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|  | **Checklist Questions** | **Response or** **Modification Required** |
|  | **Basic Trust Provisions and Requirements** |  |
|  | Is trust testamentary or living? If testamentary describe benefits of creating standalone living SNT. |  |
|  | What benefits is Beneficiary receiving? (circle all that apply)  | SSI, Medicaid, SSDI, Medicare, Section 8/housing, VA, Other \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
|  | Who is Beneficiary? Are there multiple Beneficiaries? Third party SNT may have more than one and be okay. |  |
|  | Confirm that NO (d)(4)(A) SNT requirements are in trust document, especially payback provisions. |  |
|  | What is beneficiary’s disability? |  |
|  | **Establishment Provisions** |  |
|  | Whose money is being used to fund trust? Should be from anyone but Beneficiary. Be careful to uncover exactly where money came from, misperception out there that if check is written directly to trust is not Beneficiary’s money even when legally it may be. |  |
|  | Who is the trust’s Settlor? Cannot be Beneficiary. |  |
|  | If trust’s Settlor is spouse, was trust established by a will? If no, trust will be disqualified. |  |
|  | Is trust revocable by Beneficiary? If so, it will be countable. Okay if revocable by anyone but Beneficiary. |  |
|  | **Distribution Provisions** |  |
|  | Does Beneficiary have authority to direct distributions for “support” and “maintenance”? Rule is that Beneficiary cannot have right to force distribution for own support or maintenance. If it is authorized in document, Beneficiary may have right to “force” distribution. |  |
|  | What type of distribution standard? (circle one) Always prefer Discretionary standard because allows payment for food or shelter for someone on SSI. | Discretionary or Supplemental |
|  | Does trust have spendthrift provision? |  |
|  | Does State recognize spendthrift provision? Check your State POMS Regional Counsel Precedent opinions because SSA has described its understanding of your State’s spendthrift protection. |  |
|  | Are there any required distributions to be made from SNT? If so, is it limited to only distributions that are exempt from being counted for public benefit eligibility purposes. If not, will cause eligibility issues. |  |
|  | Third party SNTs are allowed to make disbursements for others for gifts, etc. but make sure trust authorizes these disbursements if Settlor wishes them to be made |  |
|  | **Provisions for More than Public Benefits** |  |
|  | Are there provisions for a Care Manager? Discuss benefits of having care manager if Beneficiary cannot care for self and no one is able or willing to do it. May want certain minimum qualifications for Care Manager, such as RN, MSW, benefits expert. |  |
|  | Are there provisions for Advocate? If no, discuss benefits of including language authorizing hiring of one. Discuss whether it makes sense to require one if Beneficiary in facility and not being visited or at certain asset level. |  |
|  | Any provisions for Beneficiary’s housing? See if Settlor(s) wish to include provisions to obtain or pay for certain housing. |  |
|  | **Trust Termination Provisions** |  |
|  | Does trust’s Settlor give Beneficiary a testamentary power of appointment? If so, make sure it is a Limited (or Special) power of appointment and not a General Power of Appointment. |  |
|  | List out remainder beneficiaries. Make sure these are the correct people or entities that Settlor wishes to leave assets on death. |  |
|  | **Trust Protection Provisions** |  |
|  | What are Trustee’s responsibilities to Account and Report to Beneficiary or Beneficiary’s Legal Representative? |  |
|  | Are there any legal limitations or exculpatory provisions that limit Trustee’s liability? If so, what are they? |  |
|  | Does trust include provision to take into a account a Memorandum or Letter of Intent? ASNP has excellent handout on how to prepare a letter of intent. |  |
|  | Are trust’s tax status as non-grantor trust of Beneficiary clearly stated? Okay if grantor trust by Settlor(s) who may have right to revoke, but not Beneficiary |  |
|  | Does Settlor want Qualified Disability Trust (QDT) tax benefit? Increases personal exemption to individual. Trust must be irrevocable, established for sole benefit of person/beneficiary with a disability under age 65. See IRC §642(b)(2)(C)(ii); 42 USC §1396p(c)(2)(B)(iv) |  |
|  | **Trust Management Team** |  |
|  | Who is Trustee? Make sure that trustee is qualified to serve. |  |
|  | What are procedures for replacing Trustee? Are successors listed? Is there procedure to replace without court involvement? |  |
|  | Are there provisions for a Trust Protector or Trust Advisory Committee? |  |
|  | Does anyone have right to remove or replace Trustee? With or without cause? |  |
|  | See if provision exists in trust that someone on management team have expertise with public benefits and SNT administration? If not, consider adding in provision to hire an expert to assist. |  |