The Special Needs Trust

Providing for the Future
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What Is a Special Needs Trust?

- A federally recognized “safe harbor” trust for persons with disabilities
- Primary purpose of any special needs trust (SNT) is to improve the overall quality of life of a person with a disability
  - The trust works by allowing a person with a disability to have additional funds available for future care without losing essential public benefits like Supplemental Security Income (SSI) and Medicaid
  - Parents may also use to express desires for the lifetime care and advocacy of their child with a disability through Letter of Intent
What Is a Special Needs Trust? (continued)

- There are two primary types of SNTs—Individual and Pooled
  - Individual SNTs are held by a corporate trustee or private trustee
  - Pooled SNTs are held by a non-profit organization
- SNTs can also be further classified:
  - Third Party SNTs are funded with assets from someone other than the person with a disability
  - Self Settled (or First Party) SNTs are funded with the disabled person’s own assets
- This presentation describes the use of Third Party SNTs
How Special Needs Trust Operate

- Trust can pay for many goods and services like automobile, caregivers, travel, or home.
- Paying for certain expenses may reduce beneficiary’s SSI monthly check:
  - food, gas, electricity, water, sewer, heating fuel, garbage removal, real estate taxes, rent or mortgage.
- Paying for medical services covered by Medicaid may eliminate eligibility for that program.
- Trustee performs a balancing act between:
  - distributions that do not violate SSI or Medicaid’s rules and
  - providing goods and services that improve beneficiary’s life.
Growing Demand for Special Needs Trusts

- 2000 census data showed that 20.9 million families (or 2 out of 7) in the U.S. included at least one person with a disability\(^1\)
- 13.8% of school-age children were served in federally supported programs for disabled in 2004–2005\(^2\)
- Approximately 5.3 million Americans have a permanent disability as a result of traumatic brain injury\(^3\)

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3 Centers for Disease Control and Prevention, Department of Health and Human Services, May 2007.
Growing Demand for Special Needs Trusts (continued)

- “About 7.5 million persons received benefits based on disability” in the U.S.\(^4\)
- An estimated 9.4 million children in the U.S. have special health care needs\(^5\)

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\(^5\) Health Resources and Services Administration, Maternal and Child Health Bureau.
Recent advances in medical care have dramatically increased the life expectancies of persons with disabilities, meaning a much more structured approach to planning for lifetime needs is required.

- Persons with disabilities eligible for SSI or Medicaid are unable to work to earn money.
- Medicaid is often the only health insurance coverage available to a person with a disability.
- Private pay for health care can quickly reduce even very large estates to zero.
SSI and Medicaid are available to provide for subsistence-level food, shelter, medical and attendant care needs, but not more.

- Lifetime financial planning for a person with a disability is essential to provide those extra things that make life worth living.
- A Third Party SNT is the only way to leave assets to a person with a disability to pay for those “extras” without jeopardizing SSI and Medicaid.
SSI provides a modest monthly cash grant for food and shelter to disabled, blind, or aged (65 or older) persons

- In 2008, the SSI federal government maximum payment is $637 a month for an individual
- Some states supplement this amount. For example, California provides a supplement of $233 a month to the payment.
- Eligibility for even $1 of SSI (in most States) means automatic eligibility for Medicaid
What Medicaid Provides*

- Comprehensive health insurance
- Attendant services
- Dental coverage
- Day rehabilitation programs
- Group homes
- Skilled nursing facilities
  (possibly costing thousands of dollars a month)

*Programs are state specific; please contact your state Medicaid provider for more details.
Public Benefit Eligibility Requirements

- Assets over $2,000 in the SSI or Medicaid recipient’s name disqualify person with a disability from SSI or Medicaid
- Income of around $940 a month will generally disqualify a person with a disability from receiving SSI or Medicaid
- Family members often subsidize additional costs however payment of cash directly to the benefits recipient will reduce SSI payment dollar for dollar after the first $20
- Third parties paying directly for benefit recipient’s food, shelter or medical care covered by Medicaid will reduce or eliminate public benefits eligibility
Planning for a Person With a Disability’s Life Time Care

- The best planning will assemble a team consisting of a special needs planning attorney, financial advisor, insurance professional, and professional care giver to develop a plan for lifetime care
  - Understand costs associated with specific disability
  - Understand availability of public benefits
  - Understand life expectancy of person with a disability
  - Develop plan for funding the lifetime care
Establishing the Special Needs Trust

- Complex laws govern trusts
- Laws vary from state to state
- Work with experienced special needs planning attorney to preserve government benefit eligibility
Establishing the Trust (continued)

- A Third Party Special Needs Trust is usually established as part of a parents’ estate plan in their will or revocable living trust.

- Third Party Special Needs Trust must:
  - not be funded with assets owned by person with disability
  - be managed by trustee other than person with disability
  - pay third parties directly for goods and services
Establishing the Trust (continued)

The SNT also must not allow the beneficiary:

- the authority to revoke the trust; or
- to direct the use of trust assets for his or her support and maintenance

The SNT may also:

- provide Letter of Intent
- determine who should receive remainder of trust on beneficiary’s death
- include choices for successor trustees
Funding a Special Needs Trust

- Cash
- Stock
- Personal property
- Real estate
- Life insurance. Life insurance is an excellent and most popular way to fund a Third Party SNT.
Owning Life Insurance

An ideal way to provide for a special needs child or a dependent adult because death benefit is:

- federal income tax–free
- immediately available
- usually received without having to go through probate
Avoiding Common Mistakes

- Failing to plan for child with a disability’s inheritance by doing nothing or improperly leaving money directly to child with a disability
- Leaving assets to a sibling with a request to take care of their brother or sister with a disability
- Placing money in a Uniform Transfer to Minors Account
- Choosing the wrong trustee for the SNT
Example: The Smith Family

- Jim and Jane Smith are both 54
- 13-year-old son, Mike, has Down syndrome
- Want to ensure Mike continues to receive government services while being able to pay for supplemental needs

*Worth magazine, March 2008.*
Example: The Smith Family (continued)

- Smiths consult with their financial advisor, insurance professional, and attorney experienced in special needs planning
- Jim and Jane create Third Party Special Needs Trust
Smiths’ financial advisor and insurance professional:

- Examine Smiths’ Letter of Intent
- Perform detailed financial analysis based on future cost of supplementary items
- Explore available resources to fund trust now and in future
Example: The Smith Family (continued)

- One option: funding trust with life insurance
- Only life insurance provides instant liquidity in event of caregiver’s death
Remembering Other Family Members

- Don’t forget other family members who may share in care of disabled person
- Siblings should be considered in parents’ overall estate planning
- Relative as trustee should be compensated for work
Achieving Important Goals

- A Special Needs Trust can help clients with disabled family members achieve vital estate planning and financial goals.
- Proper planning allows disabled person to enjoy comfortable lifestyle while preserving governmental program eligibility.
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