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THE SUPPLEMENTAL NEEDS TRUST

We know that government programs - in the form of Supplemental Security Income (SSI) and Medicaid - are very important for people with disabilities in need, as they provide cash benefits as well as important medical coverage and long-term supports and services. The income level and financial resources of an individual with a disability, or family who is applying on behalf of their child with a disability, must not exceed a certain level in order to qualify for these government benefits. Beneficiaries are allowed to retain only a limited amount of assets, with some exceptions. *A person with a disability receiving SSI, who accumulates any significant cash resources, may lose SSI and, possibly, Medicaid.*

However, government cash benefits provide only for the bare necessities: food, shelter, and clothing. They amount to less than a federal poverty level income. As we all know, there are more things and activities beyond these basics that add quality to life. For a parent planning for the future of their child with special needs, this poses a problem.

When parents are able to care for their child, they provide the extras beyond the bare necessities to make their child's life comfortable. But who will provide those resources when they are not there to do so?

If parents leave any assets to their child who is receiving government benefits, they run the risk of disqualifying the child from receiving government benefits. If they leave assets to another family member or other person for the care of the child, they open other avenues of risk where the child might not get the benefit of those assets, such as divorce, bankruptcy, lawsuits, and financial mismanagement.

Fortunately, the government established rules allowing assets to be held in trust for a recipient of SSI and Medicaid, as long as certain parameters are met.

These trusts, called Supplemental Needs Trusts or Special Needs Trusts (SNTs), preserve government benefit eligibility and leave assets that will meet the supplemental needs of the person with a disability, those that go beyond food, shelter, and clothing and the medical and long-term supports and services of Medicaid. The SNT can fund those additional needs. In fact, the SNT must be designed specifically to supplement, not supplant, government benefits. Money from the trust cannot be distributed directly to the person with a disability. Instead, it must be distributed to third parties to pay for goods and services to be used by the person with a disability.

The SNT can be used for various expenditures such as:

- Out-of-pocket medical and dental expenses
- Eyeglasses
- Annual independent check-ups
- Transportation (including vehicle purchase)
- Maintenance of vehicles
- Insurance (including payment of premiums)
- Rehabilitation
- Essential dietary needs
- Purchase materials for a hobby or recreation activity
- Purchase a computer or electronic equipment
- Pay for trips or vacations, pay for entertainment like going to a movie, a ballgame, concert, etc.
- Purchase of goods and services that add pleasure and quality to life: videos, furniture, or a television
- Athletic training or competitions
- Personal care attendant

When should an SNT be set up?

Parents may consider setting up an SNT when they begin their future planning activities such as drawing up their Wills. If their child with a disability will likely have long-term medical or support needs, the SNT can be a vehicle to supply the funding to provide lifetime quality care. Even if the child's future prognosis is unclear, it is never too early to put plans in place for contingencies such as the parents' sudden death or disability.

How is an SNT set up?

The laws governing trusts are complex and are subject to changes in legislation that may vary by state and which could affect a person's eligibility for the government benefits that they depend upon. New laws have considerably tightened the eligibility criteria for receiving government benefits and thus have affected many aspects of the way SNTs are drawn up. These regulations are complex and require a strong knowledge of the current legislation and how it impacts people planning for their child with special needs in order to preserve eligibility. Setting up a special needs trust requires coordinated planning with an attorney knowledgeable in special needs planning who can draft a will and necessary trust documents.

When a parent or grandparent dies, additional assets can be distributed, under a will, to the SNT. A percentage of shares in an estate can be left to a child's SNT. Funding can come from discretionary contributions while parents are alive, probate distributions, a living trust, life insurance, pension plan, or other sources. Therefore, the individual with a disability does not have to be left out of a will, but should have their share of inheritance directed to his or her SNT. In the case of a life insurance policy, pension plan, or other source that would go to a beneficiary on death, the child's SNT should be the beneficiary.

Types of SNTs:

Testamentary SNTs are included in the will and funded as part of the probate process of the Last Will and Testament.

Irrevocable trusts are used in many special needs planning situations. The irrevocable nature of the trust helps protect the money on behalf of the beneficiary who has a disability. Irrevocable trusts can be funded during the life or at the death of the person who is granting the funds.

The Social Security Administration, the federal agency that administers SSI, and the state Medicaid agencies, evaluate trusts that have been set up for individuals with disabilities who are receiving government benefits to determine if they are countable resources for those individuals. If the individual has the legal authority to revoke the trust and use the principle of the trust to meet his or her needs for food, clothing or shelter, it is considered a countable resource. All trusts set up with the assets of the disabled person, or all "self-settled trusts" must be irrevocable and meet the requirements of the law to not be considered countable resources for SSI and Medicaid purposes.

Managing the SNT

Having an SNT requires a trustee to be appointed. A trustee is one who manages another's property and may be a person or an institution such as a bank. In this case, the trustee is the manager of the trust and has general unlimited discretion to use trust proceeds provided for the needs of the individual with a disability. The trustee may be given full discretion to manage the money in the trust and to decide how the money is used for the person's benefit. The SNT should be drafted in such a way as to direct the trustee in how to use the trust's resources for the individual's needs.

Trustees should have good money management/financial skills. The SNT will likely exist for a long period of time. Trustees should be chosen with longevity in mind, and the trust itself should be drafted to adjust to changing circumstances, such as to allow trustees to be changed or removed.

After the death of the individual with a disability, the trustee oversees the final arrangements and the SNT usually ends. However, the trustee may terminate the SNT if laws change or the SNT is challenged by the government.

There are many nuances and complex issues involved in setting up a plan for the future of an individual with special needs which must be handled correctly. There is so much at stake for the individual that requires proper planning be put in place.