



SNT Beneficiaries on the Move: First in a Series

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November 2017 - Vol. 11, Issue 7

This series will review the myriad issues that arise as a result of the increased mobility of the beneficiaries of Special Needs Trusts (SNTs). Gone are the days when a person with a disability was born, lived, and died in the same household or community. The beneficiaries of SNTs are increasingly on the move, residing in numerous communities and states during their lifetimes. This presents significant issues as SNTs are called upon to be more “portable” and to better accommodate the relocations of the beneficiaries. Consequently, special needs planning attorneys are increasingly called upon to help facilitate the transition of mobile beneficiaries, and the SNTs they bring with them, from one jurisdiction to another.

Identifying a New Team of Allied Professionals

Facilitating the assembly of a new team of “allied professionals” for a SNT beneficiary who is new in town is a critical first step to a successful transition. As any parent of a child with disabilities already knows, it is a team effort to secure their child’s present and future. While it is frustrating to discover that there is no central provider of all of the specialists needed, a knowledgeable special needs planning attorney is ideally suited to help assemble this team of allied professionals.

Special Needs Planning Attorney

An experienced attorney who devotes a significant portion of her practice to special needs planning is likely to be the initial quarterback of the team and to take the lead in helping a family to assemble the rest of the team members in their new community. Any member of the [Special Needs Alliance](#) will be well-suited for this task. While [basic special needs planning is critical](#) for families of modest means, wealthy families are also increasingly implementing special needs planning as part of their overall estate plans. Many of these affluent families require a special needs planning attorney who is also well-versed in

addressing estate tax minimization, gift tax planning, and even generation-skipping transfer tax planning as their children with disabilities bless the family with grandchildren (who may either be neuro-typical or similarly challenged by special needs).

Trustee Authorized to Administer SNTs in the New State

If a person with a disability is the beneficiary of one or more SNTs, there may be state law impediments to the initial Trustee continuing to administer the SNT in a new state. If the initial Trustee of the SNT is a corporate entity with a national charter, it is likely that a Trustee transition from one state to another will be relatively smooth. While the Trustee may not have a “bricks and mortar” local office in the new state, its authority to continue to administer the SNT in the new state should not be questioned. If the initial Trustee of the SNT is an entity with a state charter, many states restrict or prohibit an out-of-state entity from administering a SNT in the new state. Some state laws permit an out-of-state-chartered entity to administer SNTs if the other state has a reciprocity statute. The provisions of the agreement governing the administration of the SNT may specifically address Trustee succession issues if the beneficiary relocates to a state other than the initial situs of the SNT.

Many pooled SNTs (authorized under 42 U.S.C. § 1396p(d)(4)(C)) will accommodate only residents of the state in which it is organized and operated. If the beneficiary of a pooled SNT sub-account relocates to a new state, it may be necessary to transfer the assets in his sub-account to a new sub-account with a different pooled SNT established in the beneficiary’s new state of residence, or, alternatively, to a national pooled SNT that accepts residents of all states.

Accountant or CPA Familiar with New State Law

When the beneficiary of a SNT moves to a new state, there may be complex rules which govern the ability of the new state’s revenue authorities to tax the SNT and the beneficiary. Similarly, it will be necessary to determine if the initial situs of the SNT may continue to tax the SNT and the beneficiary even after the move. The beneficiary’s new state may also have different rules regarding permissible deductions for SNT disbursements. For example, some, but not all, states allow a modest income tax deduction for contributions to an ABLE account.

While an accountant or CPA can usually prepare state and federal income and transfer tax returns for the beneficiary and for the SNT, less certain is their ability to prepare accountings and reports designed for review by state Medicaid authorities. Numerous states (Alabama, Georgia, Iowa and North Carolina, with several others pending in 2017) have implemented a SNT accounting program (for both first-party and third-party SNTs).

These annual accountings are designed to identify sloppy SNT administration, including violations of rules applicable to first-party SNTs, as well as disbursements from both first-party and third-party SNTs that constitute “In-Kind Support and Maintenance” that adversely impact the beneficiary’s monthly Supplemental Security Income (SSI) payment. Most accountants are not ideally suited to prepare this type of annual SNT accounting, which can often be handled more cost-effectively by a paralegal or bookkeeper.

Government Benefits Advocate

While some of the government benefits for which a SNT beneficiary is eligible may be easily transferable between states, many are not. A local government benefits advocate can work with a family to verify which federal benefits will be relatively easy to transfer, which state benefits are non-transferable, and whether the beneficiary is eligible for brand new benefits under local or state law that were previously unavailable to the beneficiary in his prior community. Local benefits advocates can also assist the family with the necessary application for transferable and new government benefits. These local fonts of knowledge can also assist a family to fill in the gap where benefits from a prior state are not available in the new community. While the fees of such benefits advocates are generally less expensive than those of attorneys, they are not free. For beneficiaries who do not have a large SNT to help defray these costs, local legal aid clinics may be of assistance in this effort. Many law schools offer legal clinics that may be able to provide advice on a pro bono basis.

A local benefits advocate may also be willing to advise the Trustee of the beneficiary’s SNT as to whether any proposed disbursements will adversely impact the beneficiary’s means-tested government benefits. Many professional Trustees use the services of such advocates on a retainer basis. Similarly, the advocate may know that a specific local or state program can provide, or help defray the cost of, goods or services that the SNT has been asked to cover, thus leveraging the various sources for funding the beneficiary’s needs.

Care Manager

A local care manager is a treasure trove of wisdom and practical advice for a SNT beneficiary and his family who are new in town. This professional will update the beneficiary’s personal care plan using local providers, and assist the beneficiary and his family in identifying and retaining the services of those caregivers. A care manager can oversee the implementation of the personal care plan in the beneficiary’s new community and periodically verify the quality of care being rendered. Increasingly, individual care managers with nursing or medical backgrounds are willing to serve as health care agent for a beneficiary with legal capacity to [execute a health care directive](#), living will or other similar

document, especially if the beneficiary's closest family members are too aged or infirm to serve in this role.

Life Care Planner

An indispensable member of the team is a life care planner who will develop, or update, a life care plan to guide the Trustee of the SNT in administering the SNT assets over the course of the beneficiary's expected lifetime. Life care planners frequently have nursing or medical backgrounds, or may be trained as rehabilitation therapists or social workers. The author of this article prefers to work with nurse life care planners. (See www.aanlcp.org for information about the American Association of Nurse Life Care Planners.) There are several national associations that purport to "certify" life care planners, but it is a generally unregulated emerging specialty without consistent standards. Even if the beneficiary secured an initial life care plan at the inception of the SNT (e.g. in connection with the settlement of a personal injury claim, the net proceeds of which funded the SNT), no life care plan is fool-proof or immutable. As the disability of the SNT beneficiary ameliorates or worsens, the life care plan may need to be updated accordingly.

Special Education Advocate and Litigator

If the SNT beneficiary has not yet attained 22 years of age, education battles are likely still being fought. A special education advocate can help a family new to the local school district to obtain the "free and appropriate public education" (FAPE) in the "least restrictive environment" to which the beneficiary is legally entitled. Under the federal Individuals With Disabilities Education Act (IDEA), the educational program for a child with a disability must be designed to prepare him for further education, employment and independent living, as outlined in an "Individualized Education Program" (IEP) tailored to the child's specific and unique needs.

There is a small, but growing, cadre of attorneys and paraprofessionals who limit their practice to advising and representing parents in IDEA hearings since many public school systems fail to implement an IEP, or otherwise refuse to provide the FAPE guaranteed by IDEA. An increasing number of students with Autism Spectrum Disorder (or other disorders with consequent disruptive or self-injurious behaviors) are the victims of physical abuse at the hands of teachers who have not been properly trained in the management of such behaviors. Civil remedies and criminal penalties are often available for redress of such abuse.

Investment Advisor

Increasingly, the investment aspect of SNT administration is being delegated by the Trustee to an independent investment advisor. Investing the assets of a SNT is not for the faint-of-

heart: a significant loss of principal can be life-threatening for a beneficiary who may never be fully self-supporting. While the SNT beneficiary may have a lower risk tolerance than the average investor, a normal (or near normal) life expectancy requires the investment advisor to invest for the long haul and to understand how the beneficiary's specific disability impacts a portfolio allocation. Although many investment advisors purport to have specific expertise in investing for the future of beneficiaries with disabilities, families are advised to verify whether such designations actually warrant reliance.

Professional Fiduciaries to Serve as Guardian

As the aging parents of a child with a disability become incapacitated or die, leaving a vacancy in the office of legal guardian for their child, it may be necessary or advisable to retain the private fiduciary services of a professional to serve in that role. Attorneys, former trust officers and persons with experience as court-appointed guardians ad litem are often willing to step into the vacuum created when the parents or other close family members fail or cease to serve as legal guardian of a SNT beneficiary.

In many families, aging parents refuse to take steps during their lifetimes to secure the appointment of a legal guardian for their adult children with disabilities. Many clients are paralyzed by the prospect that (i) no one will agree to serve as legal guardian because of the monumental task it represents, and (ii) anyone who does agree to serve will not do it as well as they have done. Assembling the team of allied professionals described above provides a solution to both of these concerns. If a person nominated to serve as legal guardian of the child with a disability believes that he must personally undertake all of the responsibilities of all of the team members discussed above, the parent's fear would be justified. However, if the person nominated to serve as the legal guardian were able to view his role as the "quarterback" of the team of allied professionals, with a division of labor agreed upon in advance once the team is assembled, the proposed service as legal guardian is not nearly as daunting.

If the members of the team are identified and assembled while the parents are still living, the parents can take an active role in communicating their expectations so that, working together, the team members may indeed collaborate to do as well (or even better than) the parents have done. Each team member can be afforded appropriate opportunities to interact with the SNT beneficiary, his parents, and each other, before the parents' demise. Instead of losing the history of care and love which the parents have left as part of their legacy, the team members are made a part of that history.

Assembling the members of the special needs team while the parents are still alive can also facilitate a more accurate analysis of the cost of procuring the services of the team

members, currently and in the future. If, as is often the case, the cost of such services exceeds the client's wildest nightmares, immediate steps can be taken to bridge any funding gap that may be identified.

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