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Special Needs Planning - For the Future of your Child or Loved One

A large segment of our population is disabled, either physically, intellectually, cognitively, emotionally or psychologically. In a study reported in 2007 by the National Organization on Disability it was estimated that more than 54 million Americans, nearly one in five of us, are disabled. Generally, “special needs planning” is estate planning for the benefit of persons with disabilities. It is designed to accommodate the unique needs of the individual and to protect and preserve assets to enhance their quality of life. This planning can be done by or on behalf of the disabled individual. It can involve assets that already belong to the disabled person, assets that the disabled individual is or will be entitled to receive, and assets that others may wish to give or leave to the disabled individual. Today, it is totally unnecessary to disinherit a disabled beneficiary to prevent his or her loss of benefits. Planning for a loved one with special needs can be accomplished as part of general estate planning or it can be separately handled. What’s important to remember, however, is that the time and attention that is devoted to this type of planning will make all the difference to your loved one in the future.

The most common tool to accomplish this type of estate planning is the Supplemental Needs Trust or “SNT.” SNTs are used to protect the assets of the disabled individual who is receiving, or may eventually qualify to receive, needs-based governmental benefits such as Medicaid and Supplemental Security Income. The goal is to ensure that the assets will be used to supplement rather than replace governmental benefits, to provide quality-of-life enhancements such as special furnishings or equipment, a specially equipped van, a computer, an entertainment center, vocational training, a vacation or other recreation.

There are two types of SNTs, “First Party” and “Third Party” Trusts. A First Party SNT is funded with the beneficiary’s own money. Often, the source of this money will be an inheritance, a recovery from a malpractice or personal injury lawsuit, or a divorce settlement. These SNTs require a post-death Medicaid payback, which means that at the end of the disabled beneficiary’s life, Medicaid is reimbursed from the trust for funds it expended on the disabled beneficiary’s behalf. A Third Party SNT is funded with the property of someone other than the disabled beneficiary and is typically established through a Will or Trust. Depending upon the circumstances, the assets are utilized for the disabled beneficiary and then “remainderpersons,” typically other family members, can be designated to receive the remaining assets after the

disabled beneficiary has passed away. Medicaid receives no reimbursement from a Third Party SNT.

While estate planning is important for everyone, it is even more important for those who wish to benefit a loved one with special needs.