# Estate Planning & Elder Law Sections MCLE Program
# Zoom Webinar
# February 25, 2026

**11:55 AM – 12:00 PM**

**Welcome and Introductions**
Michelle Bugasky, *Estate Planning & Probate Section Chair*
**Sponsor Remarks**
Michael Delaney, *Arboretum Wealth & Trust Management*

**12:00 PM – 1:00 PM**

**Program**
**Utilizing Medicaid Asset Protection Trusts for Long-Term Care Planning in Illinois**
Jeffrey Kabbe, *Kabbe Law Group, LLC*

**Presentation Summary**
After this program, attendees will understand Medicaid eligibility rules and asset limitations as they relate to long-term care planning and trust design, how to identify who is a candidate for Medicaid Asset Protection Trusts, how to analyze the structure, required provisions, and legal mechanics of Medicaid Asset Protection Trusts, and how to apply best practices and learn pitfalls to avoid when implementing a Medicaid Asset Protection Trust.

**Link to Evaluation**

The evaluation must be completed to receive CLE credit
https://www.surveymonkey.com/r/EstateElder02252026

**Next CLE Program:** March 25th - Will and Trust Contests with a Focus on Prosecuting and Defending Such Actions – David Feldman and Gary Hollander, Aronberg Goldgehn

**DCBA Events:** February 27th – Judges' Nite – Belushi Performance Hall at COD, Glen Ellyn

April 15th - DCBA / DBF Member Memorial – Attorney Resource Center

**Speaker Bio**

Since 2010, **Jeffrey Kabbe** has assisted clients with estate planning, elder law, special needs planning, charitable planning, advanced estate and tax planning, asset protection, probate, and trust administration at Kabbe Law Group, LLC.

Jeffrey was previously an attorney at Kirkland & Ellis, LLP, defending firms from patent claims by competitors and patent trolls.

Prior to his legal career, Jeffrey served as an information technology consultant and developer, assisting clients with designing and implementing quality tracking systems.

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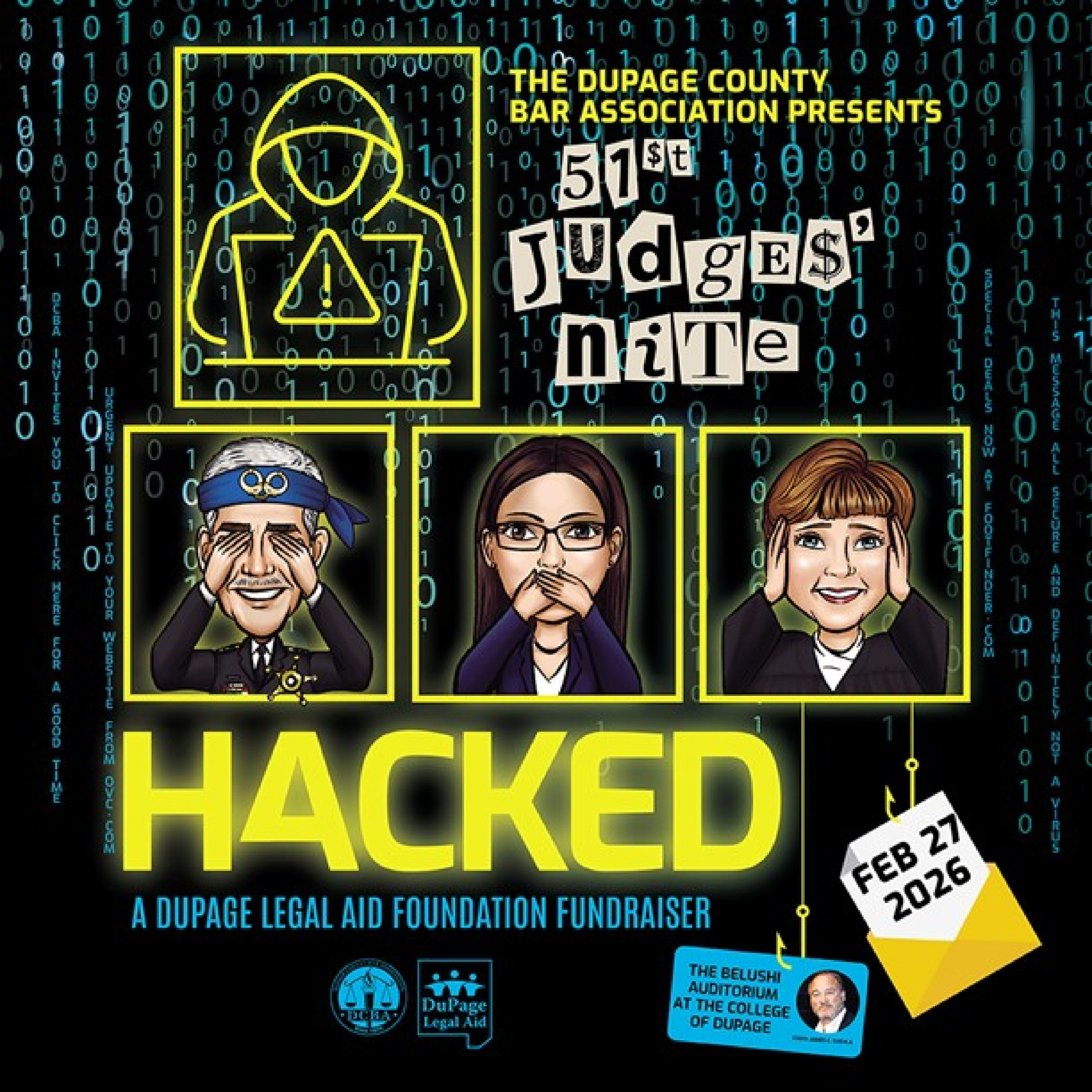

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# UTILIZING MEDICAID ASSET PROTECTION TRUSTS FOR LONG-TERM CARE PLANNING IN ILLINOIS

Presented by Jeffrey Kabbe
Attorney, Kabbe Law Group, LLC

# Agenda

- What Is Long-Term Care, and Why Plan For It?
- Medicaid Eligibility Rules and Asset Limits
- Protecting Assets with a Medicaid Asset Protection Trust (aka Medicaid Trust)
- Who is a Candidate for a Medicaid Trust?
- Structure and Mechanics of a Medicaid Trust
- Best Practices in Implementing a Medicaid Trust

# What Is Long-Term Care and Why Plan for It?

- Long-Term Care comes in three broad categories
  - In-Home Care
  - Assisted Living Facility
  - Skilled Nursing Facility (aka Nursing Home)
- Most people will need long-term care
  - Estimates are that 70% of Americans will need some form of long-term care during their lifetime
  - And 20% of Americans will need long-term care for more than 5 years

# Paying for Long-Term Care

- Long-term care can be financially debilitating
  - Services can cost $300-500 (or more) per day—$15,000+ per month
  - For one of our clients who placed both parents in long-term care facilities, it was costing over $33,000 per month
- The expense of long-term care is usually covered in one of three ways:
  - Private Pay
  - Long-Term Care Insurance
  - Public Benefits
    - Usually this means Medicaid
    - Most people who need nursing home care end up here

# MEDICAID ELIGIBILITY RULES AND ASSET LIMITS

# Medicaid Long-Term Care Qualification

- Medicaid imposes two types of financial qualification criteria
  - Asset limits and eligibility rules
  - Income limits and eligibility rules
- During the application process, asset and income information must be submitted for the applicant and, if married, for their spouse

# Medicaid Long-Term Care Exempt Assets

Before discussing Medicaid asset limits, you should know that certain assets are considered exempt and do <u>not</u> count against asset limits for the applicant or their spouse:

- Prepaid burial funds (within certain rules and limits)
- Burial spaces
- Term life insurance policies with no cash value
- Cash value life insurance policies with a combined face value (death benefit) of $1,500 or less

# Medicaid Long-Term Care Asset Limits (Applicant)

The Medicaid applicant has the following asset limits:

- $17,500 in assets (until recently this was $2,000)
- Significant other exempt assets:
  - **Residence** if their spouse lives there or if they claim that they "intend to return home" when medically able (even if unrealistic); often impractical and risks exposing the residence to "estate recovery"
  - **Car** of any value if needed for transportation for medical treatment of a specific or regular medical problem; otherwise a car up to $4,500 in value
- Limits are verified annually during Medicaid recertification process

# Medicaid Long-Term Care Asset Limits (Spouse)

The spouse (if married) who is not in the long-term care facility is called the "Community Spouse" and has the following asset limits:

- Residence (maximum equity $730,000 in 2025), including household goods and personal effects
- Car of any value
- $143,172 in other, non-exempt assets (called the Community Spouse Resource Allowance)
- Applicant can transfer assets to the community spouse to bring the community spouse up to these levels
- Limits are verified only during application and approval, not annually

# Medicaid Long-Term Care Income Qualification

- Once approved for Medicaid long-term care benefits, the applicant's income (Social Security, pension) is applied as follows:
  - Personal Needs Allowance of $60 (for skilled nursing facility resident)
  - Medicare and health insurance premiums
  - Remainder paid to the skilled nursing facility
- **BUT** there is one big exception to these rules for married couples
  - If the community spouse has monthly income below the Community Spouse Maintenance Needs Allowance of $4,066.50, the applicant can transfer income to the community spouse each month to bring them up to that level

# Medicaid Long-Term Care "5-Year Lookback" Period

- The application process involves an audit of the last 60 months of the applicant's (and if married, their spouse's) finances (the "5-Year Look Back")
- If an applicant is over the asset limit, a "Spend Down" is imposed
- If gifts or transfers for less than fair value were made, a "Penalty" is imposed
  - Medicaid benefits are denied for a period determined by dividing the value of the disallowed transfer by the monthly cost of the skilled nursing facility
  - Example: $18,000 gift and $12,000 monthly cost of facility = 1½ month penalty
- Many clients assume that annual gift exclusion gifts do not cause a Medicaid penalty—but they do!

# Reasons to Protect Assets Prior to Medicaid Qualification

- The exempt asset rules are inflexible in supporting different lifestyles:
  - For many seniors, it makes sense to rent rather than own a home, but there is no Medicaid exemption for a “rental fund”, only for an owned “residence”
  - Note that senior communities with “buy-ins” are usually refundable and are therefore not exempt under Medicaid rules
  - Some seniors do not drive, but there is no exemption for a “public transportation fund”, only for an owned car

# Reasons to Protect Assets Prior to Medicaid Qualification

- The low asset limits for the applicant and community spouse:
  - Limit the ability of the applicant to use their assets to pay for goods and services not covered by Medicaid
    - For example: upgrading to a private room from a “semi-private” room at the nursing home
  - Restrict the ability of the community spouse to support their lifestyle and their own health needs
- The community spouse may lose access to all or a portion of the applicant spouse’s income (because it is paid to the skilled nursing facility

# PROTECTING ASSETS WITH A MEDICAID ASSET PROTECTION TRUST

# Medicaid Asset Protection Trusts

- A Medicaid Asset Protection Trust (also known as a Medicaid Trust) is a trust designed to not be a countable asset against the applicant's or the spouse's respective Medicaid eligibility asset limits
- Creating and funding (transferring assets into) the Medicaid Trust is often referred to as a "5-Year Plan" because of the 5-year lookback period
- If the Medicaid Trust is created and funded at least 60 months prior to needing Medicaid long-term care benefits, the trust assets would not be counted against the asset limits

# Regulatory Framework of Medicaid Trusts

- The treatment of trusts under the Medicaid long-term care rules is governed by Ill. Admin. Code 89, Section 120.347(g):
  - (1): treat as an available resource the amount of the trust from which payment to or for the benefit of the person could be made;
  - (4): treat as a transfer of assets by the person the amount of the trust from which no payment could be made to the person under any circumstances (subject to the provisions of Section 120.387 or 120.388, as applicable). The date of the transfer is the date the trust was established or, if later, the date that payment to the person was foreclosed. The amount of the trust is determined by including any payments made from the trust after the date that payment to the person was foreclosed.

# Regulatory Framework of Medicaid Trusts

- The IDHS Policy Manual rules for trusts are found at PM 07-02-15-a (excerpted below):
  - **Withdrawals Not Permitted by the Irrevocable Trust**
  - Resources added to an irrevocable trust that does not permit withdrawals are subject to the resource transfer policy, see Transfer of Resource Policy.
  - The date of transfer is the date the trust was established and the resource(s) are added to the trust or the date resources are added to the trust after the trust is established.
  - **Irrevocable Trusts that Do Not Permit Withdrawals**
  - When the terms of a trust do not allow withdrawals from the resources held in the trust, the resource is not available to count towards the resource limit. Enter the resource type and amount in IES, mark the resource as inaccessible. Document in case comments the name of the trust and the resource(s) held in the trust.

# WHO IS A CANDIDATE FOR A MEDICAID TRUST?

# Assets That Are Best Suited for Medicaid Trusts

One factor in determining whether a person is a candidate for a Medicaid Trust is the nature of the assets that they want to protect.

Assets that can be transferred to a Medicaid Trust include:

- Real estate
- Cash accounts (checking, savings, money market, certificates of deposit)
- Investment accounts (stock, mutual funds, bonds)
- Non-qualified annuities
- Life insurance policies
- Valuable personal property (gold coins, etc)

# Assets That Are Poorly Suited for Medicaid Trusts

Some assets cannot be included in a Medicaid Trust without incurring income tax consequences

- Transferring retirement accounts (IRA, 401(k), 403(b), qualified annuities) into a Medicaid Trust requires cashing out those accounts and (unless a Roth account) paying income taxes
- Some of our clients do intend to draw down their retirement accounts and contribute the proceeds over time to their Medicaid Trust, but this step should only be taken after reviewing the options with tax and financial professionals

# Who Are Good Candidates for a Medicaid Trust?

- People who expect to be in at least fair health for the next 5 years
  - No known severe medical conditions
  - Not of an age where their life expectancy is close to or less than 5 years
  - Much more useful of a planning tool for those in their 70s or early 80s than those in their late 80s or 90s.
- People with sufficient assets that can be transferred into the Medicaid Trust
  - A family cabin or condo that they want to keep in the family
  - Sufficient cash, stocks, bonds, or other non-qualified assets in excess of limits
- People who want the flexibility to sell their residence and rent instead
- Anyone for whom ”leaving a legacy” is an important planning goal

# Who Are Not Ideal Candidates for a Medicaid Trust?

- Someone who has received a diagnosis that makes them likely to need skilled nursing care in the short term
  - Compare the crisis planning options with paying the cost of care privately for the remainder of the 5-year term
- Someone who has very few assets outside of retirement accounts
- Someone who has no family member (or only one) that they can rely on
- Someone who has sufficient income and/or insurance coverage to not be concerned about the cost of long-term care
- Someone who plans to rely on a HELOC for living expenses

# Other Factors in Who Can Benefit From a Medicaid Trust

- A married couple who is already below the combined Applicant plus Community Spouse asset limits may still be a good candidate for a Medicaid Trust
  - If one spouse dies before the other, the surviving spouse will be limited to no more than $17,500 in assets;  all of the Community Spouse exemptions and limits go away

# STRUCTURE AND MECHANICS OF A MEDICAID ASSET PROTECTION TRUST

# Structure of a Medicaid Trust

A Medicaid Asset Protection Trust is most often structured as an Income-Only Irrevocable Trust.

- The Grantor of a trust is the person (or people) creating the trust
- A Medicaid Trust can be created by a single Grantor or be created jointly by a married couple as co-Grantors
- References here to Grantor should be read as also referring to co-Grantors

# Structure of a Medicaid Trust

The essential elements of a Medicaid Trust are:

- The Medicaid Trust must be irrevocable
- The Grantor is entitled to receive trust income
  - The income of savings and investment accounts is the interest and dividends generated
  - The "income" of residential real estate is the right to live in the property
- The Grantor (and their spouse, if married) must <u>not</u> have any access to trust principal
  - The trust relies on third-parties, usually children, as beneficiaries of principal

# Grantor Rights Under a Medicaid Trust

Medicaid Trusts often reserve the following rights for the Grantor of the trust:

- The right to change the successor trustees of the Medicaid Trust
- The right, via a Lifetime Power of Appointment, to add additional successor lifetime beneficiaries of principal of the Medicaid Trust
  - Must exclude Grantor and their spouse as possible recipients
- The right, via a Testamentary Power of Appointment, to change the death beneficiaries of the Medicaid Trust
  - Must exclude Grantor's estate as possible recipient to avoid estate recovery

# Trustee of a Medicaid Trust

- The Trustee of the Medicaid Trust is the person who decides when principal is distributed to one or more of the principal beneficiaries
- A conservative approach is to name one or more Trustees other than the Grantor(s) even though there is no restriction in the Illinois Regulations or IDHS Policy Manual on the Grantor serving as Trustee
  - There are states that explicitly prohibit the Grantor from serving as Trustee
- There is no requirement that the Trustee be a corporate or professional trustee

# Distributing Principal from a Medicaid Trust

- The principal in a Medicaid Trust is accessed through one or more other people, usually the child or children of the Grantor
- Once principal has been distributed to a child, that child is free to do with the funds as they wish, including:
  - Gifting the funds to their parent
  - Spending the funds for the benefit of the parent
  - Anything else they wish
- There is no (and can be no) requirement in the trust that the child use the funds in a way that benefits the parent;  the only obligation is a moral or ethical one

# Funding a Medicaid Trust

- Once the Medicaid Trust is established, the assets the client wishes to protect are transferred into the trust
  - Real estate is deeded into the trust
  - Trust accounts are established to hold financial assets
  - Life insurance and non-qualified annuities are retitled into the trust and should have their beneficiary designation updated (usually naming the trust)
- Each asset has its own "5-year clock", that begins when the asset is transferred into the Medicaid Trust

# Taxation of a Medicaid Trust

- A residence owned in a Medicaid Trust is still entitled to a senior property tax freeze or exemption
- A Medicaid Trust is a "grantor trust" for income tax purposes and can use the Grantor's Social Security Number as the tax ID number
  - No separate 1041 tax return is required for the Medicaid Trust
- Assets owned by a Medicaid Trust get a "step up in basis" for capital gains purposes at the Grantor's death
- Unlike many other types of irrevocable trusts, transferring assets to a Medicaid Trust is not considered a completed gift for federal gift and estate tax purposes

# BEST PRACTICES IN IMPLEMENTING A MEDICAID ASSET PROTECTION TRUST

# Pitfalls in the Drafting and Design of Medicaid Trusts

- Be cautious if you believe you found a "loophole"; I have reviewed Medicaid Trusts where:
  - The Medicaid Trust stated explicitly that the distributions of principal to the children were required to be used to support the parents
  - The Medicaid Trust was accompanied by Parental Support Agreements requiring the children to use any principal distributions from the trust for the benefit of their parents
  - These arrangements would almost certainly cause the trust to be counted as an asset for Medicaid eligibility

# Best Practices for the Drafting and Design of Medicaid Trusts

- Consider carefully how to structure principal distributions from the Medicaid Trust
  - Distributions can be entirely discretionary, allowing a distribution to be made to one child out of many
  - Alternatively, principal distributions can be restricted to only *pro rata* distributions to call children simultaneously
- Whenever a child is serving as Trustee, we recommend having co-Trustees if possible
  - While not foolproof, the Trustee has wide discretion in making distributions, and it is often advisable for the trust to require two children to come to agreement on trust decisions
  - Be aware, though, that most financial institutions will not enforce that trust rule

# Best Practices for Using a Medicaid Trust

- Clients with Medicaid Trusts still need to have a financial life outside the trust
  - At least a primary checking account to receive income from Social Security, Pensions, retirement account RMDs (if any), and income from the Medicaid Trust
  - The checking account is owned by the client individually (or jointly, if married) and names the Medicaid Trust as the Payable On Death (POD) beneficiary
- For trust accounts, some bankers have told clients incorrectly that they cannot use their Social Security Number for the Medicaid Trust because it is an irrevocable trust
  - Our solution has been to tell the clients to reformat their SSN as an EIN
  - For example: 123-45-6789 can be reformatted as an EIN: 12-3456789

# Best Practices for Using a Medicaid Trust

- Additional assets can be added to a Medicaid Trust after it has been created and initially funded
  - Recommended to not commingle existing trust assets with new funds and to instead create a new account to receive the later contribution
- Keep good records of the usage of any principal distributions from the Medicaid Trust, especially in the first 5 years after creation
  - In the case of an unexpected medical event, the family sometimes needs to pivot to crisis planning, making documentation potentially very important

# Medicaid Application Pitfalls With a Medicaid Trust

- When applying for Medicaid benefits, close attention needs to be paid to the date the assets were transferred into the trust
- One potential "gotcha" in the Medicaid application form is the question that offers the applicant the ability to obtain benefits for up to 3 months prior to the date of application
- Be warned: If this option is chosen, the 5-year lookback period starts not at the current month but at the beginning of that earliest prior month
- Choosing that option therefore turns a 5-year lookback into a 5.25-year lookback, and if the funding of the Medicaid Trust falls within those 63 prior months, the planning will not be successful

# ANY QUESTIONS?

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Law Group

Founded in 2006, Kabbe Law Group practices exclusively in the areas of Estate Planning and Elder Law:

- Trusts, wills, powers of attorney, and health care documents
- Long-term care benefits planning and qualification
- Special needs trusts
- Estate tax planning
- Asset protection planning
- Probate and trust administration

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