

The Polner Abrahams Report

The Source For Intelligent Estate and Elder Law Planning

Courtesy of The Law Office of Beth Polner Abrahams

Volume 3 Issue 1

Focus On...

Special Needs Trusts Part II: Back to Basics

My last newsletter gave an overview of an important tool in estate planning and benefit preservation for families with disabled loved ones, called the Special Needs Trust.

The Special Needs Trust (also called Supplemental Needs Trust or SNT), permits a disabled individual receiving Medicaid (and SSI) to have greater resources than these Federal programs generally allow under the law. In this issue, I will discuss one of the three general types of SNTs.

Testamentary SNT

As with any inheritance for a loved one, a disabled person is not precluded from inheriting monies, investment accounts, proceeds of life insurance, or even a home, after a parent or other relative dies. The advantage to creating an SNT in your Wills or as part of your estate plan is that the disabled individual's inheritance need not be depleted by the high cost of medical care or personal care assistance. The key to protecting these assets and to avoid losing or quickly depleting these benefits is to make sure that all assets are inherited through the testamentary SNT. 'Testamentary' means the trust will spring to life when a Will is probated after death or in a trust which was part of a living trust (such as an insurance trust) after the death of the creator of

the trust.

Family members should establish the testamentary SNT in their wills (and/or other estate planning documents, such as a living trust) and specify either the portion or percentage of the estate the disabled child or individual will inherit. Sometimes a specific account or life insurance policy is earmarked for the trust in the Wills. This should be done with a beneficiary designation form

designating the trustees of the SNT to receive the funds. In some instances, families establish a particular account that will fund the SNT. Then, the estate planning document must refer to that account by the name of the financial institution and account number.

After death, the trustee(s) selected in the Wills or other documents is authorized to use trust funds to improve the quality of the disabled loved one's

Welcome to the fourth issue of my quarterly newsletter. Each



edition addresses concerns of the elderly and disabled, their families and guardians. Please email your comments to Info@bpaElderLaw.com.

Attention Special Education PTAs! At no charge, I will gladly visit schools and non-profit organizations to provide an introduction to 17A Guardianship proceedings and the value of Special Needs Trusts. Please call the office to schedule a convenient presentation date for the 2007 school year.

Our office is now located at 300 Garden City Plaza, Suite 404, Garden City, adjacent to the Roosevelt Field Mall. For directions, please visit our website or telephone our office.

Continued on page 2

300 Garden City Plaza, Suite 404 • Garden City, New York 11530

Telephone (516) 741-9175 • Fax (516) 741-9444 • Website www.bpaElderLaw.com • Email Info@bpaElderLaw.com

Special Needs Trusts...Continued from page 1

life. For example, for education or training programs, companions, special equipment, adaptive equipment and computers, modifications to a residence, videos, music, art supplies, vacations and medical treatment not paid for by Medicaid.

Your estate planning documents may be as detailed as you wish regarding the individual's special needs, or you may leave the decisions as to use of the inherited funds to the Trustee and legal guardian for the disabled loved one based upon the changing needs of your disabled loved one.

At the death of the disabled individual, it is your Will (or other estate planning documents) which specifies who receives the remaining funds or assets in the testamentary SNT. For example, your document may direct the funds to a charitable organization providing care to your child or loved one, to other surviving family members or to any organization. The decision is yours. Medicaid does not receive the remaining SNT funds if properly drafted by a qualified attorney.

The selection of a trustee for the disabled individual's SNT is as important as creating the testamentary SNT. Some families choose siblings or other relatives to act as trustee. Serious consideration should be given to the life span of the disabled loved one and the age of the trustee, the size of the inheritance and the future care needs for the family member. Some families are designating a nonprofit organization — with expertise in managing trust funds and the disabled loved one's particular disability — as

their choice of trustee or successor trustee.

As a reminder, if the disabled loved one cannot make informed health care decisions for themselves nor sign a Health Care Proxy, the SNT will not protect him or her, nor enable your trustee to make these health care decisions. You may need to appoint a guardian for an adult (over age 18 years) by petitioning the Surrogate's Court or Supreme Court depending upon the disability or incapacity. The guardian will then be authorized to make health care decisions for the disabled adult.

My next newsletter will cover the pay back SNT.

Ring In The New

With the election of New York State Governor Eliot Spitzer, it is hoped that several pieces of legislation will be introduced (or, re-introduced) to preserve health care and contain costs of that care, and to strengthen health care decision-making rights.

New York State Compact for Long Term Care was introduced in 2006 as a positive alternative to Medicaid. The current proposal, Senate bill S00116, was introduced by Senator Martin Golden (R-Brooklyn). Text of the proposed legislation is available at the NYS Legislature Web site. The legislation was referred to the Committee on Aging on January 3, 2007. The Compact would create an agreement between individuals and the State by which an individual would voluntarily make a pledge to pay a certain amount for long-term care. In return, the State would agree to pay 90% of health care costs after the pledge is fulfilled. The traditional Medicaid

Continued on page 3

program would remain for the poor and other citizens who do not choose the Compact. Passage of the Compact would enable middle class seniors without long-term care insurance to retain some assets while assuming responsibility for payment of some health care costs and ameliorate the harsh impact of the Federal Deficit Reduction Action passed in February 2006. I urge you to contact your State Assembly and Senate representatives to support the Compact for Long Term Care.

Medicaid and Medicare Updates

Each year, both the Federal and New York State Medicaid departments update their income and resource standards. The 2007 standards are:

For Nursing Home Medicaid applicants and their spouses:

Applicant Resources: \$4,200 (plus a prepaid burial contract or burial fund and burial plot; a retirement account paying minimum required distributions). Some exceptions may increase the resource level; check with my office if an application for nursing home care or 'nursing home without walls' for skilled care at home is required.

Spouse Resources: \$74,820 to \$101,640 (plus certain other resources)

Income Rules: A nursing home applicant may keep \$50/month (SSI recipients may keep less); the balance of income is generally paid to the nursing home.

The spouse residing in the community may have \$2,541/month of income. In some instances,

there may be the opportunity to seek higher monthly income from the nursing home spouse through a Fair Hearing.

Spousal Refusal

As a reminder, spousal refusal is still the law in New York State. If a spouse's resources or income are more than permitted by Medicaid, you may refuse to contribute your excess resources or income to your spouse's care and the application should be approved.

However, in many counties, including Nassau, the Medicaid departments are aggressively suing 'refusing' spouses to recover for monies paid for care. It is essential to contact my office before an application for Medicaid to determine the best strategies for protecting you and your loved one.

For Home Care/Community Medicaid applicants:

Applicant Resources: \$4,200 (plus a prepaid burial contract or burial fund and burial plot; a retirement account paying required distributions)

Income Rules: The applicant may keep \$700/month (plus \$20). Any income over this amount must be spent on medical bills or paid over to the Medicaid department before services are accessed through Medicaid.

There are new options for seniors and the disabled to shelter the income overage through a Pooled Trust. Contact my office to discuss these protective options for remaining at home.

Remember that there are no asset or income protections for spouses in the same manner as for the federal nursing home Medicaid program.

Transfers of Resources

As of February 8, 2006, under the federal Deficit Reduction Action, all transfers by an applicant or spouse may create a period of ineligibility for nursing home Medicaid or 'nursing home without walls' (Lombardi Medicaid) for five years from the transfer. This harsh penalty does not depend upon the actual amount you transferred.

There are exceptions to penalties and no transfer penalties for home care. Caution is required when Medicaid is needed. Contact my office for assistance and legal representation.

Medicare D

While enrollment for Medicare D (prescription drug plan) ended January 1, 2007, you may still enroll and be able to avoid substantial penalties.

You do not have to enroll in a Medicare D plan if: you are a veteran and receive your drugs through the Veterans Administration; you have creditable (similar) drug coverage through your employer's retirement drug plan.

If you receive Medicaid, you must enroll in a Medicaid-approved drug plan to avoid out-of-pocket expenses; however, you may enroll in any Medicare D plan outside of Medicaid's suggestions if you don't mind out-of-pocket costs (for some plans).

If you are low income and live in NYS, you should also enroll in EPIC and a Medicare D plan to get the best deals on prescription drug prices.

Low income individuals who are not yet 62 years of age (an EPIC requirement) may qualify for and should apply for Extra Help paying for drug expenses under Medicare D. Contact Social Security by calling 1-800-772-1213.

DO YOU KNOW A SUPPORT GROUP OR NONPROFIT that needs an update on Medicaid, Medicare, Special Needs Trusts or Guardianships for the retarded and developmentally disabled? Call my office to arrange for a presentation in 2007 at no charge.

DOES YOUR ORGANIZATION NEED MORE COPIES OF THIS NEWSLETTER? Call my office and we will arrange to mail you additional copies at no charge.

© 2007 Beth Polner Abrahams, Esq.

Law Office of Beth Polner Abrahams

**300 Garden City Plaza, Suite 404
Garden City, New York 11530**

**Dedicated to providing quality, caring
and personalized legal representation.**

**Handling all aspects of estate and tax
planning, elder law and representation
of incapacitated and disabled adults
in guardianship proceedings.**

Telephone (516) 741-9175

Fax (516) 741-9444

Website www.bpaElderLaw.com

Email Info@bpaElderLaw.com