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Special Needs Trusts

Ensuring Financial Security for Individuals with Disabilities

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A special needs trust (SNT) is a privately and professionally managed trust set up by one or more persons, called grantors, for the benefit of a person with disabilities or other impairments. An SNT is administered and managed by a trustee. Ideally, this trustee is an experienced professional fiduciary, such as a trust company. In addition to being created by individual grantors, SNTs can be formed from litigation proceeds payable to a disabled beneficiary, including lump sums and annuity payments. If drafted and administered properly, an SNT can supplement government benefits, such as Supplemental Security Income (SSI) and Medicaid and will not disqualify the beneficiary from receiving means-tested government benefits.

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Considerations for Creating Special Needs Trusts

SNTs are powerful tools that enable individuals with disabilities to maintain eligibility for government benefits while also receiving financial support from the trust. When creating an SNT, it is essential to carefully consider various factors to ensure the trust is structured and funded appropriately and that it effectively meets the beneficiary's unique needs. Critical factors include:

- Maintaining government benefits eligibility
- Providing clear guidance in a letter of intent to ensure the best care for the beneficiary
- Selecting a qualified trustee who can administer the trust without a conflict of interest

Government Benefits Eligibility

When creating an SNT, it is essential to consider whether the beneficiary's assets and other resources will likely cover the full cost of their lifetime needs or whether government benefits will also be needed to help cover such needs. This assessment will help determine the appropriate structure and funding of the SNT.

It is important to note that even if a beneficiary does not financially need to rely on Medicaid for health insurance or on SSI for monthly payments, he or she may still need to be "Medicaid-eligible" to participate in beneficial state or local programs, such as life skills training. Working with an estate or Medicaid planning professional can help estimate the beneficiary's future expenses and identify programs for which they may be eligible.

Understanding the differences among Medicare, Medicaid, SSI, and Social Security Disability Income (SSDI) is crucial when setting up an SNT. A special needs beneficiary may benefit from all four programs, each with eligibility rules and covered services. SSDI and Medicare are not based on financial need, while SSI and Medicaid have strict financial requirements. Comprehending the eligibility requirements of the particular programs for which the beneficiary qualifies or is likely to qualify for in the future is critical.

When establishing an SNT, reviewing all assets and beneficiary designations is crucial to ensure that no funds or resources pass directly to the beneficiary. All the beneficiary's inherited property shares should pass directly to the SNT. SSI, Medicaid, and other means-tested government benefits could be lost if assets pass outright to the beneficiary.

This review should include:

- IRA, 401(k), and other retirement benefits
- Life insurance
- Employer-provided death benefits
- Annuities and savings bonds

It is worth noting that trusts can be drafted to contain an SNT provision that is activated if a beneficiary's life circumstances change. This flexibility ensures that the trust can adapt to the beneficiary's evolving needs and maintain their eligibility for essential government benefits.

Letter of Intent

Providing a letter of intent to assist the SNT trustee is highly recommended. This letter provides valuable information concerning the beneficiary's daily life, health care concerns, likes, dislikes, needs, preferences, and other important details. It is especially helpful when a new caregiver steps in to manage day-to-day activities. Once the SNT has been created, the letter of intent should be regularly updated to document any changes in care requirements, ensuring the best care for the beneficiary.

Trustee Selection

Selecting a qualified trustee is a critical consideration when creating an SNT. During the initial stages, a trustee will be chosen to administer and manage the trust assets for the sole and exclusive benefit of the beneficiary. Performing the duties of a trustee is a serious responsibility. The trustee must understand the trust terms, appropriately manage the trust assets, and properly apply the trust funds without disqualifying the beneficiary from government benefits. Most importantly, the trustee must be able to fulfill their fiduciary duties, including maintaining undivided loyalty to the beneficiary.

> *"As you can imagine, in order to prevent a trustee from abusing the decanting power, there are additional restrictions to decanting if the trustee is also a beneficiary of the first irrevocable trust."*

SNT Trustee Duties

- Invest the assets of an SNT to reflect the needs, risk tolerances, and projected length of care for the beneficiary; risk tolerance tends to be low. SNT funds should be invested to produce an appropriate mix of current income and capital appreciation.
- Distribute income and principal "for the sole benefit" of the beneficiary, preferably directly to providers of goods and services to avoid misuse of funds or inadvertent impact on government benefits.
- Reimburse persons who have expended their own funds for items that are permissible SNT disbursements.
- Coordinate with healthcare professionals to provide for the current and anticipated needs of the beneficiary.

- Provide accurate accounting, periodic reporting of receipts and disbursements, and periodic and accurate accounting that reflect trust expenditures and receipts.
- Verify that SNT distributions do not defray a legal obligation of support owed by another to the beneficiary.

Choosing a Trustee

When selecting a trustee for an SNT, it is highly recommended to choose a professional trustee, such as a trust company, due to the specialized skills required to administer the trust properly. Individual trustees are unlikely to afford the high cost of specialized training necessary to manage an SNT effectively.

The chosen trustee must be capable of recognizing and discharging “regular” fiduciary duties, in addition to undertaking an appropriate ongoing analysis of relevant government programs and the impact of trust distributions on the beneficiary’s eligibility for those programs. This requires a deep understanding of the complex rules and regulations surrounding SNTs and government benefits.

Corporate fiduciaries, such as trust companies, are often more cost-effective than individual, non-professional fiduciaries. An individual trustee must separately retain the paid services of investment advisors, accountants, claims processors, bonding agents, and other professionals to effectively manage the SNT. In contrast, corporate fiduciaries typically have these resources and expertise in-house, which permit streamlining the trust administration process and reducing overall costs.

Some states specifically prohibit parents, guardians, or other family members from serving as trustees of an SNT. This is because these individuals are often named as remainder beneficiaries of the trust or are considered heirs-apparent of the beneficiary. Naming a family member as trustee could create conflicts of interest and potentially jeopardize the beneficiary’s eligibility for government benefits.

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