

## **SPECIAL NEEDS REQUIRE SPECIAL PLANNING**

Medicaid is only available to individuals with insufficient assets and income. What do you do if you or a loved one would qualify for Medicaid but for an inheritance or large legal settlement due to a personal injury? Special needs require special planning. Hence, Special Needs Trusts. First and foremost, a Special Needs Trust is a *trust* like any other – a written agreement whereby a trustee holds property for the benefit of another person (the beneficiary). Special Needs Trusts are simply trusts in which the funds can be invested for a recipient of Social Security Income or Medicaid without losing these government benefits. There are different types of Special Needs Trusts. Following are two common types:

### **Supplemental Needs Trusts**

As a creditor, Medicaid can only claim the interest in trust that the beneficiary could reach. If the beneficiary cannot reach the funds, Medicaid can't either. Beneficiaries of discretionary supplemental needs trusts (SNT's) are not guaranteed the trust funds, as this is subject to the trustee's discretion. Thus, Medicaid cannot reach the assets in such trusts. Parents or grandparents with a special needs child or grandchild often create a SNT for that child's/grandchild's benefit so they may still provide for them or leave an inheritance without disqualifying the child/grandchild from governmental benefits.

The SNT must be carefully drafted so that the trust assets are discretionary. The SNT provides that the trustee may use funds from the trust as the trustee deems best for the beneficiary, but the trustee cannot use the funds for basic support which Medicaid or other public assistance programs provide. As its name implies, a Supplemental Needs Trust may be used for the beneficiary's supplemental needs, not those needs covered by public assistance. Examples of appropriate use of SNT funds include private rooms, caretakers, travel, and entertainment.

The SNT may take effect and be used for the disabled individual's benefit either during or after the trust creator's lifetime.

### **Medical Assistance Special Needs Trusts**

Medical Assistance Special Needs Trusts ("MASNT's") are often established after a legal settlement of a personal injury or medical malpractice case. There are several requirements of a MASNT. First, the trust must be irrevocable, meaning it can't be changed. Second, a parent, grandparent, legal guardian, or the court must create the trust. Third, the trust must be established *with the assets of the disabled individual* under the age of 65. Fourth, the State of Iowa must be the residual beneficiary of the trust. Finally, the trust must provide for the special needs of the beneficiary attributable to the disability.

Appropriate expenses paid from a MASNT (which are generally *not* covered by Medicaid), may include things like: cosmetic surgery; psychological counseling; electric wheelchair and other

mobility aids; assistive devices for home or vehicles; caretakers for reading or driving, cultural experiences and periodic vacations; hair, nail, and dental care. The MASNT should not be used to pay for ordinary support, care, education, or entertainment that would not be incurred without the disability.

Once initially drafted and signed, the MASNT should be sent to the Department of Human Services for review, approval, or denial. Yearly reports showing the monthly and yearly income and expenses of the trust must also be submitted and approved by the Medicaid Trust Program. At the beneficiary's death, the remaining trust assets are used to reimburse the State for all medical assistance provided to the beneficiary, and any remaining funds may be paid out to another beneficiary.

If you or someone you love receives governmental assistance, rest assured there are ways to provide for those individuals without disqualifying him or her from those outside benefits.

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