

News From The Center

Information and Support for the Special Needs Community

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PROVIDING FOR A LOVED ONE THROUGH SPECIAL NEEDS TRUSTS

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“Who will care for my loved one when I’m gone?” is a question faced by concerned families who recognize that their resources may be inadequate to provide quality care for their loved ones with special needs. Public benefits programs may provide basic necessities for an individual with disabilities but many programs, such as Medicaid and Supplemental Security Income (SSI), are “means-tested” and impose financial limitations for eligibility. A properly drafted special needs trust can benefit the person with disabilities without jeopardizing eligibility for public benefits. Trust assets are made available to provide for the beneficiary’s special needs and to supplement public benefits, often resulting in a greatly improved quality of life.

Two types of trusts are commonly used for this purpose: a first party special needs trust, which is funded with assets that belong to the person with disabilities, and a third party special needs trust, which is funded with assets that belong to third parties, usually family members. A first party special needs trust is a self-settled living trust that can be funded with an inheritance or the proceeds of a personal injury action. A third party special needs trust can be a testamentary trust that is included in a Will or

a living trust. In either instance, to avoid the beneficiary being disqualified from public benefits, the trustee’s discretion to use trust assets for the disabled beneficiary must be sufficiently limited and the trustee must not use trust assets to purchase too many “countable resources” or provide the beneficiary with too much “income.”

First Party Special Needs Trust

Under federal law a first party special needs trust must be established by the beneficiary’s parent, grandparent, legal guardian or by a court. The law also requires (i) the beneficiary to be under age 65 when the trust is established and funded; (ii) the beneficiary to be disabled as that term is defined under Social Security law; and (iii) the trust to provide that upon the death of the beneficiary any state agency that has provided Medicaid benefits be reimbursed out of the trust up to the amount of the benefits provided during the existence of the trust. State law may provide for additional restrictions. It is important to consult an attorney who is experienced in drafting special needs trusts and who is knowledgeable in the area of public benefits that may be available to the person with special needs.

Third Party Special Needs Trusts

To avoid jeopardizing a disabled individual’s public benefits, a Will or living trust of a parent, spouse or other third party can provide that the assets be held in a special needs trust for the benefit of the individual with special needs. The trust beneficiary can be over age 65 and there is no requirement that the agency providing

Medicaid benefits be paid back. While the terms of a third party special needs trust are not mandated by law, the availability of trust assets to the beneficiary with special needs will determine whether his or her eligibility for public benefits programs is compromised. Under the terms of a properly drafted special needs trust, the disabled individual has no control or access to the trust funds. As a result, the funds are not considered a resource available to the disabled individual for purposes of determining eligibility for Medicaid or SSI benefits. Anyone other than the disabled individual can continue to contribute funds to the trust. For example, relatives or friends of the disabled individual can make a gift by adding to the trust instead of making an outright gift to the individual.

In addition, senior parents who are concerned about Medicaid or other means-tested public benefits to cover the future costs of their own custodial care, may transfer their assets to special needs trusts created for the sole benefit of their disabled child without affecting their own access Medicaid benefits. The trust must be drafted so that no individual except the disabled child can in any way benefit from the transferred assets. Federal law provides that no transfer penalties will apply if a trust created for the sole benefit of a disabled child is “actuarially sound” or has a “payback provision.”

Parents often sacrifice their careers and their life savings to provide for their children with special needs. Even parents who are financially secure, however, want to ensure that more assets are available for their children with disabilities when they are gone. Many parents purchase life insurance to provide for their special needs children when they have died. A third party special needs trust can be designated as a beneficiary of various life insurance products. As in the case of first party special needs trusts, an attorney who is knowledgeable and experienced in the areas of special needs trusts and public benefits should be consulted.

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MetLife Center for Special Needs PlanningSM works with national non profits and individuals to help support the mutual goal of helping individuals with special needs. The Center is dedicated to helping families plan for the future of dependents with special needs. Helping you answer those questions, directing you to the right resources, and just being there as a resource and advocate for you, is an important part of what we do. If you'd like to find out more, or you'd like to be referred to a local MetLife Special Needs Planner, please call 1-877-638-3375, or visit our website at www.metlife.com/specialneeds.



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