



What, Where, Why, and When must a Special Needs Trust Be Reported to Government Agencies?

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What, Where, Why, and When must a Special Needs Trust Be Reported to Government Agencies?

One of the most common questions attorneys are asked after drafting a Special Needs Trust (“SNT”) is, “do I have to tell Social Security and Medicaid about the trust?” The short answer is yes. Of course, the longer answer is more complicated.

Reporting requirements may be different depending on the type of trust, the type of benefit the beneficiary receives, and the state in which the beneficiary lives. There are two basic categories of SNTs. The first type of SNT is the third party SNT – one that is drafted as part of an estate plan where a beneficiary of that plan is receiving government assistance. The purpose of such planning is to allow the special needs beneficiary to inherit funds, in trust, and not lose Supplemental Security Income (“SSI”) or Medicaid benefits. This SNT is called a “third party SNT” because the money in the trust is from a third party – someone other than the beneficiary. The second type of SNT is one that is created when a special needs beneficiary owns assets that he or she is putting into the trust. This might occur if the special needs beneficiary was injured and receives a personal injury award, or when he or she is the beneficiary of assets such as life insurance or a retirement account and a third party trust was not previously set up to receive those assets. We call this trust a “first party SNT.” The purpose of both types of SNTs is to enable the recipient of certain government assistance programs to maintain those benefits while still permitting the trustee of the SNT to spend money for the benefit of the beneficiary.

It may seem odd that the SNT and the assets it owns must be reported to the public benefits agencies. It is not odd because when an individual accepts SSI and/or Medicaid benefits he or she agrees to inform the Social Security Administration (“SSA”) and state Medicaid agency about any changes in his or her financial situation. A beneficiary of an SNT has a financial interest in the trust, even though the beneficiary has no direct access to the money, accounts, real estate, or other assets titled in the name of the SNT. Typically, any change to one’s financial situation must be reported no later than ten days after the end of the month in which the change occurred. Some Medicaid agencies may have a shorter reporting time requirement – usually ten days after the change occurred. An SNT might also need to be reported to the agency providing public or subsidized housing. Distributions from the SNT might impact the amount and availability of those benefits.

The drafting attorney likely drafted a Special Needs Trust that complies with all of the requirements to ensure that the assets in the trust will not be counted, and thus the beneficiary will remain eligible for government assistance; however, it is the agencies that provide those benefits that get to make that decision. The SNT must be reported even if there was a hearing in court and the judge approved the SNT.

Who has the obligation and authority to report the SNT?

Some trusts will be clear about who has the responsibility to report the SNT. However, most trusts are silent on this issue. Typically, the beneficiary of the SNT, [his representative payee](#), or his guardian has the responsibility to keep the Social Security Administration apprised about changes in the beneficiary’s financial situation. Or one of them may direct the trustee to do so. In some states, state law dictates who is responsible for reporting to the various agencies.

When does it have to be reported?

If the SNT does not own any assets because it will be funded with assets after someone dies, there is no reason to report the SNT because the beneficiary’s financial situation has not changed. However, when assets are titled in the name of the SNT, the trust and all of the assets that are titled to that trust must be disclosed to the SSA if the person is receiving SSI, and may need to be reported to the state Medicaid agency as well. Generally, this must be done within ten days after the end of the month in which the trust is funded. Some public housing agencies require that the trust or trust distributions be reported on the annual recertification forms.

There may be ongoing reporting requirements as well. Therefore, a trustee of an SNT must keep excellent and detailed records of the use of the funds. At some point the trustee will

probably have to provide an accounting of the use of the SNT assets to the agencies that provided government benefits, to the beneficiary, to a court, or to those who will receive the assets in the SNT after the primary beneficiary passes away. A trustee cannot be too prepared or too organized when it comes to administering an SNT!

What must be reported?

Generally, a copy of the trust and the initial inventory must be sent to any agency that is providing a needs-based benefit to the beneficiary. The state Medicaid agency where the trust beneficiary receives benefits may or may not require a third party SNT to be reported. A trust must be reported to Medicaid and the SSA when assets or accounts are titled to that trust.

The attorney who drafted the SNT can provide information about the best way to report the SNT and its funding. It is always best to include a cover letter to each of the agencies explaining that the trust being provided is an SNT and the assets it owns should not be counted as belonging to the SNT beneficiary. Also, it is important to reference the social security number of the beneficiary and, if the SNT is also being reported to the Medicaid agency, the beneficiary's Medicaid number should be included. This will allow the agencies to make sure the information is saved in the correct file. Keep a copy of your letter and proof that you mailed it in case you need to prove at some later time that you did report the trust.

Finally, if the SSA or Medicaid notifies the beneficiary or the trustee that the assets in the SNT and the income it earns will be counted and not excluded, and that the individual's public benefits will stop as a result, it is important to contact an attorney immediately. There are very short time frames in which to appeal to avoid loss of benefits. Do not procrastinate!

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