

SPECIAL NEEDS AND SUPPLEMENTAL BENEFITS TRUSTS

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Ø A mechanism for sheltering resources to benefit individuals with disabilities.

- Ø Provide assets for the disabled beneficiary's special needs so that the beneficiary can live a more productive and comfortable life
- Ø Avoid having trust assets count as a resource to the beneficiary
- Ø Avoid having trust distributions count as income to the beneficiary

- Ø SSDI
- Ø Medicare
- Ø SSI
- Ø Medicaid
- Ø Federally-Assisted Housing
- Ø Other Agency Supported Housing

∅ “unable to engage in any substantial, gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than twelve months”

Ø Child “suffers from any medically determinable physical or mental impairment of comparable severity” to adult

Ø Special Needs “Payback” Trust

- 42 U.S.C. §1396p(d)(4)(A)

Ø Third Party Special Needs Trust

Also known as supplemental benefits trust

Ø Sole Benefit Trust

- § Transfer of assets from person who needs Medicaid to trust for someone who needs Medicaid
- § Payback provision required or
- § Payments must be on actuarially sound basis

- 42 U.S.C. §1396p(d)(4)(C) –pooled trust managed by non-profit
- Separate account for each person
- Can be established by parent, grandparent, guardian, court or individual with disabilities
- Remaining assets in account may be subject to payback or retention

- ∅ The beneficiary cannot be the trustee
- ∅ The beneficiary cannot compel distributions
- ∅ Supplement, not supplant, government benefits

- Ø Basic necessities of life
 - § i.e., food, shelter, utilities
- Ø Incidental spending money (unearned income)
- Ø Gifts
- Ø Insurance on life of disabled beneficiary

- Ø Established with assets of disabled individual
- Ø Individual must be under 65 at time of the establishment and funding BUT
 - § SSA says payments from structured settlement beginning before age 65 and continuing thereafter are ok
- Ø Individual must be disabled as defined in Social Security Act

Ø Trust may be established by

§ Parent or

§ Grandparent or

§ Legal Guardian, or

§ Court or

§ Competent individual with disabilities

- Ø Medicaid agency entitled to reimbursement from any assets remaining in trust upon death of beneficiary or trust termination for other reasons
- Ø Reimbursement “dollar for dollar” up to amount paid by Medicaid on behalf of individual
- Ø Irrevocable

- Ø Tort recoveries can be placed into payback special needs trusts to ensure eligibility for SSI and/or Medicaid benefits.
- Ø Medicaid and Medicare liens must be paid back before the trust is funded.

- § Payments made directly to disabled beneficiary may render beneficiary ineligible to receive means-tested government benefits
- § Trust should be payee
- § Payments should “pour over” into trust
- § Contingent payee of guaranteed period must be the special needs trust to preserve Medicaid’s reimbursement rights – not spouse or parents

- Ø SNT can be used where one of the parties is disabled, has high medical expenses, is under age 65 and is receiving or may need to receive in near future SSI and/or Medicaid
- Ø All of part of person's share of property division and alimony payments may be ordered to be made to trustee to hold assets and use for party with disability
- Ø SNT can be used to hold payments for disabled child of divorcing parents

Ø Living trust or

Ø Testamentary trust created by will

Ø Revocable

Ø Trustee must have sole discretion

- Ø Periodic additions can be made through lifetime giving or inheritances.
- Ø Unless payback trust is very small, discourage additional funding by third parties
- Ø Additions of beneficiary's assets to third party trust may result in ineligibility for certain government benefits

- § Payable on death (POD)
- § Transfer on death (TOD)
- § In trust for (ITF)
- § IRA
- § 401K
- § Life Insurance
- § Person with disabilities should not be named as beneficiary

Ø On November 19, 2020, IRS published final ABLE account regulations regarding in part:

§ Account Eligibility

§ Contributions to Account

§ Distributions/ Qualified Disability Expenses (QDEs)

§ Account Rollovers

§ Account Owner's Death/Treatment of Remaining Funds

Ø Coordination with SNT/SBT

QUESTIONS?

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Thank you

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