

Trust Connection

A Monthly Report of Trust News and Information

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Smith Salley

PRIVATE TRUST

ABOUT US

Smith Salley Private Trust provides trust solutions for clients who want the peace of mind that their estate will be protected and distributed according to their wishes. Our clients don't need to change their investment philosophy, asset management style, or portfolio holdings, because our trust services integrate seamlessly with the same comprehensive financial planning approach they already enjoy.

Special Needs Trusts

A special needs trust (SNT), sometimes referred to as a supplemental needs trust, is a trust that is established for the benefit of a physically or mentally disabled person, or a person who has other special needs, such as chronic illness, while still allowing such persons to qualify for and receive public assistance disability benefits provided by Social Security, Medicare or Medicaid. The objective of a special needs trust is to provide resources to supplement, and not replace, any such governmental benefits.

Background

Some government programs aimed at assisting the disabled, such as Medicaid and Supplemental Social Security Income (SSI), are needs-based. That means that if the disabled individual has access to more than a specified level of resources (state level limits vary but are generally \$2,000 monthly per applicant), he or she will not be eligible to receive such benefits. In 1993, Congress officially approved the use of SNTs to maximize the use of all available resources, both private and governmental, to provide more fully for the needs of the disabled.

For persons of limited means, government programs may constitute the primary, if not the only, source of funding for their current and future needs. However, government assistance is also available to families who have resources available to meet their loved one's basic needs. These families may be fortunate enough to be able to use their personal resources to provide for non-basic needs as well. With a special needs trust, the disabled person is able to first tap into any government benefits to which he or she is entitled and then can spend personal resources as a secondary source for additional support and comfort.

Types of Special Needs Trusts

There are three types of SNTs: a self-settled or first-party SNT, a pooled SNT, and a third-party SNT.

Self-Settled or First-Party SNT

A self-settled or first-party SNT is created for the sole benefit of a disabled person who is under age 65. The trust must be established by the disabled person's parent, grandparent, guardian, or by the court, but it cannot be created by the disabled person. However, the disabled person can fund the trust. For example, the disabled person could fund the trust with money that has been inherited or received in settlement of a lawsuit or as a result of a divorce.

As previously stated, in order to qualify for Medicaid or SSI, the person who is enrolling must have a limited amount of income and resources. Generally, Medicaid and SSI will look back 36 or 60 months to see if any assets have been transferred to someone else in order to qualify for benefits; if so, a penalty is imposed. The penalty will be that the person who is enrolling won't be able to

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receive benefits for a certain amount of time. Transferring assets to an SNT does not, however, trigger these look-back provisions.

The other benefit of a self-settled or first-party SNT, of course, is that assets in the trust will not be countable as resources for eligibility purposes.

One disadvantage, however, is that upon the disabled individual's death, any money or assets remaining in the trust must be used to reimburse the government for Medicaid benefits extended to the individual during his or her lifetime.

Pooled SNT

A pooled SNT is a trust that is managed by a nonprofit organization. Funds are pooled for investment purposes, but separate subaccounts are maintained for each disabled beneficiary. A pooled SNT works in the same way as a self-settled or first-party SNT. However, with a pooled SNT, the disabled individual can create the account for himself or herself.

Further, any funds remaining in the account upon the individual's death can be used to pay back Medicaid, or they can remain in the pooled SNT to help others in the pool, depending on state law.

Third-party SNT

A third-party SNT is a trust created by a disabled person's parent or other third party, but this type of SNT has no payback requirement. The person establishing the trust must not have a duty to support the disabled child, so the child must be age 21 or older, depending on state law. There is no requirement that the disabled person be under the age of 65. However, transfers to a third-party SNT may or may not trigger the Medicaid or SSI penalty period. Again, it depends on your state's laws.

Conclusion

Family members and caretakers of individuals with special needs can benefit from setting up an SNT to help supplement public assistance. If an individual's basic needs and comfort are not able to be met with Social Security or Medicare/Medicaid benefits alone, an SNT can help close the gap. Setting up an SNT is a complex process that requires careful drafting and administration to avoid disqualification for government benefits. Be sure to consult a specialist to determine which type of SNT is appropriate and to properly set it up so that individuals with special needs can receive the benefits they require to ensure their care and comfort.

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