

The Estate Planning Advisor

Supplemental Needs Trusts

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Many people face the difficult challenge of assisting a disabled child or grandchild. A dilemma often arises where the parent or grandparent would like to help enhance a loved-one's quality of life, but not at the expense of disqualifying the disabled person from governmental benefits such as Medicaid and Supplemental Security Income ("SSI"). Enter the Supplemental Needs Trust.

There are two basic types of Supplemental Needs Trusts ("SNT"): (i) a third party SNT established and funded by a person who does not have a legal duty to support a person with a disability (i.e., a disabled adult child or a grandchild); and (ii) a self-settled SNT funded with the disabled person's own assets and/or income. These trust are specifically authorized in New York under Estates, Powers and Trust Law §7-1.12.

With a typical third party SNT, all distributions from the trust are made in the sole discretion of the trustee and are usually paid to third party providers of services to the disabled beneficiary. If distributions are made directly to the beneficiary, such distributions may reduce or disqualify the beneficiary from SSI, Medicaid and other "means tested" government programs.

Third party SNT's may be created either during the trustmaker's lifetime (called an *intervivos SNT*) or as part of the trustmaker's will or revocable trust where the SNT "springs" into effect after the trustmaker's death (called a *testamentary SNT*). Be aware that lifetime transfers into a third party SNT will *not* qualify for the annual \$11,000 gift exclusion and will utilize a portion of the trustmaker's \$1,000,000 gift exemption.

A benefit of a third party SNT is that the State has no right to recover any of the assets in the trust remaining after the death of the beneficiary. All such assets may be left to other children, grandchildren or any other beneficiaries selected by the trustmaker.

A self-settled SNT operates much like a third party SNT (i.e., the trustee retains complete discretion to make distributions of principal or income to or for the benefit of the beneficiary), but the source of the assets funded into the trust derives from the disabled beneficiary him or herself. Such trusts are often funded with settlement proceeds from a personal injury or similar lawsuit. Or, a disabled beneficiary who is able to work may divert income above the Medicaid allowable level into a self-settled SNT in order to retain eligibility for Medicaid and SSI.

A fundamental difference between the third party SNT and a self-settled SNT is that the latter must include a "Medicaid payback" provision. That is, upon the death of the beneficiary, Medicaid must first be repaid from the trust proceeds up to the amount of

the benefits provided to the beneficiary during his or her lifetime. Amounts remaining after the Medicaid payback, if any, may be left to other beneficiaries.

SNT's can be extremely beneficial to families facing the already difficult prospect of assisting a loved-one with beneficiaries. Because of the specific legal requirements for establishing and maintaining SNT's, it is advised to consult with an experienced elder law attorney to assist with this important planning tool.

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