held in a 3P SNT

ABLE ACCOUNTS

- ▶ Assets are exempt up to \$100,000
- ▶ One account per owner
- ▶ Can receive contributions up to \$17,000/year (plus earnings up to poverty level if no 401(k))
- ▶ Only cash can be contributed
- ▶ Medicaid estate recovery

What Provisions are Needed in Your Will when Funding a Special Needs Trust?

- ▶ Savings Clause
- ▶ Backup SNT
- ▶ SECURE Act provisions

Q&A

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Thank you for joining us



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Next Steps: Each 3rd Thursday



October 19 – Gotchas! Josh Norris, Esq
November 16 – Letter of Intent/
Emergency Plan Pat Satterfield



Run for Health 2023



Thank you for supporting
ADMH! It was a great day!!

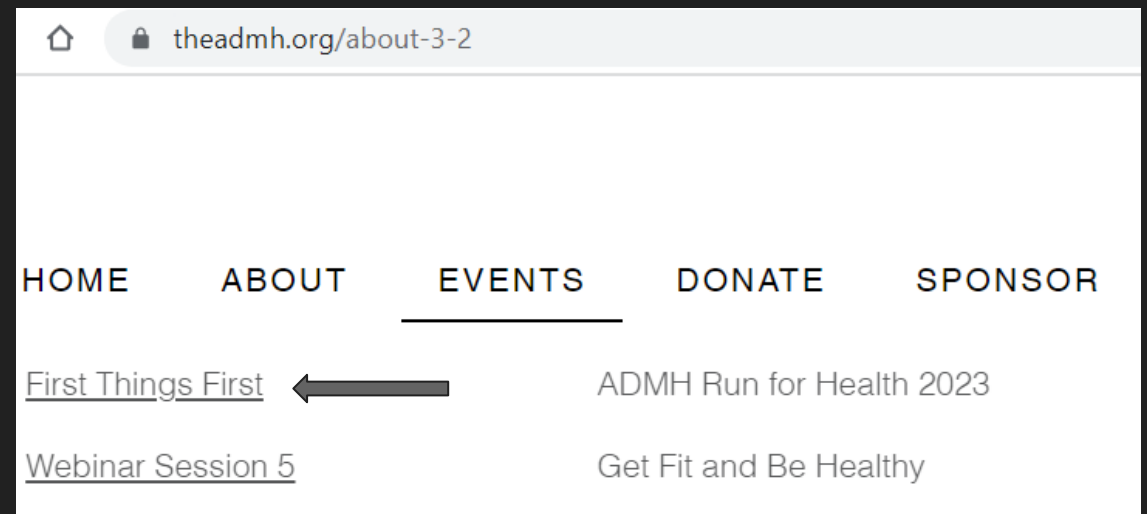
Brook Run Park
September 10, 2023



Resources



Please go to our website www.theadmh.org for the recording of this session and more information on all of the topics in our series so far.



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