



## Protecting Medicaid And Supplemental Security Income Benefits With A Special Needs Trust.

Our federal government, in partnership with individual states, provides two public benefit programs:

1. Medicaid - to meet the medical needs of low-income persons who are aged, blind or disabled; and
2. Supplemental Security Income (SSI) - to provide income for housing, food and clothing.

Medicaid pays for nursing home care, medical services, prescription drugs, physician bills and hospitalization. One must qualify for Medicaid by having income and assets below set limits, as it is a 'means-based program.' For example, a person with more than \$2,000 in assets will not be eligible for Medicaid in some states. Confusion often occurs between the public benefits under Medicaid and Medicare, which is an entitlement program generally available to most at age 65 regardless of income or assets.

### Losing Medicaid Benefits

One can receive Medicaid benefits and become ineligible if they were to suddenly receive assets from an inheritance or settlement from a lawsuit.

#### Example 1

Mrs. J. is in a nursing home paid for by Medicaid and her brother dies, leaving her \$250,000. With this sum of money, Mrs. J. is no longer eligible for Medicaid and must use the \$250,000 to pay for her nursing home and medical care. This is commonly referred to as 'spending down' to qualify for Medicaid. Even if she gave the money away, Medicaid rules would not allow her to be eligible for a period of years from the date of the gift.

#### Example 2

Mr. S., age 35, has been disabled all of his life. Due to his disability, and with no assets to his name, Mr. S. receives benefits under Medicaid and SSI. His mother dies and in her will she leaves substantial assets to Mr. S. With these assets in his name, Mr. S. no longer qualifies for these public benefits and will not qualify until his mother's estate is exhausted. Even if his mother left her estate in trust for her son, the assets in the trust may disqualify the son *unless the Trust complies with federal and state laws applicable to a special needs trust.*

#### Example 3

Ms. H., age 28, is in an automobile accident and becomes completely disabled. She now relies on Medicaid and SSI for her basic needs. The accident was not her fault and her attorney files suit against the party at fault, prevailing in a jury verdict for damages of \$500,000, net of attorney's fees. The amount is paid directly to Ms. H. The same situation as Example 2 occurs, rendering Ms. H. ineligible for Medicaid until this amount is depleted below the prescribed limits for eligibility.

## The Law Provides Protection For Special Needs Trusts.

In these true-to-life examples, the individuals and families could have remained eligible for public benefits and used the newfound money to supplement, but not supplant public benefits, overall improving the quality of life for each person. Laws and regulations under both the federal and state governments would have allowed a Special Needs Trust to be established in these examples to protect eligibility of the named individuals.

Medicaid and SSI regulations established the requirements for a Special Needs Trust with the purpose of allowing trust assets to be a resource to supplement the benefits of Medicaid and SSI, but not replace them. Generally, these regulations require the trust to be irrevocable, the beneficiary must be disabled at the time of funding and the distributions or payouts from the trust must be for additional needs beyond the basic necessities met by the public benefits. If drafted and administered properly, the assets in the Special Needs Trust will not count as a resource for the purpose of determining the eligibility for Medicaid and SSI.

If the Special Needs Trust is funded from assets of the disabled person, such as from a settlement as opposed to a third party, Medicaid regulations require that the trust include a provision that assets remaining at the death of the disabled beneficiary be used to reimburse the state Medicaid Agency for benefits paid to the beneficiary. Also, the beneficiary must be under the age of 65 when the trust is created.

## Is A Special Needs Trust Always Right?

No, as there may be other means to protect these public benefits, and you should carefully evaluate the long term consequences and restricted access to the income and principal of the trust. For example, the beneficiary may regain capacity to work and the overly restrictive standard for distributions in the trust may deny the beneficiary access to needed assets.

Each situation requires careful analysis by a qualified attorney and trust advisor. Call your Credit Union's trust officer who will discuss your unique situation and team with a qualified attorney for the development of the right plan for you and your family.