**Two Kinds of Special Needs Trusts   
for Persons with Special Needs under the Age of 65**

1. **Third Party Special Needs Trusts – Funded with Money that belongs to someone other than the Person with Special Needs**
   1. Estate planning trust for parents of children with disabilities
   2. **Funded by assets not owned by the beneficiary with special needs or disabilities**
   3. **Most common application – parents seeking to provide for a disabled child after their death – thus commonly funded with parent’s life insurance**
   4. **The way for family to leave assets to the child who is disabled**
   5. **Since third Party SNT assets are not an “Available Resource” for benefit qualification, the disabled beneficiary can maximize their existing government benefits and not risks losing benefits.**
   6. **No payback (to State Medicaid) requirements, can go to other beneficiaries**
   7. Can be created by Will (via a testamentary trust) (then probate required)
   8. Can also be created during lifetime of the 3rd party – a Third Party SNT (a type of revocable living trust – can be amended if the laws change)
   9. A Third Party SNT that is immediately in effect allows for trustees and successors to gain training & experience
   10. Trustees need to understand how SNTs work with retirement assets
   11. Annuities can be used to provide income, but must watch income limits of beneficiary
   12. Terminates at the death of the beneficiary and remaining assets can stay in trust for the contingent beneficiaries or be distributed to beneficiaries
2. **First Party Special Needs Trust (SNT) – Funded with Money of the Person with Special Needs**
   1. Also known as a **(d)(4)(A) Trust** (because it is found under 42 USC 1396p(d)(4)(A)), a **Self-Settled SNT**, or a **Payback Trust**
   2. Must be set up by parent, grandparent, legal guardian or a court (by law)
   3. Must be for the sole benefit of a person who is disabled as determined by SSA and under the age of 65
   4. **Must be established and funded with the disabled person’s own money; this money is often the result of a personal injury settlement, inheritance, alimony or some other income**
   5. **Must be an irrevocable trust, and must name a residuary beneficiary**
   6. **Must contain a payback provision to the State Medicaid**
   7. **State Medicaid/SSI agency must approve the SNT**
   8. Complex role for a non-professional; highly recommend an experienced trustee
   9. High costs if Trustee does not properly administer assets in the SNT (i.e. disqualified from Medicaid/SSI)
   10. Co-Trustee arrangement with family member and a professional recommended
   11. Trust advisor or Trust advisory committee recommended
   12. Use of Trust Protector provisions for beneficiary protection