

Midwest Special Needs Trust

INFORMATION BRIEF

A Special Needs Trust

WHAT IS IT? HOW CAN IT HELP?

The Problem: How to Arrange Financial Security for the Future

Arranging for the financial security of a child is a critical issue faced by families of individuals with disabilities. Families often struggle to figure out the best method to assure that their son or daughter has sufficient financial resources to live a comfortable life. Of special concern to parents is how to arrange for financial security after the parents' death. Parents realize that it is important both to protect SSI and Medicaid and to have funds set aside to supplement income from benefits.

Trust -A legal arrangement whereby property is held by one party for the benefit of another.

In many situations, a special needs trust is the best solution. The purpose of a special needs trusts is to enable assets (cash, property or securities) to be held for a person with a disability. SSI recipients are allowed to have such assets. With a properly structured special needs trust, SSI eligibility is not affected so long as the recipient has no control over distributions from the trust and so long as the funds are used in accordance with SSI regulations.

What is a Special Needs Trust?

Special needs trusts were first created in the early 1970's by families who were trying to determine the best method to assure that their son or daughter had sufficient financial resources to live a comfortable life. Shortly thereafter, the Social Security Administration (SSA) established regulations for special needs trusts. By definition, a special needs trust is a trust established for the benefit of a person with a disability. Special needs trusts are important for persons with disabilities because trusts which meet SSA regulations are not counted as a resource for determination of eligibility for SSI or Medicaid. Funds from the trust can be used to supplement income from SSI and Medicaid. Funds can be used to meet medical and personal needs not covered by benefits. A trust can be established during the donor's lifetime (Living Trust) or may be established at the death of the donor by his or her Will (Testamentary Trust).

In order to protect benefits it is important that special needs trusts have explicit language in the trust that limits the use of funds to expenditures which supplement, not supplant, benefits. Funds in the special needs trust must not be directly available to the beneficiary, otherwise SSA will count the funds as his or her resource. The special needs trust is controlled by a trustee. The trustee may be the donor or a person designated by the donor. It is the job of the trustee to manage the account on behalf of the beneficiary. Funds may be placed into a special needs trust directly by parents and relatives, or assets may be directed to the trust by the donor's will or living trust. Funds may be used immediately once the trust is established.

How to Establish a Special Needs Trust

Two basic steps must be completed to create a trust. The first step is to complete the legal documents required to establish the trust. These are generally completed by an attorney. The documents identify the person for whom the trust is established (beneficiary), the person(s) who are providing the funds for the trust (donor), and the person(s) who will manage the trust (trustee). Other terms and conditions of the trust are also set forth in detail.

The second step is to establish the trust account. A copy of the legal documents is provided to the trust department of a bank and funds are deposited to open an account. Banks generally have minimum deposit requirements for opening a trust account. The bank may charge a fee for establishing the account.

A special needs trusts may also be established through the Midwest Special Needs Trust (MSNT) which accepts trusts for persons with disabilities who are residents of Missouri or the seven permitted surrounding states. The MSNT is a non-profit organization established by law in the State of Missouri to administer trusts for persons with disabilities. Although established by law, MSNT is not a state agency. A Board of Trustees is appointed by the Governor to oversee the operation of the Trust. While there is no upper limit on the size of a trust with the MSNT, it is an especially valuable resource for persons who have a limited amount of funds to place into the trust. Trust application documents are available on request (see contact information below). MSNT requires a minimum deposit of \$500 plus an enrollment fee for opening an active account. An inactive account can be established with a deposit of \$100.

Midwest Special Needs Trust

Formerly known as Missouri Family Trust

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Key Considerations for Planning

The first consideration for planning is to **determine the needs of the beneficiary**. Planning should take into account the needs of the beneficiary now and in the future, especially what the needs will be for supplemental income after the parents' death. Resources for such planning are available from the Arc of the United States (see below).

The second major consideration is to **identify the source of funds** for the trust and how and when these assets will be transferred into the trust. Assets may be placed into the trust immediately after the legal documents are completed. However, it is not necessary to fund the trust immediately.

Many types of assets can be used to fund the trust. Options include cash, property, stocks and bonds, certificates of deposit, and life insurance policies. The simplest way to fund a trust is to deposit cash to the trust account. Additional funds may be added later, either by the donor or other friends and relatives.

Another option for funding a trust is for the donor to specify in a will that certain assets are to be placed into the special needs trust at the time of his/her death. The assets may be held by the trust and sold only as needed to support the beneficiary, or the donor may choose to have the assets sold and the proceeds placed into the trust. It is important that the donor spell this out in his/her will. In situations where property or the proceeds of the sale of property are to fund the trust, the will or living trust is the vehicle for instructing how the assets are to be transferred into the special needs trust.

Life insurance policies are another option for funding a trust. In this situation, the donor names the trust as the beneficiary for the proceeds of a life insurance policy on the donor's life. The life insurance approach is also a practical way to assure funding for a special needs trust pending the development of a more comprehensive estate plan. The life insurance policy provides protection for the person with a disability and peace of mind for the donor. Then, the difficult issues of estate planning can be dealt with in a more systematic and thoughtful way over a longer period of time.

Resources

Resources for Future Planning. The Arc of the United States. 1010 Wayne Ave, Suite 650, Silver Spring, MD 20910. 301-565-3842.

www.thearc.org