Special Needs Trusts – Formation and Structure
(Frequently Used For Disability Planning)

Will the Trust be funded with assets of the beneficiary?
- No
- Yes

Is the beneficiary disabled?
- No
- Yes

Special Needs Trust rules do not apply; consider other trust options such as spendthrift trust

Trust must comply with (d)(4)(A) Rules
- Must be established by one of following:
  - Parent
  - Grandparent
  - Legal Guardian
  - Court
- Disabled individual must be sole beneficiary of the Trust
- Beneficiary must be under 65
- Trust must include medical assistance pay-back clause
- Limit Control; beneficiary must have no legal right to use assets for support or maintenance
- No right to revoke or terminate trust

Other Trust Provisions:
- Statement of Purpose and Goals for Trust; provides direction to Trustee
- Distribution Standard
- Administrative Powers
- Spendthrift clause
- Identification of potential residuary beneficiaries
- Provisions for replacing Trustee
- Decanting provisions

Note: In addition, the POMS indicate the Trust will be invalid unless the person funding the Trust has legal authority to transfer assets into the Trust

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Special Needs Trusts
Distributions

Trustee Decision-Making Process

Is the Beneficiary on SSI, Medicaid or HUD?

Yes

Distribution must be evaluated for impact on public benefits

Is the distribution for food or shelter?

Yes

Distribution is likely treated as income under Medicaid and SSI Rules

No

The distribution should not impact Medicaid or SSI

No “means-tested” public benefits; distribution makes no impact

Yes

No

Proposed distribution is probably prohibited

Is proposed distribution for the “sole benefit” of the beneficiary?

The following usually do not impact eligibility:
1. Medical, psychological and other health treatment not covered by Medicaid
2. Experimental, holistic or other treatments not covered by Medicaid
3. Education
4. Assistive/adaptive devices and equipment
5. Transportation
6. Caregivers/companion services
7. Communications/phone
8. Recreation and entertainment
9. Respite services

Following are deemed to be a shelter expense:
1. Mortgage payments
2. Real property taxes
3. Rent
4. Heating Fuel
5. Gas (for home)
6. Electricity
7. Water
8. Sewer
9. Garbage removal
Georgia Special Needs Trust Accounting

Annual Trust Review

Each expense must be documented by:
- Date
- Purpose
- Amount
- Recipient

Receipts must be provided upon request

After documentation is provided, DCH applies a 4 part test:
1. Was the expenditure for the primary benefit of the Trust beneficiary?
2. Was the expenditure appropriate given the beneficiary’s age, physical condition, lifestyle and needs?
3. Was the expenditure consistent with the terms of the Trust, and published federal and State guidelines?
4. Was the expenditure consistent with the fair market value of similar goods and services?

Special review of certain expenditures:
- Expenditures not clearly for sole benefit of beneficiary
  - Caregiver wages
  - Housing expenses
  - Vehicle expenses
  - Egregious expenses