Often overlooked in the baby boomer medical equation is the fact that boomers are also parents and caregivers to millions of disabled children. How will parents’ aging impact the care and wellbeing of their children?

It appears little has been done to educate aging baby boomers as to what steps should be taken to provide for the future care of their disabled children. Special Needs Trusts (SNT), also known as Supplemental Needs Trusts, play an important role in the planning for a disabled child. They are generally considered to be the legal centerpiece of a plan for a disabled person.

SNTs provide for the preservation of funds permitted for a disabled person without affecting eligibility for government benefits such as Medicaid and Supplemental Security Income (SSI). Depending on the benefits, an SNT can be utilized for food, clothing, electronics and other necessities. Common types of SNTs include:

**Third-party SNT**

A third-party SNT is a trust created and funded by someone other than the disabled beneficiary (generally a parent, grandparent or sibling). The source of funds for a third-party SNT should never be from the disabled person. Any individual can fund this type of trust without affecting the beneficiary’s entitlement to government benefits. The funding of a third-party SNT by a parent also has Medicaid planning benefits for the grantor since the transfer is considered an exempt transfer; no period of ineligibility is created. A third-party SNT does not require payback to the government for benefits upon the death of the disabled person.

**Self-settled SNT**

or **first-party SNT**

Self-settled trusts are either funded with a disabled beneficiary’s own funds or funds to which he or she is entitled (such as personal injury award or inheritance). In order for the disabled beneficiary to establish and fund a self-settled SNT, he or she must be disabled and under the age of 65. Upon the death of the disabled beneficiary, all remaining trust principal and accumulated income must be paid back to Medicaid as reimbursement for all benefits paid during his or her lifetime. Any funds left over may be paid to the named beneficiary of the trust.

**Pooled self-settled SNT**

A pooled self-settled SNT is managed by a nonprofit association. Although funds are pooled into the trust, a separate account is established for each individual beneficiary. Beneficiaries can be of any age. If he or she is over 65 years old, however, there is a penalty period for assets transferred to the pooled trust for Medicaid nursing home benefits. These trusts are usually utilized where there is no family member to act as a trustee or when the beneficiary is over 65.
Depending on the terms of the pooled trust, the disabled person may be able to provide how the remaining balance of the account is to be distributed upon death. This would, however, be subject to a payback to Medicaid. If the balance on death is retained by the pooled trust, then Medicaid is not entitled to a payback of benefits paid.

Pooled income-only trusts play an important role when the disabled beneficiary has a fixed income that exceeds the monthly amount permitted by the Community/Home Care Medicaid program since contributing one’s excess income is permissible. The trust will pay the disabled beneficiary’s household expenses, such as mortgage, rent and taxes. The pooled trust, in many cases, allows the beneficiary to remain eligible for Medicaid home care.

Sole-benefits trust

This type of SNT is increasingly popular. Generally speaking, a sole-benefits trust (SBT) is administered the same as a third-party SNT to preserve eligibility for Medicaid or SSI. The third-party parent funding the trust may also do so without incurring a transfer penalty for the purposes of his or her own eligibility for Medicaid and SSI.

An SBT can be funded with a lump sum or annuity, but must be fully funded before the beneficiary reaches 21. In the situation where the beneficiary’s ability to qualify for Medicaid or SSI is not a concern, the SBT can often be administered to provide for his or her general health, education, welfare, support, maintenance and comfort. When Medicaid or SSI eligibility is a concern for the beneficiary and the third party funding the trust, neither party (nor their spouses) may act as a trustee.

For an aging baby boomer with a disabled child or grandchild, a properly drafted SNT can provide a level of comfort knowing that a significant step has been taken to ensure future care. Start the discussion early.

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