

IRA M. LEFF

AND ASSOCIATES

ATTORNEYS AT LAW

1722 PINETREE CIRCLE, N.E.
ATLANTA, GEORGIA 30329

WWW.IRALEFF.COM

IRA M. LEFF

IRALEFF@IRALEFF.COM

TELEPHONE: (404) 633-1801

FACSIMILE: (404) 633-1830

November 23, 2009

ELDER LAW MINUTE

Last week I wrote about third party Special Needs Trusts created by a Will. Several of you have asked me about self-settled Special Needs Trusts. These are trusts created with assets of the Medicaid recipient (A/R) during his lifetime. There are many technical requirements for these trusts which are found at MEDICAID MANUAL § 2346. Here are some of the more critical ones. For a link to the Medicaid Manual, go to www.IraLeff.com.

1. The SNT must be established by a parent, grandparent, guardian or a court. It cannot be created by the A/R.
2. The SNT must be established for the sole benefit of one beneficiary. Payments from the SNT may not exceed the amount determined to reasonably meet the special needs of the beneficiary.
3. The SNT must provide that the State of Georgia will receive all funds remaining in the trust upon the death of the beneficiary up to the amount paid by Medicaid on behalf of the beneficiary.
4. The beneficiary must be disabled and under 65 when the SNT is established. No funds may be contributed to the SNT after the beneficiary is 65.
5. The Legal Services Office of the Department of Community Health will review all SNTs and determine validity. SNT should be sent to DCH Legal two months prior to execution and/or judicial approval.
6. Notice of a judicial hearing concerning a SNT should be served on DCH Legal at least 15 business days before the hearing.
7. The SNT must identify the source of funding of the trust and all assets purchased by the trust.
8. The SNT must state the age of the beneficiary and affirm that the beneficiary is disabled within the definition of 42 U.S.C. § 1382c(a)(3). It also must state whether the beneficiary is competent.
9. The SNT must state the its purpose is to supplement not supplant public benefits.

Information contained in this newsletter is general in nature and not intended as legal advice. Legal advice should be obtained before action is taken based upon this information. Receiving this Elder Law Minute newsletter does not create an attorney-client relationship. If you wish to unsubscribe, please let us know. Copyright 2009 by Ira M. Leff and Associates. All rights reserved.