Pooled Special Needs Trusts: Preserving the Assets of People with Disabilities

Pooled Special Needs Trust can be a cost effective tool to preserve eligibility for needs Supplemental Security Income (SSI) or Medicaid (MediCal in California).

To appreciate Pooled Special Needs Trusts - one needs to understand the Special Needs Trusts in general. Special Needs Trusts are basically arrangements where funds can be invested for a recipient of SSI or Medicaid without loosing eligibility. The Social Security Administration describes a valid Special Needs Trust as "a trust in which the trustee has full discretion as to the time, purpose and amount of all distributions." If the beneficiary has no discretion over the distributions, the trust is not counted for SSI eligibility. Keep in mind that Special Needs Trusts mean a loss of control by the trust beneficiary. The 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.

Special Needs Trusts can be divided into two categories, Estate Planning Special Needs Trusts and Self Settled Special Needs Trusts. The Estate Planning Special Needs Trust is typically created by a parent with the parent's assets for their disabled child. Estate Planning Special Needs Trusts generally are permitted great latitude, and upon the death of the beneficiary, any remaining assets in the trust can be left to anyone the grantor chooses without any liens by the government.

The second category is Self Settled Special Needs Trusts. A Self Settled Special Needs Trust is a trust that contains the assets of an SSI or Medicaid recipient. These trust were codified in the Omnibus Budget Reconciliation Act of 1993 (OBRA '93) at 42 U.S.C. § 1396p (d) (4) (A)- Self Settled Trust, and 42 U.S.C. § 1396p (d) (4) (C)- Pooled Trust. Both of these trusts have in common that upon the death of the beneficiary, the State Medicaid Agency must be repaid for any Medicaid used by the benefits recipient before amount can be paid to the beneficiary's heirs. Basically, the benefits recipient is making a bargain with the government to retain eligibility for SSI and Medicaid and they will repay the government upon their death for any benefits used during their lifetime. Of course, in many cases, the funds are long spent before the beneficiary dies.

The Self Settled Special Needs Trust (d) (4) (A) allows an SSI or Medicaid recipient to place their own funds in a trust for their needs, but the trust must be created for an individual under age 65 and established by a parent, grandparent, legal guardian of the individual, or a court. Federal law also requires that upon the death of the beneficiary the State must receive all amounts remaining in the trust up to an amount equal to the total Medicaid used during the beneficiaries lifetime. The Pooled Special Needs Trust (d) (4) (C) allows an SSI or Medicaid recipient to place their own funds in a trust for their needs if it meets the following conditions:

- The trust is established and managed by a nonprofit association.
- A separate account is maintained for each beneficiary of the trust, but, for purposes of investment and management of funds, the trust pools these accounts.
- Accounts in the trust are established solely for the benefit of the disabled individual by the parent, grandparent, or legal guardian of such an individual, **by such an individual**, or by a court.
- To the extent that amounts remaining in the beneficiary's account upon the death of the beneficiary are not retained by the trust, the trust pays to the State from the remaining amounts in the account an amount equal to the total amount of Medicaid assistance paid on behalf of the beneficiary under the State plan under this subchapter.

A Pooled Special Needs Trust is somewhat like a cross between a 401 K and a Special Needs Trust. Beneficiaries do not get their own documents, but instead join the trust and establish an account for their sole benefit. The account is then administered like any other Special Needs Trust.

One of the major differences between the Self Settled Trust and the Pooled Trust is that Pooled Special Needs Trust has no age limitation and the benefits recipient can protect eligibility for SSI and Medicaid without their parent's or without or with court permission.

Examples Where Pooled Special Needs Trusts Might Be Used

Below are some examples of clients that have benefited from utilizing a Pooled Special Needs Trust.

Helen is 58 years old, has inherited $60,000 from an unexpected inheritance from her aunt, and is receiving SSI and Medicaid. Loss of her Medicaid would cause her great hardship. She has no parent or grandparent alive, and to establish a Self Settled Special Needs Trust would require a court order. Setting up a court ordered Special Needs Trust would cost $5,000 to $7,000, take 3 months or longer, and would require costly court supervision. Helen could instead join a Pooled Special Needs Trust at a fraction of the cost, have professional administration of the account, and avoid court supervision.

John has Multiple Sclerosis, has a residence worth $400,000, and wants to sell the home and purchase a smaller residence for $100,000. John would like to use the balance to pay for his care. Both SSI and Medicaid allow a benefits recipient to own a residence of any value, but if John retains more than $2,000 in his own bank account, he will have a loss of eligibility. If John does not have a parent or grandparent alive, he would be faced with a costly legal procedure to authorize the establishment of a Self Settled Special Needs Trust. John could put the balance of the funds in a Pooled Special Needs Trust and then use the account to pay for his care that is not covered by Medicaid. If the trust pays for his attendant care directly, there will be no loss of his benefits.

Jane is the recipient of a civil rights settlement totaling $50,000. Her wish is to use the funds to go to law school with the hope that some day she can get off public benefits. She placed her funds in the Pooled Special Needs Trust, and the trust is paying her tuition and buying her books. Her goal is to get a job with good medical benefits and not be reliant on public benefits for the rest of her life.

Sam is 67 years old and has become disabled because of a work related injury. He is receiving the maximum SSI, and Medicaid. Sam is going to receive a Workman's Compensation award of $64,000. John is receiving Medically Needy Medicaid and feels it is unlikely that he is going to need to be in a nursing home so long as he has dependable attendant care. A Self Settled (d) (4) (A) Special Needs Trust is not an option because he is over the age of 65. The Pooled Special Needs Trust will pay for his attendant care directly.

Albert has Cerebral Palsy and receives SSI, Medicaid and Section 8. He inherited $120,000 directly from his father. He wants to use the funds to purchase a residence, and through a program offered by Fannie Mae called HomeChoice he qualifies for a 3% loan, and can use his Section 8 Voucher towards payment of the mortgage. He estimates that it will take 9 months to qualify for the program. Albert places his funds in a Pooled Special Needs Trust and uses $80,000 towards a down payment. The remaining funds are retained to pay for maintenance.