

Planning For Children and Adults With Special Needs

General Goals and Objectives

When a family creates an estate plan that includes provisions for children or adults with special needs, particular care always is required. The estate plan must accomplish the goals of (a) assuring that assets used for the family member with special needs do not impair his/her eligibility for available government benefit programs, while, at the same time, (b) assuring that those assets can be used for a diverse range of supplemental needs of the family member, and (c) building in sufficient flexibility to address presently unanticipated changes in the health and/or functioning level of the family member with special needs, changes in the law, and changes in the support structure available for the family member with special needs.

Supplemental Needs Trusts

Planning for a family member with special needs almost always involves what is referred to as a Supplemental Needs Trust (SNT) and sometimes is referred to as a Special Needs Trust. In common parlance, the terms are used interchangeably. A SNT is a special type of trust that holds, manages, and administers assets for the “supplemental needs” (those not covered by available government benefit programs) of a beneficiary with one or more physical or mental limitations. Because of the specific language used in the SNT document, the assets in the Trust are not “available” to the beneficiary when determining eligibility for government programs that have income/asset limitations. Common government benefit programs that have income/asset eligibility limitations are Supplemental Security Income (“SSI”), Medicaid (Title XIX), food stamps, Section 8 housing, and services provided by the Connecticut Department of Developmental Services.

In general, the terms of a SNT state that the funds in the trust are to be used to supplement any governmental benefits that the beneficiary is entitled to receive and preclude the trustee from making any distributions of income or principal that would jeopardize the beneficiary’s eligibility for any such government benefit program. In most cases the Trust will direct the trustee to pay such amounts of income or principal to or for the benefit of the beneficiary as the trustee deems appropriate in the trustee’s “sole, absolute, and unfettered discretion.”

SNTs can be funded by a third party such as a spouse, parent, sibling, or grandparent of the person with special needs (“Third Party Trust”) or can be funded by the person with special needs with assets owned by himself/herself (“Self Settled Trust”). A Third Party SNT can be revocable or irrevocable, and can be created during the life time of the third party grantor, or at his/her death. In general, there is greater flexibility allowed in a Third Party Trust than in a Self Settled Trust.

One example of this greater flexibility arises after the death of the beneficiary of the SNT. When a beneficiary of a Third Party SNT dies, any funds remaining in the Trust can be distributed in accordance with the grantor's wishes; there is no requirement that the funds be used to pay back Medicaid upon the death of the beneficiary. However, when the beneficiary of a Self Settled Trust dies, the funds remaining in the trust must be used to reimburse the state agency that has provided Medicaid benefits for up to the amount of benefits provided to the beneficiary. Any remaining funds can then be distributed to other named beneficiaries.

Certain types of Self Settled Trusts can only be established for the person with special needs if he/she is younger than 65 and, as well, only if the SNT is established by "a parent, grandparent, legal guardian...or a Court.". In common parlance, this type of SNT often is referred to as a "(d) (4) (A) trust" which ties in with the federal statute that creates special treatment for this type of SNT. Because of the limitations on the creation of a (d) (4) (A) trust, it often is advisable for a parent or grandparent to establish one for a child/grandchild with special needs, even if the child/grandchild has no assets to put into the SNT at that time. By creating a SNT in advance, the family assures that future assets received by the person with special needs (received from third party sources, such as a relative, friend, or insurance proceeds), can immediately be placed into the SNT in a manner that does not jeopardize the individual's eligibility for government benefit programs.

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