

Helpful Hints #7

Trusts for Individuals with Disabilities

Special Needs Trusts are basically arrangements where funds can be invested for a recipient of SSI or Medicaid without losing eligibility for these benefits. A Special Needs Trust cannot give cash directly to the beneficiary, but can pay for services directly and certain exempt resources without causing a loss of benefits eligibility. Iowa law differentiates trusts based on whether the trust is established with a beneficiary's own assets or established with third party assets (usually a parent, grandparent or a court). This distinction can make a big difference in the amount of money per month which can be accessed / utilized on a monthly basis and not affect the beneficiary's eligibility for SSI or Medicaid as well as who receives any remaining assets upon the death of a beneficiary.

Medical Assistance Special Needs Trust- in Iowa, this is a trust created with the assets of a person who is under the age of 65 and is disabled. The trust is established by a parent, grandparent or the court (but not funded by them). The state of Iowa will receive all amounts remaining in the trust upon the death of the beneficiary up to an amount equal to the total Medicaid paid on behalf of the beneficiary. Any remaining monies could go to another party. Generally the court must approval monthly payouts from the trust. If an individual is already eligible for a Medicaid Waiver at the time a trust is established, a monthly payout is generally limited to three times the SSI payment.

Pooled Special Needs Trust- this is a special needs trust with no age limit. The trust contains the assets of persons who are disabled. The trust is established and managed by a nonprofit association. The association maintains a separate account for each beneficiary of the trust but pools these accounts for purposes of investment and management of the funds. Upon the death of one of the beneficiaries, all amounts remaining in the one beneficiary's

account are paid to the state to reimburse Medicaid expenditures. Any monies remaining after the state is repaid may go to another party which could be the nonprofit association.

Medical Assistance Income Trust (Miller Trust)- this trust is set up by someone for their own benefit and is made up of money only from pensions, social security and other income to the person (not set up with the person's assets) and the state will get any money left in the trust upon the death of the beneficiary up to the amount to repay Medicaid expenditures. Interest from the trust can be used to pay medical expenses or facility care and is not counted as income for the purposes of eligibility for SSI or Medicaid.

Supplemental Needs Trust for Persons with Disabilities- these trusts are inter vivos (during the life of the third party funding the trust) or testamentary (upon the death of the third party funding the trust) created for the benefit of a person with a disability. The third party funding the trust is generally a parent, grandparent or a court (from a settlement or award from a personal injury case if the trust is established within six months of the settlement or award). Disbursements from the trust can only supplement or complement the benefits the person already receives from SSI or Medicaid. Disbursements from the trust do not affect eligibility for SSI or Medicaid. Upon the death of the beneficiary any remaining monies would go to the state up to the amount of medical assistance benefits paid on behalf of the person. A Supplemental Needs Trust should provide the greatest benefit to the beneficiary and flexibility to the trustee. However, the Iowa Department of Human Services has applied rules applicable to Medical Assistance Income Trusts to Supplemental Needs Trusts. This has greatly limited the usefulness of the trust so that trust disbursements basically supplant rather than supplement government benefits.

Individuals with Disabilities Should:

1. Be aware of the various trust options in Iowa and consult with an attorney who has specialized expertise with Special Needs Trusts for Individuals with Disabilities.

Parents/Advocates/Case Managers/ Providers Should:

1. Be aware of the various trust options in Iowa.
2. As needed, direct an individual with a disability or their family to consult with an attorney who has specialized expertise with Special Needs Trusts for individuals with disabilities.
3. Advocate for a statewide pooled special needs trust in Iowa.
4. Advocate for legislation to amend Iowa Code 633C.2 so that Iowa is in conformance with federal law regarding Supplemental Needs Trusts.

Resources

1. Supplemental Needs Trusts for Persons with Disabilities- Iowa Code- Chapter 634A
2. Medical Assistance Special Needs Trusts- Iowa Code 633C.2 and 441 IAC 75.24(3)"a"
3. Pooled Special Needs Trust- Iowa Code 633C.2 and 441 IAC 75.24(3)"c"
4. Medical Assistance Income Trust- Iowa Code 633C.3 and 441 IAC 75.24
5. Resource for an attorney- contact the Iowa Bar Association- 1-515-243-3179 or the Special Needs Alliance at: www.specialneedsalliance.com
6. Resources for estate planning for individuals with disabilities- Frank Varvaris and Associates- www.disabilityplanning.org
7. For more information on this subject as well as other asset development / self-sufficiency strategies, view other Helpful Hints, a Resource Directory and the full report- "Assessing Opportunities for Asset Development and Self-Sufficiency Strategies for Individuals with Disabilities: The Nation and Iowa: at the following website: www.healthcare.uiowa.edu/cdd/multiple/programs/employmentinitiatives.asp