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Groups seek support for Special Needs Trust Fairness Act

The National Academy of Elder Law Attorneys (NAELA), the Special Needs Alliance, and other groups are asking for our help in encouraging passage of legislation containing the **Special Needs Trust Fairness Act** (SNT Fairness Act). This Act is part of the Senate version of the Sustainable Growth Rate Repeal and Medicare Beneficiary Access Improvement Act of 2013. In the House, the Energy and Commerce Committee is reviewing repeal of the Medicare Sustainable Growth Rate (SRG) formula; Rep. Joseph Pitts serves on this committee. NAELA would like to see the SNT Fairness Act be part of this legislation too. Typically, this type of legislation is part of larger legislative packages, but its importance cannot be underestimated for many Americans with disabilities.

Supplemental Needs Trusts or Special Needs Trusts (SNTs) have been recognized by Congress since 1993. They are an important mechanism to allow a disabled person who is receiving public benefits to protect some assets that might come to them, such as a settlement in a lawsuit that was a result of medical malpractice or an injury. Current law, for whatever reason, does not allow the disabled individual to set up what is known as a (d)(4)(A) trust; only a parent, grandparent, legal guardian of the individual, or a court can set up such a trust. Therefore, an individual without a grandparent or parent who is still living, but who is nonetheless legally competent, must hire an attorney and petition a court to allow such a trust. A similar but often less advantageous trust, a (d)(4)(C) trust has the language that includes the individual. It appears that the failure to allow an individual who is legally competent to set up his or her own trust might have been a legislative oversight; the fix is simple and will not be costly. The (d)(4)(A) trust has a provision that requires "payback" of any funds paid by the State for the individual's care during his lifetime.

SNTs are an important tool to assist persons with disabilities to remain on public benefits and to use the extra or supplemental funds for the many items that public benefits do not provide for. For instance, someone who must reside in a nursing home due to a severe disability can use the supplemental funds for private rehabilitative care, or care at home that they otherwise could not afford, and/or to supplement daily living expenses. Otherwise, public benefits such as Medicaid and SSI are lost, and it can be very difficult to have these benefits reinstated after the money is depleted. Money in a SNT is not considered a countable asset for Medicaid. Making sure that all disabled individuals, including veterans, who are competent will be able to establish their own SNTs is only equitable and fair. This will allow (d)(4)(A) trusts and (d)(4)(C) trusts to be on equal footing (which in all other respects they are) and give the individual the choice for the vehicle best suited to him or her.

Please consider contacting your U.S. Congressman or Senator today. The website for the House of Representatives is www.house.gov, and for the Senate is www.senate.gov. You can contact Joe Pitts at <https://pitts.house.gov/contact-me>. Many of us know a person who is disabled or may have a friend or family member who may be in need of such trust someday. Please consider adding your voice to what is actually an easy fix to the statute but one with long repercussions.