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Special Needs Trust

A Special Needs Trust (SNT) provides for a physically disabled, mentally disabled, or chronically ill individual to receive income without reducing his or her eligibility for government benefits such as Social Security, Supplemental Security Income, Medicare, or Medicaid. This type of trust is often referred to as a Supplemental Needs Trust, as it allows for supplemental and additional care over and above what the government provides. It is not meant to replace government benefits for those that are disabled or chronically ill. Assets held in a SNT will not count for the purposes of qualifying for government assistance as long as they are not used to provide food and shelter.

In qualifying for government assistance programs, one's assets and income are taken into account to determine the actual need for assistance. If someone with special needs has too high of income or assets, he or she may not qualify for government-sponsored programs such as Social Security, Supplemental Security Income (SSI), Medicare, or Medicaid. However, if these assets are held in a Special Needs Trust, they will not be considered when calculating the individual's government assistance needs. Assets which originally belonged to the disabled individual that are placed into the trust may be subject to Medicaid's repayment rules, but assets provided by third parties such as parents or as part of an inheritance are not.

Types of SNTs

Self-Settled Trust - this is funded with the disabled individual's own assets and once he or she passes away, any remaining funds in this trust must be used to repay the state for any benefits the individual received from Medicaid during his or her lifetime. The advantage of this type of trust is that it allows the Trustee to conserve assets of the beneficiary while simultaneously making the beneficiary eligible for governmental benefits.

Third-Party Trust - this type of trust is funded with assets from someone other than the disabled person, such as a parent, grandparent, etc. that can be listed in a will, revocable living trust, or a standalone trust. In the event funds remain following the death of the beneficiary, they do not pass on to the state but are instead distributed to the remainder beneficiaries chosen by the individual(s) who created the trust. The main disadvantage of a Third-Party Trust is that it cannot be created with any property which belonged to the disabled beneficiary as this must be placed in a Self-Settled Trust.

Why Set Up an SNT

Those with more than $2,000 worth of countable resources are not eligible for SSI. Countable resources include:

- Checking and Savings Accounts
- Investment Accounts
- Property (other than primary residence)
- IRAs and Other Retirement Accounts
- Custodial (UTMA) Accounts

There are certain types of assets that are not considered to be a countable resource by the SSI and Medicaid programs and therefore, do not affect one's eligibility to continue receiving benefits. These are known as non-countable resources. A trustee can use funds in an SNT to purchase the following items on behalf of the beneficiary:

- Primary Residence - exceptions apply in the event the beneficiary receives only Medicaid (not SSI), the home value may be limited to a specific value

- Vehicle - beneficiary can own one motor vehicle, regardless of value, without affecting SSI eligibility.
- Personal Property
- Property Used for Their Self-Support – items that are used for work, either as an employee or running a trade or business. However, there are limitations, including the value of these items and the rate of return they provide.
- Assets Used for College, Vocational Training, or Starting a Business– under SSI's Plan for Achieving Self-Support (PASS) program, the government allows SSI recipients to use specific assets toward an occupational goal, such as college, vocational training, or starting a business, so as to not affect eligibility of receiving benefits.

Role of a Trustee in an SNT

Instead of giving the money to a third party who they hope will provide for their child, parents can place the assets into a Special Needs Trust and designate a trustee to manage the funds to ensure they will be used for their intended purpose. This trustee has sole discretion for distributions and cannot be compelled or forced to distribute funds to the beneficiary. The trustee may ask for the beneficiary's input on how funds should be spent, but the final decision must always remain with the trustee. In addition, the trustee should never distribute cash directly to the beneficiary to pay for a service or item. All purchases by the trust should be paid directly from the trust. In terms of government assistance eligibility, receiving cash is equivalent to support.

Non-Support Items

Income from a Special Needs Trust cannot be used towards providing support, including food and shelter. The funds in this trust will be considered an "available resource" for government assistance calculations if it is used to provide anything but non-support items. Despite not being able to provide for food and shelter, these assets can still make a significant difference in the quality of life for a special needs individual by providing resources for:

- Independent Health Check Ups
- Transportation
- Insurance
- Vacations
- Entertainment
- Rehabilitation
- Personal Care Attendant

Asset Protection

In addition to aiding in the qualification for government assistance, and ensuring that funds will be used for their intended purpose, the use of a Special Needs Trust also provides asset protection. Special needs trusts are irrevocable, and their assets cannot be seized by creditors or in the event of a lawsuit. This can help parents ensure that funds will be available to provide for their special needs child, even in the case of severe financial difficulty.