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Special Needs Trusts
Answers

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Special Needs Trust Answers

What is a "special needs" or "supplemental needs" trust?

"Special" or "supplemental" needs is just a term to describe any trust intended to provide benefits without causing the beneficiary to lose public benefits he or she is entitled to receive. "Special needs" and "supplemental needs" are interchangeable, and describe the purpose of the trust rather than being a limited legal term.

What kinds of public benefits do special needs trust beneficiaries receive?

Each special needs trust can be drafted to protect different public benefits. Most commonly, special needs trusts are intended to permit Supplemental Security Income (SSI), a Social Security needs-based income program, and Medicaid, which provides medical goods and services. In Massachusetts, the Medicaid programs are known as MassHealth or CommonHealth.

Does the existence of a special needs trust qualify the beneficiary for public benefits?

Yes and no, depending on circumstances. If the beneficiary has excess income or assets that disqualify him or her from eligibility for a public benefit, then assigning or putting the excess income or assets into the special needs trust could help establish eligibility by making the income or assets non-countable. The beneficiary must also currently qualify for the other requirements of the public benefits program, or qualify after the trust is established. If properly established, the special needs trust will never cause a loss of benefits. However, the existence of a special needs trust will not itself make public benefits available if the beneficiary is otherwise not eligible.

Who can have a special needs trust?

Anyone can have a special needs trust, but they are generally only created for individuals who have, or will have, a need for public benefits and to have funds managed on their behalf due to their disability. There are two general categories of such trusts: "self-settled" and "third-party" trusts.

What is a third-party special needs trust?

A third-party special needs trust can be established by a person for the benefit of another. The person establishing the trust, called the settlor (or grantor or sometimes, trustor) chooses to make some of his or her own assets available for the benefit of the disabled beneficiary. Third-party special needs trusts are often established, for example, by parents for their developmentally disabled or mentally ill children.

What special rules govern third-party special needs trusts?

There are actually few rules governing the creation of third-party special needs trusts. Since the beneficiary was never entitled to the money in the trust, the most important rule is simple: the trust terms should not allow the beneficiary to directly control distribution of either income or principal. If the trustee, an independent party not the beneficiary or

beneficiary's spouse, has complete discretion whether or not to make distributions for the beneficiary, the trust principal and income will usually not be counted as available for public benefit eligibility purposes.

What can a third-party special needs trust provide for the trust beneficiary without reducing SSI Benefits?

For SSI benefits not to be reduced by a trust distribution, the cardinal rule for special needs trusts is that the trust should not provide food, shelter, or any asset which would be converted into food or shelter (including cash), to the beneficiary. In other words, the trust can provide for physical therapy, medical treatment, education, entertainment, travel, companionship, clothing, furniture and furnishings (such as a television or computer), and some utilities (like cable television and a telephone, but not electricity, gas or water) without any SSI benefit reduction. However, even if food or shelter expenses are paid for by the trust, the beneficiary's SSI benefits are only reduced up to a limited amount each month. Distributions of cash to the special needs trust's beneficiary are almost never permitted because it would reduce SSI benefits dollar for dollar, thus wasting the trust funds.

Are the distribution rules different for MassHealth than SSI?

Yes. Special needs trust distributions for any purpose (including food and shelter expenses) do not affect MassHealth eligibility at all as long as cash is not given directly to the beneficiary, or the goods or services are not converted to cash by the beneficiary.

Can a special needs trust be used to purchase a home, or pay rent, for the beneficiary?

Yes. However, there are special rules affecting SSI eligibility with the use of special needs trusts (or any third-party payment) for shelter. Those rules are very difficult to navigate and depend heavily on the beneficiary's situation. It is important to secure competent legal advice before making any decision about the provision of shelter.

Is it easy to establish a proper third-party special needs trust?

While the principles involved in third-party special needs trusts are simple, there are a myriad of choices involved in the actual drafting of a trust. In addition, the administration of a special needs trust can be extremely difficult. A seasoned lawyer, familiar with public benefits programs and special needs trust provisions, should always be involved in preparation of a third-party special needs trust. While many legal matters can be undertaken without a lawyer or with a lawyer with a general background, special needs trusts are complicated enough to require the services of a specialized practitioner.

What is a self-settled special needs trust?

Sometimes an individual otherwise eligible for public benefits may have or receive income or assets in his or her own name that prevent continued eligibility for benefits. In such a case, it may be possible and advisable to place the income or assets into a special needs trust to regain or continue eligibility for government benefits.

What types of assets might an individual place in a self-settled special needs trust?

Self-settled special needs trusts are often established by individuals who have received a personal injury settlement (perhaps, but not necessarily, arising out of the incident that caused the disability) or an inheritance. Sometimes, individuals who are fearful of losing their pre-existing assets determine that it would be advisable to create a special needs trust in order to receive public benefits.

If the special needs trust is actually established by a guardian, or a court, is it still "self-settled?"

Yes, the law makes it clear that a trust established with assets which would have belonged to an individual, or his or her guardian, is self-settled regardless of who signs the trust instrument. In Massachusetts, guardians must receive Court permission to place the Ward's assets into a special needs trust.

Why would someone with assets want to place his or her money in a special needs trust just to qualify for government benefits?

Many benefits available from the public sector are extremely expensive when paid for privately. Some are practically unavailable except through the public system. It also allows limited funds to be stretched over a person's lifetime.

What restrictions are placed on self-settled special needs trusts?

Self-settled special needs trusts are much more complicated than their third-party equivalents. Usually (but not always), a self-settled special needs trust must comply with a federal law first enacted in 1993. In order to receive SSI or institutional level MassHealth in Massachusetts, that law requires that most self-settled special needs trusts actually be signed by either a judge, a court-appointed guardian, a parent, or a grandparent of the beneficiary. In addition, when those benefits are involved, the self-settled special needs trusts will have to include a provision repaying state Medicaid agencies for any benefits, payable at the death of the beneficiary. Such a provision is often called a "pay-back" provision.

Must both third-party and self-settled special needs trust include "pay-back" provisions?

No. Absent unusual circumstances, only self-settled special needs trusts require a provision repaying the state for Medicaid benefits