

## **SUPPLEMENTAL NEEDS TRUST**

A Supplemental Needs Trust is a trust designed to protect the assets of physically or mentally disabled persons and still allow such persons to be qualified for and receive governmental healthcare benefits, especially long term nursing care benefits, under the Medicaid welfare program.

One significant governmental benefit which is available only through Medicaid is long term nursing care which includes care for the mentally disabled and physically disabled.

Medicaid is a welfare program. To qualify for Medicaid and its long term nursing care benefits, the applicant must be "poor" and there is a limit to the countable assets which he or she can own.

To qualify for Medicaid, the applicant must meet the asset guidelines for Supplemental Security Income ("SSI"). SSI allows a single applicant to own no more than \$2,000 and a married applicant to own no more than \$3,000 in countable assets.

Certain assets are specifically exempted and are not countable.

Upon the death of the individual, the State Medicaid agency must be reimbursed for the costs of the medical assistance which was provided by Medicaid during the disabled individual's lifetime. This is called the "payback" provision.

The disabled person's trust must be created by a parent, grandparent, guardian or court. The State does not allow the disabled person to create his or her own trust, even if he or she is legally competent. Action by a third party is required in creating the trust.

**It may be preferable in most cases to permit the trustee to make the decision to make distributions which reduce or even eliminate public benefits in cases where the availability of trust resources is more important than continued eligibility for Supplemental Security Income and Medicaid.**

A Supplemental Needs Trust is referred to as a "payback" trust because they are valid only if the State is paid back for medical assistance at the end of the trust.

EPTL section 7-1.12 codifies the Supplemental Needs Trust in New York, protects the principal and income of those trusts for more than just consideration by Medicaid. EPTL section 7-1.12 has suggested language for a Supplemental Needs Trust.

**A Medicaid lien must be repaid before a Supplemental Needs Trust can be funded.**

Any disabled person receiving community based care (including home care) can have their pension or Social Security placed into a Supplemental Needs Trust and it will not be budgeted toward their Medicaid spend down.

For Supplemental Security Income purposes, disbursements from the trust will be counted as income unless they are “in-kind” payments by the trustee to a third-party that result in the beneficiary receiving items which are not food, clothing or shelter. Income paid directly to the beneficiary will reduce benefits dollar for dollar.

All distributions from the trust are made in the sole discretion of the trustee and are usually paid directly to third parties that provide goods and services to the beneficiary.

Upon the disabled person’s death, the trust assets will be distributed according to the instructions given in the trust agreement by the individual who funded the trust.

Your home, condo or coop apartment, if it is worth less than \$750,000 is exempt for eligibility purposes. However, it is subject to a Medicaid lien for the amount of benefits provided, and this lien will be satisfied upon your death.

EPTL section 7-1.12(b)(3) provides that neither principal nor income held in trust shall be deemed an available resource under any government benefit or assistance program.

The beneficiary does not have any right to require the distribution of principal and income from the trust. **The beneficiary can never have any right to personally receive the funds in the Supplemental Needs Trust.**

**The trustee can be authorized to terminate the SNT and distribute the assets, including a distribution to beneficiary**, keeping in mind that any distribution to the beneficiary will certainly make the beneficiary ineligible for government entitlements.

The trust pays for supplemental needs and luxury items not provided by governmental entitlements (SSI, Medicaid), such as medical or dental treatment not covered by government benefits, cosmetic care, vacations, etc.

The trustee is instructed to pay the providers directly. The trust distributions are, therefore, not deemed to be income to the beneficiary.

Placing funds into a Supplemental Needs Trust creates a concrete plan of financial care for the beneficiary.

The beneficiary's own funds must not be placed into the Supplemental Needs Trust. If the beneficiary's funds are placed into the Supplemental Needs Trust, Medicaid will have the right of recoupment for monies expended from part of the corpus of the SNT upon the beneficiary's death. Medicaid may argue that it has the right of recoupment against the entire trust.