

SNTs, Public Benefits Eligibility, and Housing Issues for People with Disabilities

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Part One Basics-Special Needs Trusts (SNTs)

I. Why are SNTs an Important Planning Tool?

More than 54 million Americans have a mental or physical disability.¹ Through special needs planning, individuals with disabilities are provided with financial resources to help manage their lives successfully, and as independently as possible. Although public benefit programs are extremely important to special needs people, these programs are usually limited to the financially needy. A SNT is a tool that can assist families of any economic status in planning for their loved one.

The key component of a SNT is that the funds in the trust do not disqualify the beneficiary from public benefit programs. The individual is not disqualified from public benefits because the funds are not considered to be “available” to the individual. SNTs have the potential to be powerful tools to preserve assets and to guard a SNT beneficiary’s eligibility for public benefits. The relationship between the SNT and public benefits is such that the beneficiary is allowed to retain their standard of living, without completely depleting available resources. Without a properly drafted SNT, the individual would exhaust their assets.

II. Considerations in Drafting a SNT

A. Information Gathering

Similar to the drafting of general estate planning documents, the information gathering process is a necessary component to drafting a SNT. Information gathering is the essential first step to take, and it must be done in a thorough manner. Biographical and financial data must be discussed first. This is getting to know the client, their family, and their assets. Next, it is important to get to know the client on a personal level. Learning about the client’s aspirations, goals, and fears, will result in more effective special needs planning. Information gathering provides the

¹ *National Organization on Disability*, available at: www.nod.org.

foundation for the entire special needs planning process. Samples of the client intake forms I use are attached. See *Attachment 1*.

B. Program Operations Manual System (POMS)

When drafting a SNT, POMS, which are published by the Social Security Administration (SSA) and contain operating procedures for SSI, must be taken into consideration. POMS not only recognize the trust as an instrument, but also provide helpful definitions.²

C. Letters of Intent

A Letter of Intent is a method for the creator of a SNT to communicate their intentions regarding the trust beneficiary to the trustee, successor trustees, or a court. It is not a legally binding document. Ideally, it should include personal information about the beneficiary that only the creator knows. It should include facts, hopes and dreams that the creator has for the trust beneficiary. There is no required format. It can include information on medical history, housing desires, recreation, vocational and travel preferences, family and/or religious traditions, etc. The Letter of Intent should provide the trustee with guidance as to what “special needs” the beneficiary has or will have.

The Letter of Intent should be frequently updated as the beneficiary’s needs change. An updated copy should always be kept with estate planning documents.

For great samples of Letters of Intent and a blank form to help you clients in drafting one check out my website and blog:

- www.pekdadvocacy.com
- http://pattidudek.typepad.com/pattis_blog/welcome.html

² POMS may be accessed online at: www.socialsecurity.gov.

III. Types of SNTs

After the information gathering process is complete, the next step is to determine which type of SNT will best meet your client's needs. There are two types of SNTs: 1) Self Settled Trusts, including: Exception A Trusts, Exception B Trusts and Exception C Trusts; 2) Third-Party Special Needs Trusts.

A. Self Settled Trusts

i. Exception A Trusts³

To meet the requirements of an Exception A Trust,

- A. The trust must be funded with the assets attributable to the person with special needs;
- B. When established and funded, the person with special needs must be under 65 years of age at the time of funding;
- C. The beneficiary must be disabled pursuant to the SSA definition;
- D. The trust must be established by either a parent, grandparent, legal guardian/conservator of the beneficiary, or a court;
- E. The trust must be for the sole benefit of the person with special needs during his or her lifetime;
- F. Any state paid medical assistance on behalf of the beneficiary must be reimbursed from any amounts remaining in the trust upon the death of the beneficiary; and
- G. The trust must be irrevocable.

ii. Exception B Trust⁴

- A. Clients who reside in income cap states must meet an income threshold in order to qualify for Medicaid. Essentially if a client is even as little as a few dollars over the limit they will not qualify for benefits and their application will be denied. Where available Exception "B" Trusts offer a solution.
- B. Exception "B" trusts (also known as Miller or Qualified Income Trusts) may be used in some states to attain qualification for Medicaid when an applicant exceeds the income eligibility limits.

³ Authorized by 42 USC §1396p(d)(4)(A)

⁴ Authorized by 42 USC §1396p(d)(4)(B)

Essentially the client is allowed to keep a certain amount of money for personal needs and the amount exceeding the Medicaid cap or the remainder of their income may be put into the trust.

- C. Upon the death of the beneficiary the state must be paid back with trust funds for assistance provided

iii. Exception C Trusts

- A. Exception “C” trusts or Pooled Accounts Trusts, are established by a non-profit organization or charity.
- B. Individuals with disabilities are allowed to participate in PATs by opening what is known as a sub-account, with the master account being managed by the non-profit entity.
- C. The trust must be established by a parent, guardian, grandparent or conservator for the benefit of the individual with the special needs.
- D. Unlike Exception A Trusts, the beneficiary of a PAT does not have to be under age 65 to participate.
- E. Funds remaining after the beneficiary’s death remain the sub-account and are retained in trust by the non-profit for payback of medical assistance or Medicaid. The funds may also be designated to a remaining beneficiary of the PAT.⁵

B. Third Party SNT

A Third Party SNT is established by a third party, with the assets of the third party, for the benefit of the individual with the disability.⁶ In drafting a Third Party SNT, there are fewer hurdles for the drafter to overcome. For example, there is no requirement that the state Medicaid agency be paid back funds upon the beneficiary’s death. Therefore, the attorney need not be concerned with Medicare claims, Medicaid liens, or age limits in regard to the beneficiary.

It is important to note that income and assets may not be distributed directly to the beneficiary, without the risk of elimination or reduction of public benefits. As a result, the assets should be distributed to a third party who then pays for the beneficiary’s necessities.

⁵ Authorized by 42 USC §1396p(d)(4)(C) and PEM 401.

⁶ Begley, Thomas D. and Canellos, Angela, *Special Needs Trusts Handbook*, §4.01[A] (2008).

IV. Permissible Distributions

The Trustee(s) of a Special Needs Trust may utilize any of the foregoing listing for expenditures from the Trust. The following list of non-support items is provided for purposes of description and shall not limit the Trustee(s) in making other distributions for other items of amenities that the trustee may believe are in the best interest of the beneficiary. Those items may include, but are not limited to:

1. Automobile/Van
2. Accounting services
3. Acupuncture / Acupressure
4. Alterations or mending to clothing – shoe repairs
5. Appliances (TV, VCR, stereo, microwave, stove, refrigerator, washer/dryer and maintenance/repairs)
6. Assistive Technology and Assessments
7. Bottled Water or water service
8. Bus pass/public transportation costs
9. Camera, film, recorder and tapes, development of film, photo albums, scrapbook supplies, web cite or blog services
10. Carpet cleaning
11. Clothing and shoes
12. Clubs and club dues (record clubs, book clubs, health clubs, service clubs, zoo, Advocacy Groups, museums, wine clubs)
13. Computer hardware, software, program, maintenance/service
14. Internet service
15. Assistive technology
16. Conferences and travel related to same
17. Courses or classes (academic or recreational) including supplies
18. Craft and supplies
19. Curtains, blinds, drapes and the like
20. Dental work not covered by Medicaid, including anesthesia.
21. Down payment on home or security deposit on apartment.
22. Dry cleaning and/or laundry services and/or supplies
23. Elective surgery
24. Fitness equipment, personal trainers, bike and maintenance including a helmet
25. Funeral expenses
26. Furniture, home furnishings and insurance
27. Gasoline and/or Maintenance for automobile
28. Haircuts / Salon services
29. Hippo therapy, horse back riding lessons, equipment and the like
30. Holiday Decorations, parties, dinner dances, holiday cards and postage
31. Home alarm and/or monitoring/response system
32. Home improvements, repairs and maintenance (not covered by Medicaid), including tools to perform home improvements, repairs and maintenance by homeowner, paint, wallpaper, contracts for same
33. Home Purchase (to the extent not covered by benefits)
34. House cleaning / maid services/lawn services/snow removal

35. Independent Care Managers/Case Managers
36. Insurance (automobile, home and/or possessions)
37. Insurance Co-Payments not covered by any other source
38. Legal Fees/Advocacy
39. Linens, towels, bedding and other household furnishings
40. Massage, facials and other similar services/treatments
41. Musical instruments (including lessons and music)
42. Non-food grocery items (laundry soap, bleach, fabric softener, deodorant, dish soap, hand and body soap, personal hygiene products, paper towels, napkins, kleenex, toilet paper, any household cleaning products, allergy medications, asthma supplies)
43. Over the counter medications (including vitamins and herbs, etc.)
44. Personal Assistance Services not covered by Medicaid or any other source
45. Pets and pet's supplies, veterinary services
46. Physical therapy and equipment not covered by any other source
47. Physician specialists if not covered by Medicaid or any other source
48. Private counseling if not covered by Medicaid or any other source
49. Repair services (appliance, automobile, bicycle, household, fitness equipment)
50. School supplies
51. Snow removal/Landscaping/Lawn Service
52. Sporting goods/equipment/uniforms/team pictures/travel to games/tournaments
53. Stationary, stamps, cards, etc.
54. Storage Units
55. Taxi cab
56. Telephone service and equipment, including cell phone, pager, etc.
57. Any therapy (physical, occupational, speech) not covered by Medicaid – or any other source
58. Tickets to concerts or sporting events (for beneficiary and an accompanying companion, travel)
59. Transportation (automobile, motorcycle, bicycle, moped, gas, bus passes and helmets)
60. Utility bills (direct TV, cable TV, electric, heating as long as not basic needs)
61. Vacation (including paying for personal assistance to accompany the beneficiary)

V. Examples of Trust Distributions which will Reduce SSI Benefit:

1. Food
2. Basic shelter related expenses
3. Cash for any purpose (including for gambling)

VI. Examples of Impermissible Disbursements from 1st Party SNT's:

1. Paying for something that is not for the sole benefit of the beneficiary.
2. Paying for a service already paid for by another source

3. Distribution not in the best interest of the beneficiary.

So on to Part II, which provides an overview of why SNTs are important: They protect eligibility for public benefit programs that people with disabilities depend on to live full and self-determined lives!