



Understanding SNT Groundrules Can Avoid Disappointment

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Beneficiaries and their families generally have high expectations regarding [special needs trusts](#) (SNTs), which are designed to enhance quality of life for a loved one with disabilities without threatening eligibility for means-tested government programs. But SNTs are subject to regulation, and the trustee of an SNT or any trust, for that matter, has fiduciary duties and responsibilities to fulfill. Failing to understand the sometimes-complex workings of SNTs can lead to disappointment. Here are some important considerations:

Distributions that reduce government benefits

Sometimes it's important to cover a life-enhancing expense with SNT funds even if it will reduce government benefits. If SSI payments are insufficient to pay shelter costs in their entirety, using a SNT to make up the difference in exchange for reduced SSI benefits may be money well spent. Or, it may be advisable to purchase an electric wheelchair now with SNT funds, rather than wait long months for Medicaid to authorize and arrange for payment. When a SNT is being drafted, similar scenarios should be discussed so that the document includes adequately flexible language.

Unlike a personal bank account

Especially in the case of a first party SNT, which is created with assets belonging to the beneficiary, access to funds can be a serious source of misunderstanding. In creating the trust, a conscious decision has been made to delegate decision-making authority to the trustee in order to preserve government benefits. And while the beneficiary and guardian (if one has been appointed) should be consulted, the trustee will ultimately make independent judgments, based on factors such as trust assets, ongoing costs, liability and long-term needs. As a result, under certain circumstances, the trustee may not approve a requested disbursement.

Difference between Trustee and Guardian

The role of a trustee, which is focused on money management, is distinct from that of a guardian, who is responsible for making decisions regarding the person, such as medical care and treatment, living arrangements, education, etc. If a trustee needs help determining whether or not certain disbursements would be in the beneficiary's best

interest, he or she may arrange for the SNT to engage a case manager or other professional to provide assessments.

Distributions take time

While planned disbursements can be appropriately timed, unscheduled requests may take several days to process. Documentation must be maintained for auditing purposes, and professional trustees may have to refer large expenses-or those involving certain asset classes – to a review committee. If the SNT is monitored by a court, the disbursement may require prior court approval.

There’s a reason for those questions

Trustees must be able to justify the expenditures that they approve, so they may ask for additional information in order to complete their backup documentation. If asked to pay for an experimental treatment, for instance, they may want to know who is recommending it, the likelihood that it will prove beneficial, and whether or not it’s covered by insurance or another source.

Setting priorities

Unfortunately, SNTs sometimes have insufficient funds to cover all of an individual’s potential needs. In such cases, it’s important for the guardian, beneficiary and, possibly, the care manager, to help set priorities. For instance, should limited assets be concentrated on housing, caregiving or a vehicle? “Depletion analyses” should be conducted regularly by the trustee in order to alert stakeholders to dwindling resources and to evaluate the need to refocus.

Remainder beneficiaries

SNTs, particularly, third party SNTs, frequently identify “remainder beneficiaries,” who are to receive residual funds upon the primary beneficiary’s death. To ensure that the priorities of those who created the trust are respected, the SNT should include clear language indicating that, in making investment and disbursement decisions, the trustee’s first concern should be the primary beneficiary’s well-being. This may include explicit instructions with regard to the handling of funeral costs in order to avoid disagreements concerning final expenses. Remainder beneficiaries may be entitled to ongoing reports concerning SNT status, a right that should be clearly communicated to all involved.

Trustee succession plan

Trustees may change. A family member may no longer be able to fulfill the responsibilities of the role. A professional trustee may retire, or a guardian may become dissatisfied with

their performance. To avoid disruption and the need to file a court request, the SNT should clearly state the circumstances in which a new trustee should be named and who is authorized to make such a decision. The beneficiary cannot assume the role of trustee or the beneficiary's eligibility for needs-based public benefits may be impacted.

Management of an SNT is a complicated affair and to best understand the intent of those creating it, the trustee should be involved before it is fully established. It's also a good idea for the special needs planning attorney who drafted the trust agreement to remain involved during a transition period to help all stakeholders understand legal requirements, as well as to ensure that they have reasonable expectations concerning how the trust will function.

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