NEW YORK STATE BAR ASSOCIATION
ELDER LAW SECTION

Guidelines for Trustees of First Party Supplemental Needs Trusts

Prepared by the Special Needs Planning Committee

TABLE OF CONTENTS

I. Welcome/Introduction: Now That You Are a Trustee 1
- A. What is a fiduciary? 1
- B. What is a Trust? 1
- C. Who is a Trustee? 1
- D. Who is the Beneficiary? 1

II. Overview of Supplemental Needs Trusts 1
- A. What is a Supplemental Needs Trust? 1
- B. What is Supplemental Security Income? (SSI) 1
- C. What is Medicaid? 1
- D. First Party SNT 2

III. Your Initial Obligations as Trustee. 2
- A. Reading and Understanding Your Trust Document. 2
  - 1. Grantor – Settlor 2
  - 2. Declaration of Intent. 2
  - 3. Administration of Trust. 2
  - 4. Funding the Trust. 2
- B. Assistance of Professional Advisors 2
- C. Specific Advice 3
  - 1. Know Your Beneficiary. 3
  - 2. Bond requirement. 3
  - 3. Accounting requirements 3
- D. Understanding Your Fiduciary Obligations as Trustee 3

IV. Duties of Trustee 3
- A. Duty to Collect Assets and Fund Trust 3
- B. Authority to Hire Professionals for Trust Management 3
- C. Duty to Inform and Account 4
- D. Commissions as Trustee 4
- E. Managing Trust Assets 4
- F. Prudent Investor Act 4
- G. New York State Regulations Regarding First Party Trusts 5
- H. Securing Federal Tax Identification Number for the Trust 5
- I. Filing Annual Income Tax Returns 5

V. How Your Decisions as Trustee Might Impact the Beneficiary's Entitlement to Other Benefits 6
- A. Social Security Disability 6
- B. Adult Child Benefits 6
- C. Medicare 6
- D. Office of Mental Health Benefits 7
- E. Section 8 Housing 7
- F. S.N.A.P. Benefits (Food Stamps) 7
- G. HEAP 7

VI. Making Appropriate Disbursements **7**
A. Paying for Housing/Shelter (buying a home; paying/subsidizing rent) 7
B. Paying for Utilities (electric, gas, water) 8
C. Paying for other household expenses
(phone, cable, internet, maid service, lawn service) 8
D. Paying for household furnishings and other personal property 8
E. Buying the Beneficiary Clothes 8
F. Buying the Beneficiary Food (weekly groceries, meals out) 8
G. Paying for a Car and all insurance related thereto 8
H. Setting up a prepaid funeral account 8
I. Paying for travel and entertainment expenses 9
J. Credit Card 9
K. Paying for Educational Expenses 9
L. Paying for Medical Expenses 9
M. Paying for Insurance
(health, auto, homeowners, long term care, disability, life, other) 9
N. Items that will affect SSI and Medicaid 9
O. Final Expenses Upon Death 9

VII. Definitions **9**
A. Fiduciary/Trustee 9
B. Beneficiary 9
C. Grantor/Creator/Settlor 10
D. Court 10
E. Department of Social Services 10
F. Disability 10
G. Social Security Disability Income (SSDI) 10
H. Supplemental Security Income (SSI) 10
I. Medicare 10
J. Medicaid 10

VIII. Conclusion **10**

I. Welcome/Introduction: Now That You Are a Trustee.

Congratulations on accepting your recent appointment as Trustee of a Supplemental Needs Trust! A Supplemental Needs Trust, sometimes called a Special Needs Trust, but referred to interchangeably or simply as an "SNT," is a valuable legal tool available to assist persons with disabilities in maximizing their resources and enhance their quality of life. We hope the following basic guidelines will assist you in understanding your responsibilities.

A. What is a fiduciary?

You have accepted the role of Trustee. As such, you are now a fiduciary. A fiduciary is one who owes to another the duties of good faith, trust, confidence and candor; one who must exercise a high standard of care in managing another's money or property. Thus, you must act in the best interest of the SNT beneficiary and may not mix Trust assets with your own assets or profit from your role as Trustee, other than receiving Commissions for your work as Trustee.

B. What is a Trust?

A Trust is a legal written entity created through a written document. It sets forth the reason the Trust was created and how assets owned by the Trust may be distributed.

C. Who is a Trustee?

A Trustee is a fiduciary who is entrusted with managing the Trust assets. As Trustee, you are entrusted with investing the Trust assets and disbursing them in accordance with the terms of the SNT. You may have been appointed by the person who created the Trust or by a Court.

D. Who is the Beneficiary?

The Beneficiary is the person for whom the Trust was established. The Beneficiary is the person who will have the trust assets applied for his or her needs.

II. Overview of Supplemental Needs Trusts.

A. What is a Supplemental Needs Trust?

A Supplemental Needs Trust (SNT) is a trust designed to qualify or preserve the Beneficiary's eligibility for government benefits, such as Medicaid and Supplemental Security Income (SSI). These programs, which are described in greater detail below, are often vital for the Beneficiary of SNT, who is an individual with a disability, sometimes called the Benefit Recipient.

B. What is Supplemental Security Income? (SSI)

Supplemental Security Income (SSI) is a government benefit for persons with a disability of limited means. A person with a disability may qualify for SSI financially because he or she does not have income and assets greater than the SSI rules allow. In general, for 2011, a single person must have limited income and not more than $2,000.00 in countable assets. If you need more information on eligibility for, entitlement to, applying for, and maintaining SSI benefits, you may consult with an experienced special needs attorney to learn those rules. Information is also available at www.ssa.gov.

C. What is Medicaid?

Medicaid is a government benefit that assists the disabled and/or elderly with medical care. In general, for Medicaid in New York State, an individual may retain no more than $13,800 of countable assets. The Medicaid program provides medical coverage (including long term care) in nursing homes and in the community.

For those with a disability under the age of 65, funding an SNT with assets such as an inheritance or lawsuit recovery or accumulated money creates no waiting period for any Medicaid programs. The use of an SNT is a

way to ensure eligibility for government benefits while still enjoying the benefits of that inheritance, lawsuit recovery or assets.

D. First Party SNT

There are different types of SNTs – depending upon whose money is funding the Trust and whether or not an organization will serve as Trustee. This brochure will discuss only the responsibilities in serving as a Trustee of a First Party SNT.

A First Party SNT is a trust that is funded with the assets of the Beneficiary with a disability. It must be established by a parent, grandparent, guardian or Court. It is not possible for the Beneficiary to establish his or her own First Party SNT. To establish a First party SNT three (3) criteria must be satisfied: 1) the Beneficiary must have a disability, i.e., - he/she must be unable to be gainfully employed; 2) the Beneficiary must be under the age of 65 when the Trust is created; and 3) the SNT must contain a provision obligating the Trustee to repay Medicaid, when the SNT is terminated, for all of the benefits paid by Medicaid for the benefit of the Beneficiary over his or her lifetime.

III. Your Initial Obligations as Trustee.

A. Reading and Understanding Your Trust Document

1. **Grantor – Settlor.** As you read the Trust for the first time, you will see at the beginning of the Trust document itself the title of the trust, the name of the Grantor, the name of the Trustee, and the name of the Beneficiary. The Grantor is the person creating the Trust and is usually the parent, grandparent or legal guardian of the Beneficiary or a Court which directs the establishment of the Trust.

2. **Declaration of Intent.** In general, this declaration is most often included to make it clear to the Trustee, the Beneficiary, and any government entity or court reviewing the trust document itself that it was the Grantor's intention to supplement but not replace government benefits.

3. **Administration of Trust.** The Trust may include provisions outlining how the Trust may invest assets and use assets for the Beneficiary. The Trust will include a provision to pay back Medicaid upon the death of the Beneficiary. The Trust will also include provisions for its administration after the death of the Beneficiary. It may, or may not, include directions on the payment of debts, funeral expenses, taxes and other administration expenses after the Beneficiary's death. It will then tell what will happen with remaining Trust assets.

4. **Funding the Trust.** Assets in the Trust will be titled "YOUR NAME as Trustee of the JOHN DOE SNT". You should maintain the financial records of the Trust accounts. It is important to know what the amount and type of assets (real estate; cash; stocks, bonds, mutual funds, etc.) that will fund the Trust.

B. Assistance of Professional Advisors

The Trustee must be familiar with the government benefits the Beneficiary receives or could likely receive in order to understand how the use of the Trust may affect these benefits. An attorney may be able to assist with this information. A financial advisor can ensure that the Trust assets are properly allocated. If the Trust holds real estate, it may be necessary to retain maintenance crews, landscapers, housekeeping services, and general property management teams. Tax preparers or accountants may be necessary to ensure timing tax filings (discussed below) and to advise as to potential tax savings or advantages that can be leveraged to the benefit of the Trust and, consequently, the Beneficiary. If you have been appointed to serve as a Trustee by a court, the court may require a specific Order before you may retain such personnel.

C. Specific Advice

1. Know Your Beneficiary. Your first responsibility should be to familiarize yourself with the Trust's Beneficiary. The Trustee should take the time to review thoroughly and understand the Beneficiary's current financial, medical, emotional, and social circumstances. This short checklist is a good way to get to know your Trust's Beneficiary:

- How old is the Beneficiary?
- What assets does the Beneficiary currently have?
- What income does the Beneficiary receive on a monthly basis?
- What is the current medical diagnosis for the Beneficiary resulting in his or her being disabled?
- What support systems are presently in place for the Beneficiary (family; case managers; day programs; educational or vocational programs; lawyers, accountants, financial planners, other professionals)?
- Where does the Beneficiary live and how are those living expenses paid for?
- How active is the Beneficiary in the community and what services and programs is he or she involved in?

2. Bond requirement. Many SNTs contain a requirement that the Trustee be bonded. A bond is an insurance policy that is issued by a commercial surety company insuring the Trust against mismanagement or improper actions of the fiduciary. Your attorney can guide you in finding a reputable bonding company to secure a bond. The Trust provisions will specify whether a bond is required.

3. Accounting requirements. Accounting is the name given to the process by which the Trustee reports concerning his/her actions as Trustee. The Trust document itself and any court orders establishing the Trust will determine who must receive a copy of the Accounting and the format of the Accounting. The Accountings are often given to the Beneficiary of the Trust, to a Legal Guardian, to the local Medicaid agency and to the bonding company.

D. Understanding Your Fiduciary Obligations as Trustee. As Trustee, you must act in the best interest of the Beneficiary and must carefully follow the requirements of the Trust. You must follow instructions as set forth in court orders, and avoid profiting from your position as Trustee, other than receiving Commissions for your work, and avoid conflicts of interest.

IV. Duties of Trustee

A. Duty to Collect Assets and Fund Trust

The Trustee must collect assets and fund the Trust. The Trust may be comprised of the proceeds of a medical practice settlement, an inheritance, or simply monthly income of the Beneficiary. In all instances, the trustee must not commingle his or her personal funds with assets of the Trust. How the funds may be invested is discussed in the section below discussing the New York Prudent Investor Act.

B. Authority to Hire Professionals for Trust Management

The Trustee is responsible for the day to day management of the trust assets, the payment of bills, and the operation of the Trust. However, when particular expertise or specialists are needed, a Trustee may require the assistance of professionals to help him/her in serving as Trustee. An accountant may be needed for tax advice and income tax preparation, or a financial planner may be needed for investment guidance. If a court authorized the Trust, you may need permission to hire these professionals and to pay them for their services from the SNT.

C. Duty to Inform and Account

The Trustee has have an obligation to keep accurate and complete financial records, including checks issued, money received, expenditures made, proof of sales of assets, and income earned by the Trust. Trustees of SNTs established under Article 81 of the Mental Hygiene Law will file Accountings for court ordered trusts in the month of May for financial transactions made during the previous year. If the SNT was created in Surrogate's Court, that Court will tell you the month in which you must submit your Annual Account.

You may need to keep a log of the time involved in managing the trust assets and using the trust for the benefit of the disabled Beneficiary. Some courts will determine how you will be compensated for your services when they review your annual accountings and may base your compensation on the time you spent as Trustee.

D. Commissions as Trustee

You may be entitled to be paid for your services as Trustee. The Trust document itself and, if applicable, the court order establishing the Trust, will explain the manner in which your compensation, called "Commissions," will be calculated.

E. Managing Trust Assets

Trustees in New York State have the power to manage trust assets under New York *Estates Powers and Trusts Law* (EPTL) §11-1.1. This section of the law is a general list which can be used as a guide for you. Please note, however, that if your trust is created by a court, you must get court permission before you exercise certain powers. Always look at the Trust document itself and any court order to see what actions may require prior Court approval. Also consult with your attorney if you are unsure about whether to make certain transactions.

F. Prudent Investor Act

A trustee has a duty to invest and manage trust property in accordance with the Prudent Investor Act unless the trust document says otherwise. The Prudent Investor Act is found in EPTL §11-2.3.

The Prudent Investor Act does not direct you to invest in any particular investment; no investment is considered to be inherently prudent or imprudent. You must make investment decisions as a prudent investor would for the entire portfolio. To the extent relevant, you must take into account such factors as "the size of the portfolio, the nature and estimated duration of the fiduciary relationship, the liquidity and distribution requirements of the governing instrument, general economic conditions, the possible effect of inflation or deflation, the expected tax consequences of investment decisions or strategies and of distributions of income and principal, the role that each investment or course of action plays within the overall portfolio, the expected total return of the portfolio (including both income and appreciation of capital), and the needs of beneficiaries (to the extent reasonably known to the trustee) for present and future distributions authorized or required by the governing instrument." EPTL §11-2.3 (b)(3)(B).

You should diversify the assets of the Trust unless you reasonably determine that it is in the interest of the Beneficiary not to diversify, taking into account the purpose and terms of the trust document.

You may delegate your investment or management functions, but you must be careful in doing so. You need to monitor the work of the delegatee and make sure he or she is performing the delegated duties properly. You must make sure that the costs of the delegation are not excessive. You should receive account statements regularly and review them carefully.

G. New York State Regulations Regarding First Party Trusts

The Department of Health has issued regulations pertaining to the requirements for administering First Party SNTs. This is so because the establishment of a First Party SNT is done because the Beneficiary is receiving Medicaid. Compliance requires the following actions by the Trustee:

> (1) The Trustee must notify the appropriate local Social Services district of the creation and/or the funding of a Supplemental Needs Trust which was established for the benefit of an applicant/recipient for Medicaid and which is funded with the applicant's/recipient's own assets.
>
> (2) If the assets of the trust exceed more than $1,000,000, the Trustee must provide the local Social Services district with proof of bonding, unless that requirement has been waived by a Court with jurisdiction of over the Trust (typically the Surrogate's Court or Supreme Court of the County where the Beneficiary resides).
>
> (3) The Trustee must provide the local Social Services district with proof of bonding for all Trusts with assets totaling less than $1,000,000 if such bonding has been required by a Court with jurisdiction over the Trust.
>
> (4) The Trustee must notify the local Social Services district in advance of any transaction involving transfers from the trust for less than fair market value.
>
> (5) The Trustee must notify the local Social Services district in advance of any transaction tending to "substantially deplete" the principal of a trust valued at more than $100,000. "Substantial depletion" is defined as:
>
> > 5% of the corpus of the trust valued at $100,000 up to $500,000;
> >
> > 10% of a trust valued over $500,000 up to $1,000,000; and
> >
> > 15% for trusts valued over $1,000,000.
>
> (6) The Trustee must notify the local Social Services district of the death of the Beneficiary of the Trust.

The Trustee should be aware of any provisions in the Trust that require additional affirmative reporting obligations or restrictions on the Trustee.

H. Securing Federal Tax Identification Number for the Trust

The Trust accounts will usually be opened with a Tax Identification Number obtained from the IRS rather than in the Social Security Number of the Beneficiary. Your attorney will be able to assist in obtaining the Tax Identification Number.

Upon securing the Federal Tax Identification number, you will open accounts in your name as Trustee. The accounts will read "YOUR NAME, as Trustee of the John Doe Special [or Supplemental] Needs Trust Dated_____."

I. Filing Annual Income Tax Returns

The Trust income will be reported to the IRS. An accountant will advise you about filing an annual income tax return by April 15th.

V. How Your Decisions as Trustee Might Impact the Beneficiary's Entitlement to Other Benefits

Medicaid and SSI are not the only government benefits that individuals with disabilities receive. Beneficiaries of SNT may qualify for assistance in housing, food and heat, and receive disability benefits based upon his or her own work history. Using an SNT will not affect benefits that are not means tested (they do not have an income limitation or resource level). However, as federal and state rules are constantly changing, it is incumbent upon you, as Trustee, and your advisory team, to remain abreast of changes to all the benefits programs the Beneficiary is receiving or may receive in the near future.

A. Social Security Disability

Social Security Disability Income (SSDI) is a payment made to a disabled former worker. Unlike SSI, which is not dependent upon a prior work history and is a fixed ceiling of income per month, SSDI and the amount of monthly payment is completely dependent upon the amount of money the now-disabled former worker paid into the system. Individuals who have worked and paid into the Social Security Trust Fund through the Federal Insurance Contributions Act (FICA) tax may acquire insured status by having paid into the Social Security system for the requisite number of quarters per year prior to becoming disabled. If a former worker becomes disabled and has paid into the Social Security system through FICA tax withholdings, upon a qualifying disability (as defined under Social Security), Social Security provides a monthly income without regard to assets or other income. This is an SSDI benefit. After receiving SSDI for two years, the disabled former worker would then qualify for Medicare.

To receive SSDI benefits, one must be "currently insured." Workers disabled after the age of 31 must have 20 quarters of coverage within the 10 year period immediately preceding the onset of their disability. Those disabled under the age of 31 require fewer quarters of coverage but never fewer than six. Individuals over the age of 31 who become disabled after they have left work and who do not have 20 quarters of coverage within the 10 years prior to becoming disabled will not be "currently insured" and will not be able to receive Social Security Disability.

SSDI benefits are not based upon any asset or income level.

B. Adult Child Benefits

Another benefit paid through the Social Security Administration is Adult Child benefits. An unmarried, adult child with a disability of a deceased, disabled, or retired parent can receive Adult Child benefits if that child became disabled prior to age 22 and if the deceased, disabled, or retired parent had sufficient work history. The child can receive these benefits at any age, provided that the disability of the child is determined to have onset before the age of 22. After two (2) years of receiving Adult Child benefits, the adult child will receive Medicare.

C. Medicare

Medicare is the federally government funded health insurance program. An individual aged 65 years or older who is entitled to receive Social Security Retirement benefits, Social Security widow benefits or Railroad Retirement benefits is eligible for Medicare, as are individuals with disabilities who have received SSDI benefits for two years, or those receiving Adult Child benefits. Those with end-stage renal disease who require dialysis or a kidney transplant also are eligible for Medicare, regardless of age, as well as those with ALS.

Medicare provides coverage for hospitalizations (Part A), physicians (Part B) and Prescription Drugs (Part D). Medicare is not based on any asset or income level. Distributions from an SNT will not affect Medicare benefits.

D. Office of Mental Health Benefits

In New York, those between the ages of 21 and 65 in a State psychiatric hospital will have their care paid for by the State of New York. This is a means-tested program. An SNT will preserve assets for those who enter a State facility. Once assets are placed in an SNT, the individual will be financially eligible for Office of Mental Health State benefits.

E. Section 8 Housing

The Department of Housing and Urban Development provides a rental subsidy for individuals with disabilities. The amount of the subsidy is calculated by determining the family's contribution based on income and family size, taking into consideration the actual cost of the housing. Countable income for Section 8 housing subsidies include monthly payments, such as Social Security, annuities, income from assets based on current passbook savings rate, as well as assets gifted away two (2) years prior to the application or recertification for Section 8 housing. Some distributions from a Special Needs Trust paid to a third party for the benefit of the Trust Beneficiary may be countable income for Section 8 residents.

F. S.N.A.P. Benefits (Food Stamps)

Supplemental Nutrition Assistance Program (SNAP) benefits, formerly and commonly known as food stamps, provides a person with limited income an allowance of funds with which to purchase food. The amount of the monthly allowance depends upon household size and income. While food stamp benefits used to be tied to the SSI asset level ($2,000 for a single person), there is currently no asset limit for SNAP benefit eligibility for persons with very limited income. However, if a person is disabled or over the age of 60, he or she may not have monthly income over 200% of the federal poverty level. If income exceeds that amount, then a resource limit of $3,000 applies for households with a disabled person or a person over the age of 60. For households without a disabled person or without someone over the age of 60, there is a $2,000 resource limit. It is important to review the SNAP benefits eligibility rules very carefully when an SNT is involved. Because first party SNTs are funded with the assets of the benefit recipient, in general, disbursements from the trust made to the Beneficiary for everyday living expenses such as rent/mortgage and groceries are counted as income in determining the amount of income the household has. However, there may be other disbursements out of the SNT that will not be counted as income and therefore not affect the Beneficiary's eligibility for SNAP benefits.

G. HEAP

Home Energy Assistance Program (HEAP) is a grant, awarded annually, to low income persons to cover the cost of fuel and utilities. HEAP has no resource test and therefore the assets in the SNT do not cause eligibility problems. Emergency HEAP, which is distinct from a general HEAP benefit, will only be granted in emergency situations when the household does not have sufficient means to fix the fuel or utility emergency. However, even in emergency situations, assets in an SNT are not counted when making an eligibility determination for emergency HEAP. However, determining whether the person is "low income" is a complex process for HEAP eligibility. Income used for everyday expenses is considered available income when a HEAP eligibility determination is made. Therefore, a Trustee of an SNT must be care in making disbursements from the SNT to or for the benefit of the beneficiary because it may affect HEAP eligibility.

VI. Making Appropriate Disbursements

A. Paying for Housing/Shelter and Food (buying a home; paying/subsidizing rent)

It is important to know that a Beneficiary who is receiving SSI will have his or her SSI monthly payment reduced (up to a maximum reduction of one third) if the Trust pays for some or all of the Beneficiary's food or shelter. An attorney can guide you through the calculations of the precise reduction so that you may determine whether the Beneficiary's reduction of the monthly SSI payment is worth the benefit of having food or shelter expenses paid by the Trust.

The Social Security Administration considers the following items to be distributions for shelter: mortgage payments, insurance premiums if required by the mortgage company, real estate taxes, rent, heating fuel, gas, electric, water, sewer, and garbage removal.

If you as Trustee are considering having the Trust purchase a home for the Beneficiary, there are many issues to consider and plan for. If you were appointed Trustee pursuant to Article 81 of the Mental Hygiene Law or pursuant to SCPA 17A in Surrogate's Court, you may need to have special court permission to purchase real estate with the Trust. As Trustee you must also consider whether others living in the home should contribute to its monthly expenses.

Medicaid benefits are not reduced by the Trustee's paying for food and shelter.

B. Paying for Utilities (electric, gas, water)

As mentioned above, electric, gas, water and the like are considered provisions of shelter which will reduce the Beneficiary's monthly SSI award. Therefore, in most instances, the Beneficiary's SSI monthly payment should be used to meet these obligations. If the Beneficiary can use his or her monthly SSI check to pay for rent, electric, gas, water, sewer, garbage, and spending cash, then the Trustee can use Trust funds for other expenses, as detailed below.

C. Paying for other household expenses (phone, cable, internet, maid service, lawn service)

The Social Security Administration does not consider things such as cable, phone, internet, cleaning services, landscaping, newspaper subscriptions, and other non-essential items as shelter. Therefore, the Trustee should try to structure the Beneficiary's bills so that the Trust is bearing the cost of these non-essential expenses. Using Trust funds to pay them will not reduce the Beneficiary's monthly SSI award. These expenditures also do not reduce Medicaid benefits.

D. Paying for household furnishings and other personal property

There is presently no limit on the value of household furnishings and other personal property that the Trust may own or purchase for the Beneficiary without reducing the Beneficiary's monthly entitlement to a SSI award.

E. Buying the Beneficiary Clothes

Paying for clothing for the Beneficiary with Trust assets will not affect SSI or Medicaid eligibility.

F. Buying the Beneficiary Food (weekly groceries, meals out)

The Trust's purchase of food for the Beneficiary will result in the reduction of that Beneficiary's SSI award. "Food" has been defined by the SSI program to include groceries, dinners out, entertainment dinners and gift cards to establishments selling food. Purchasing these items for the Beneficiary from the Trust does not affect Medicaid benefits.

G. Paying for a Car and all insurance related thereto

It is permissible for the SNT to purchase, own, insure, and pay for upkeep of an automobile for the Beneficiary. In order to reduce insurance costs, it is often preferable to have the Beneficiary own the automobile with expenses paid from the Trust, with the approval of the Medicaid agency, if necessary.

H. Setting up a prepaid funeral account

The Trustee may pay for a *pre-paid* funeral agreement while the Beneficiary is *alive*. Beneficiaries are encouraged to pay for these arrangements before the Trust is created, or request a payment from the Trust for a burial agreement during the Beneficiary's life. The Trust may not purchase a funeral once the Beneficiary has passed away if sufficient funds will not remain for the Medicaid agency to be paid back for all Medicaid provided to the Beneficiary.

I. Paying for travel and entertainment expenses

Travel and entertainment expenses are supplemental needs. In some instances, a companion may also need to travel with the Beneficiary. It is important to understand the local Social Service district's position on disbursements from the Trust for the expenses relating to a companion.

J. Credit Card

Paying the Beneficiary's monthly credit card bill is a way for the Beneficiary to remain independent. So long as the credit card does not purchase food or shelter items, the credit card will not affect eligibility for SSI. The Trustee may not authorize a debit card against the Trust assets or gift card purchases for the Beneficiary.

K. Paying for Educational Expenses

The Trustee is permitted to use Trust assets for educational expenses for the Beneficiary. However, the Trustee must be mindful of the rules governing payment for food and shelter, discussed above. If the educational expenses encompass any of those expenses, such as dormitory expenses or a meal plan for a student in a residential educational setting, the Trustee must take care to not use Trust assets for these types of expenses or else risk a reduction in the Beneficiary's SSI award, as discussed above.

L. Paying for Medical Expenses

It may be appropriate to use the Trust assets to pay for medical related equipment or therapies not provided by government benefits.

M. Paying for Insurance (health, auto, homeowners, long term care, disability, life, other)

The Trust may pay for insurance beneficial to the Beneficiary. For life insurance, the named beneficiary on the policy must be the Trust if the Trust is paying the premiums.

Car insurance may be purchased and maintained by the Trust for a vehicle owned by the Trust, or by the Beneficiary outright. Homeowner's insurance may be paid by the Trust, although it might result in a reduction of SSI benefits. Renters insurance may be paid and not affect the SSI benefits as it is seen as a personal property insurance rather than a shelter payment.

N. Cash, Gifts from Trusts, and Other Items that will affect SSI and Medicaid

Giving the Beneficiary spending money reduces dollar-for-dollar SSI benefits. Gifts to others on behalf of the Beneficiary should not, in general, be made from the Trust.

O. Final Expenses Upon Death

The local Social Service district will allow the Trust to pay taxes due because of death of Beneficiary, fees for administration of trust estate such as accounting to a court, etc. before reimbursing Medicaid, but the Trust may NOT pay debts owed to third parties, such as paying off a mortgage, credit card debts, etc. The Trust may NOT pay for a funeral prior to reimbursing the State for all Medicaid provided to the Beneficiary during the Beneficiary's lifetime.

VII. Definitions

A. Fiduciary/Trustee

A fiduciary or Trustee is the person charged with managing and administering the Trust. This may be one or more persons, or a corporate entity. The fiduciary is bound by standards established by state law.

B. Beneficiary

The Beneficiary is the person for whom the Trust funds are to be expended.

C. Grantor/Creator/Settlor

The person who creates the trust is known as the "Grantor" or "Settlor."

D. Court

The phrase "Court" refers to the local court that will have jurisdiction over a Trust and/or the fiduciary. A Court may be involved in the establishment of a SNT, or may be involved in the ongoing monitoring of the fiduciary's actions.

E. Department of Social Services

In New York State, each county has a department responsible for administering the social service benefits to its county's residents. This department is called the Department of Social Services. The Department is responsible for administering the Medicaid program in New York State and is often involved in reviewing the provisions of the Trust often must receive annual Accountings.

F. Disability

The Social Security Administration considers a person disabled if "you cannot do work that you did before; [the SSA] decides that you cannot adjust to other work because of your medical condition(s); and your disability has lasted or is expected to last for at least one year or to result in death."

G. Social Security Disability Income (SSDI)

This is a federally funded government program that pays former workers with a disability a monthly stipend. There are no financial criteria for eligibility because eligibility for SSDI is based upon the disabled person's work history.

H. Supplemental Security Income (SSI)

SSI is a government entitlement program that pays a monthly stipend to persons unable to work, who meet the financial criteria of the program. Eligibility for SSI brings with it automatic eligibility for Medicaid.

I. Medicare

Medicare is a health care program operated by the federal government for persons over age 65 and for persons with disabilities under the age of 65 who have received Social Security Disability (SSDI) for 2 years. This is not a means tested program.

J. Medicaid

Medicaid is a means tested health care program funded jointly by the federal and state governments.

VIII. Conclusion

Although serving as a Trustee of a Special Needs Trust is challenging, your role as Trustee is indispensable in enhancing the quality of a person with a disability.

NEW YORK STATE BAR ASSOCIATION
ELDER LAW SECTION
One Elk Street, Albany, New York 12207