

Special Needs Planning and Medicaid Law Newsletter



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A FREE LEGAL UPDATE FOR ELDERS AND OTHERS WHO SEEK ASSET PROTECTION ♦ JUNE, 2016 EDITION

SUPPLEMENTAL NEEDS TRUSTS: SOME FREQUENTLY ASKED QUESTIONS

WHY USE A SUPPLEMENTAL NEEDS TRUST?

A Supplemental Needs Trust (sometimes called a Special Needs Trust) is a specialized legal document designed to benefit an individual who has a disability. A Supplemental Needs Trust is most often a "stand alone" document, but it can form part of a Last Will and Testament.

Supplemental Needs Trusts have been in use for many years, and were given an "official" legal status by the United States Congress in 1993.

A Supplemental Needs Trust enables a person under a physical or mental disability, or an individual with a chronic or acquired illness, to have, held in Trust for his or her benefit, an unlimited amount of assets.

In a properly-drafted Supplemental Needs Trust, those assets are not considered countable assets for purposes of qualification for certain governmental benefits.

Such benefits may include Supplemental Security Income (SSI), Medicaid, vocational rehabilitation, subsidized housing, and other benefits based upon need.

For purposes of a Supplemental Needs Trust, an individual is considered impoverished if his or her personal assets are less than \$2,000.00.

A Supplemental Needs Trust provides for supplemental and extra care over and above that which the government provides.

Each Supplemental Needs Trust is its own "entity" with its own Federal Identification Number (Employer Identification Number) issued by the Internal Revenue Service.

The Trust is not registered under either the Grantor's or the Beneficiary's Social Security Numbers. According to Congress a Supplemental Needs Trust must be irrevocable.

A properly-drafted Trust will include provisions for Trust termination or dissolution under certain circumstances, and will include explicit directions for amendment when necessary.

WHAT CAN A SUPPLEMENTAL NEEDS TRUST BE USED FOR?

According to the law, a Supplemental Needs Trust can be used for "supplemental and extra care over and above what the government provides." A properly-drafted Supplemental Needs Trust will work on a "sliding scale".

In the impossible event that the government provides for 100% of the disabled beneficiary's needs, the Trust will provide 0%. If there are no governmental benefits available, the Trust can provide 100%.

Most people fall somewhere along the scale, and the Trust supplements governmental coverage. If a beneficiary falls into a Medicare "doughnut hole" for example, it becomes the Trust's job to cover the shortfall.

Although there are Medicaid rules that say that the Trust cannot be used for housing or food, these rules have to be interpreted carefully.

For example, there is no restriction on purchasing an accessible home or making accessibility adaptations to an existing home and having the Trust own or pay for them.

Likewise, although foodstuffs are not strictly allowable under the rules, social events such as dinner parties are; likewise, vacations and entertainments are permitted.

It is important to remember that a Supplemental Needs Trust is a living legal document that is meant to not only maintain benefits eligibility, but also to bring enjoyment and new, positive experiences to the beneficiary.

MY FAMILY IS WEALTHY AND WE'RE NOT TOO CONCERNED ABOUT GOVERNMENTAL BENEFITS. WHY BOTHER CREATING A SUPPLEMENTAL NEEDS TRUST?

Other types of Spendthrift or Family Trusts aren't appropriate for Special Needs persons because they don't address the specific needs of the disabled beneficiary or his future lifestyle.

Even in situations where a family may have significant resources to help a disabled family member a Supplemental Needs Trust should be established to address these issues.

Monies placed in the Trust remain noncountable assets and allow the beneficiary to qualify for available benefits and programs. Why sacrifice services that might be available to your relative now and in the future?

Just as importantly, trust funds are not subject to creditors or seizure. Therefore, if the disabled beneficiary should ever be sued in a personal injury or other type of lawsuit, the beneficiary is not a "deep pocket" because monies placed in the Trust are not subject to a judgment.

IF HAVING MONEY CAUSES PROBLEMS FOR MY DISABLED DAUGHTER, WHY CAN'T I JUST LEAVE THAT MONEY TO HER BROTHER SO THAT HE CAN LOOK AFTER HER?

"Disinheritance" was commonly used before the use of Supplemental Needs Trusts was officially recognized by Congress.

Disinheritance as a means of providing for a disabled or ill person puts the assets at risk. A non-disabled sibling holding assets for the benefit of a disabled sibling could be subject to such liabilities such as judgments from automobile accidents, a bankruptcy, or a divorce.

Using a Supplemental Needs Trust guarantees that the funds will be held only for the benefit of the person under the disability or chronic illness, and not for any other purpose whatsoever.

News You Can Use

2016 FLORIDA MEDICAID LIMITS

Gross Monthly Income Limit for Medicaid Applicant:	\$2,199.00
Personal Needs Allowance:	\$105.00
Asset Limit (Individual):	\$2,000.00
Asset Limit (Couple):	\$3,000.00
Community Spouse Resource Allowance:	\$119,220.00
Minimum Monthly Maintenance Income Allowance:	\$1,966.25
Maximum Monthly Maintenance Income Allowance:	\$2,980.50