Sawyer & Sawyer, P.A. Publishes Guidance on Supplemental Needs Trusts and Public Benefits

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Sawyer & Sawyer, P.A., an estate planning attorney in Orlando, Florida, has published guidance explaining how supplemental needs trusts are used to hold assets for a person with a disability while helping preserve eligibility for need-based public benefits such as Supplemental Security Income and Medicaid. The guidance, set out in an article titled Special Needs Trusts Explained: Safeguarding Benefits in Orlando, describes the resource limits that can affect eligibility, the trust structures available under Florida law, and why those rules depend on the specific benefit program a person is enrolled in.

According to the article, need-based programs such as Supplemental Security Income apply a limit on countable resources, commonly $2,000 for an individual, and receiving assets above an applicable limit can cause a beneficiary to lose benefits. The article emphasizes that Medicaid is not a single program but a set of programs with different eligibility categories and asset rules, so the effect of exceeding a limit depends on which program applies. A supplemental needs trust, the guidance explains, is generally drafted so that its assets are not counted toward that limit while remaining available to support the beneficiary.

The article describes three categories of such trusts. A first-party trust is funded with the disabled individual's own assets, often a personal injury settlement or an inheritance already received; under federal rules it must be established before the beneficiary turns sixty-five and include a Medicaid payback provision. A third-party supplemental needs trust is funded by a parent, grandparent, or sibling, generally requires no payback, and can allow any remaining balance to pass to other named beneficiaries. A pooled trust is administered by a nonprofit in individual subaccounts and, like a first-party trust, generally requires a payback provision.

For Windermere and Winter Garden families, the article notes that a third-party supplemental needs trust is frequently built into a parent's existing revocable living trust or will and funded at the parent's death rather than created as a separate document. It identifies the first step as determining which Supplemental Security Income or Medicaid program a family member is enrolled in, because that determines which rules apply. Turning to probate, the guidance notes that when a parent in the Orlando area dies without a plan in place, the family is left to arrange care for the disabled individual and to protect benefits that may be at risk.

The article identifies four drafting errors it says can undermine such a trust: naming the disabled beneficiary as trustee or co-trustee, which can cause the government to treat trust assets as countable; naming additional beneficiaries in a first-party trust, where the disabled person must be the sole beneficiary; including a Medicaid payback provision in a third-party trust, which can expose family assets to state recovery; and using the health, education, maintenance, and support language common in general estate plans, which the article warns can cause trust assets to be counted for benefit purposes. It also describes a $400,000 life insurance policy naming a disabled child as direct beneficiary, noting that naming a properly drafted trust as beneficiary instead can direct the payout into the trust while preserving benefits.

"The starting point is identifying exactly which programs the person is enrolled in, because Medicaid and Social Security are umbrellas covering dozens of programs, each with its own rules," said Cary L. Moss, Esq., Managing Partner at Sawyer & Sawyer, P.A. "The question a family should ask any attorney drafting one is whether the trustee is given discretionary authority, because rigid supplement-only language can preserve a benefit on paper without serving the person the trust exists for." Moss received her law degree from Stetson University College of Law in 1998 and is a member of the Florida Bar, its Elder Law Section, the National Academy of Elder Law Attorneys, and the Academy of Special Needs Planners.

The article treats the trust as one part of a broader plan that also names a trustee versed in public benefits, a beneficiary's advocate, and a trust protector. For families with a developmentally disabled relative, it describes the guardian advocate, a Florida mechanism through which a court can appoint someone to make health-care and placement decisions without a full determination of incapacity. It also points to ABLE United, which the article describes as allowing a person with a disability to hold savings, up to $100,000 for Supplemental Security Income purposes, without affecting eligibility, subject to the rules of the particular program.

Sawyer & Sawyer, P.A. is located at 8913 Conroy Windermere Rd. in Orlando, Florida, and serves clients throughout Orange, Lake, Osceola, and Seminole Counties, including Orlando, Windermere, Winter Garden, and Winter Park. The firm can be reached by telephone at (407) 909-1900.

Sawyer & Sawyer, P.A., an Orlando, Florida firm practicing in estate planning, trusts, probate, and elder law, has published the full guidance at sawyerandsawyerpa.com, with additional firm information on its Google Business Profile. The article recommends that a plan, once in place, be reviewed every two to three years or after a major change in circumstances.

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