

New York Supplemental Needs Trusts

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An inheritance or a gift to or received by a person with a chronic and severe disability who is receiving governmental benefits as a result of that disability may have the effect of disqualifying that person from those benefits. New York law, however, provides a means by which such an inheritance or gift can be made without such dire results. Under New York trust law, a person can create a fully discretionary irrevocable trust for the benefit of a disabled person that will not jeopardize that person's governmental benefits if the intent of the person establishing the trust is clearly stated that the purpose of the trust is to supplement and not supplant such governmental benefits. This is referred to as a supplemental needs trust and the specific requirements of creating and maintaining one are set out in New York law. It is critically important that the rules and requirements of the New York supplemental needs trust law be followed exactly in order to achieve the desired result and avoid disqualifying the disabled trust beneficiary for any governmental benefits he or she may be receiving.

A supplemental needs trust is a discretionary trust that can distribute to a disabled beneficiary funds for items that are not covered by governmental benefits. Receipt of these types of distributions do not disqualify the beneficiary from receiving governmental benefits. A supplemental needs trust can be established by someone other than the disabled person and is usually referred to as a "Third Party" trust. A Third Party trust would include one

established by a parent for a disabled child, either by will or during the life of the parent. A trust established with the funds of a disabled person is referred to as a "Self Settled" trust. A Self Settled trust would include one funded by a recovery awarded by a court. Generally, receipt of such funds, however, may have the effect of disqualifying the disabled recipient from receiving governmental benefits. Nevertheless, state and federal law have set out an exception for trusts of a disabled person if the following conditions are met:

1. the disabled beneficiary is under the age of 65 years when the trust is created;
2. the trust is established by a parent, grandparent, legal guardian or a court;
and,
3. the trust provides for a "pay back" to the state of any medical assistance provided to the disabled beneficiary.

Please note that a new federal law passed on December 13, 2016, now allows a mentally competent disabled individual under the age of 65 years to establish this type of trust for his or her benefit. It is anticipated that New York will pass enabling legislation this year.

What happens if the disabled person is 65 or older when the trust is created or if a bequest is made under a will directly to a disabled person, regardless of age? The answer may be the use of a pooled trust allowed under state and federal law. This type of trust is established by a non-profit organization and is available to a person of any age, including one over 65 years. Such a trust can be created by a parent, grandparent, guardian or court or the disabled person. These trusts provide for discretionary distributions (determined solely by the trust administrator) to the beneficiary and generally require that any funds

remaining in the trust at the death of the beneficiary are paid back to the state to the extent of any medical assistance paid.

When designing an estate plan, it is important to advise your estate planning lawyer whether any intended beneficiaries are receiving governmental benefits as a result of a disability. By doing so, the lawyer will be better able to devise an estate plan that will meet the needs of both the client and his or her intended beneficiaries.

If you have any questions regarding a Supplemental Needs Trust, please do not hesitate to contact me or the attorney in our firm with whom you typically work.