

The following checklist is intended to give you some things to look for when preparing to sign a supplemental needs trust. In all cases, you should work with an attorney familiar with special needs planning and/or estate planning who has experience with supplemental needs trusts. If your family member with a disability currently receives government benefits, the government agency providing benefits may want to review the trust before it is signed. A knowledgeable attorney can tell you if this is required.

- Does your trust document state who will serve as trustee? Does it name the beneficiary, who is the person for whom the trust is created?
- Does the trust provide for a successor trustee, if the original trustee is unable or unwilling to continue as trustee?
- Are the purposes for the trust clearly stated in the trust document? That is, is it clear that you intend for the trust funds to be used to meet the beneficiary's needs, but only as a **supplement** to the beneficiary's government benefits? These requirements should be set out for the trustee, who will be making distributions on the beneficiary's behalf, so that he or she does not jeopardize the beneficiary's government benefits. The trust may be completely discretionary, meaning the trustee may have complete control over when to make distributions to the beneficiary. It may also limit trust distributions to supplemental items only. In either case, the trustee should be clear on how to use the trust fund for the beneficiary's supplemental needs.
- When will the trust be funded? If you are setting up a living trust, you may plan to fund it now by retitling assets in the name of the trust. You also may direct in your will that other assets will pass to the trust upon your death. If you are setting up a testamentary trust, which is created in your will, it will be funded when you die according to the directions in your will and/or your beneficiary designations on your life insurance policies and retirement benefits.
- If you are creating a living trust, do you have a will that directs some other assets into the trust upon your death?
- Is the trust revocable or irrevocable? Your attorney should consider your needs, as well as the beneficiary's needs in relation to the trust fund, and any tax consequences associated with the decision to make the trust revocable or irrevocable. Remember, you cannot change or terminate an irrevocable trust once it is established.
- Can the trust be amended? If so, are the provisions so broad that an irrevocable trust is actually considered a revocable trust? An irrevocable supplemental needs trust should have very limited amendment provisions to avoid this result.
- Does the trustee have the authority to defend any attacks to the trust by the state or other creditors?
- Does the trust name contingent beneficiaries, the individuals who will receive the trust funds when the trust terminates? Has your attorney discussed with you all conflicts of interest associated with your trustee and his or her relationship to contingent beneficiaries?
- Does the trust have a spendthrift provision, making it clear that the beneficiary is not the owner of the trust fund and that no creditors have a claim to the trust fund?

- Does the trust document list the trustee's powers, and are these powers broad so that they enable the trustee to make a variety of financial transactions and decisions as the beneficiary's circumstances change? Does the trust cover trustee liability, limitations on trustee powers and a provision for reasonable compensation for trustee services?
- Does the trust refer to a letter of intent, which outlines for the trustee your vision, expectations, and dreams for the beneficiary? The letter of intent is not a legal document, but is a way to outline for the trustee, attorney, guardian, or other advocate how you feel about these issues.
- If the trust is funded with the **beneficiary's** own funds, does it include "payback" provisions to the Department of Health and Mental Hygiene for all Medicaid paid on the beneficiary's behalf, and has it been approved by the Office of the Attorney General?