The Special Needs Trust

Producer Guide

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Providing for the Future

With proper legal and financial planning, the family can guarantee that the person with the disability will enjoy a comfortable lifestyle, while preserving governmental program eligibility.

Following is an overview of Special Needs Trusts and the general steps necessary to implement and maintain them.

Overview of a Special Needs Trust

A Special Needs Trust is like other trusts: It is a separate, legal entity that allows the donors to gift assets to a second person, the trustee, to be used for the benefit of someone else—in this case, a special needs child or dependent adult. Funds from this type of trust are not used to pay for benefits that would otherwise be provided by state or federal programs.

This type of trust is generally established for people who receive Supplemental Security Income (SSI) and Medicaid. In order to receive SSI and Medicaid, one's assets cannot exceed a specified level. Additionally, the grantor of the trust can specify that the trustee is not authorized to replace the cost of services covered by governmentally sponsored programs. The trust would require the trustee to provide funds only for certain items, services, or other expenses not covered by SSI and Medicaid.

Parties to a Special Needs Trust

The parties to a Special Needs Trust are:

- The trust grantor(s)—usually the family of the disabled individual
- The trust beneficiary—the disabled individual
- The trustee(s)—the person(s) responsible for managing and investing trust assets on behalf of the person with the disability

Growing Demand for a Special Needs Trust

As our country's population increases and people continue to live longer, there is a possibility that at some time in a person's life, he or she—or a loved one—will experience a disability. Consider these statistics:

- The National Center for Education Statistics reports that from 2004 to 2005, 13.8% of the school age population was served in federally supported programs for the disabled.[1]
- "About 7.5 million persons received benefits based on disability" in the U.S., estimated the Social Security Administration in 2005.[2]
- The U.S. Department of Health and Human Services estimates that 9.4 million children in the U.S. have special health care needs.[3]
- The Department of Health and Human Services Centers for Disease Control and Prevention indicates that approximately 5.3 million Americans have a permanent disability as a result of a traumatic brain injury.[4]

Under current SSI eligibility requirements, assets in excess of $2,000—with certain exceptions—disqualify an individual with special needs from most federal needs-based assistance.

Why a Careful Financial Strategy Is Important

With advances in medical treatment and technology, an individual who historically would not have survived a difficult birth, other trauma, or a plethora of other medical or mental health conditions may now live to old age. While such a person may expect to live a longer life, his or her care needs may be extensive, and the cost of that care will almost certainly be high.

Needs-based public benefits, including Supplemental Security Income (SSI) and Medicaid are available to provide for subsistence-level food, shelter, medical and attendant care needs, but not more. Public benefits provide for only the most fundamental "basic" needs but not for supplemental or "special" needs. To alleviate physical or mental symptoms and live in the least restrictive environment, a person with a disability may require equipment and other goods and services to support him or her with activities of daily living in pursuit of higher goals and interests. This structure and support is considered a "special" need for which public benefits do not pay or pay only in small part.

Planning for the future for a person with a disability will maximize the beneficiary's eligibility for public support for basic needs and ensure that additional resources are available to fill in where public services end. In most instances, the issue is not whether advance planning is needed, but when, and what methods will be most effective in a given case.

Early planning makes it is possible to assist the person with a disability to:

- preserve needs-based public benefits;
- provide additional financial support beyond public benefits;
- select an appropriate individual or entity to manage the inheritance; .
- provide guidelines for asset management;
- provide guidelines for living arrangements and personal care;
- provide guidelines for advocacy for the person with the disability;
- facilitate employment and social activities;
- coordinate an entire family's planning; and
- preserve assets for other heirs at the death of the special needs beneficiary.

Failure to plan ahead means that a person with a disability may:

- lose eligibility for needs-based public benefits;
- require first party special needs trust planning, which, being more complex, is also more expensive and takes longer than third-party planning;
- forego the benefit of a parent-directed lifetime care and advocacy plan;
- fall subject to undue influence or waste or simply use of assets in ways the parent would wish to prevent;
- overwhelm and strain family relations; or
- face institutionalization or inappropriate placement.

Action Steps

Establishing the Special Needs Trust

The laws governing trusts are complex, and vary from state to state. This is why it is important that the client work with an attorney who has experience with Special Needs Trusts.

The Special Needs Trust must:

- not be funded by the disabled person with his or her own assets;
- be managed by a trustee (and successor trustees) other than the person with the disability;
- give the trustee complete discretion to provide whatever assistance is needed;
- not give the person with the disability more income or resources than permitted by the government.

Furthermore, the grantor should:

- not replace the items and services provided by government benefit programs;
- define what "supplementary" means as it relates to the person with the disability.
- provide a letter of intent that specifies what kind of care the caregiver would want for the disabled person, should the caregiver die or no longer be able to care for the disabled person;
- determine who should receive the remainder of the trust after the individual with the disability dies; and
- include choices for successor trustees—people or organizations that will take a personal interest in the welfare of the person with the disability.

Funding a Special Needs Trust

A Special Needs Trust can be funded much like any other trust, with a wide range of assets, including cash, stock, personal property, and real estate. It can also be the owner and beneficiary of a life insurance policy.

When a Special Needs Trust is the owner and beneficiary of a life insurance policy (generally on the disabled individual's parent's(s') life/lives), it is ideal for a special needs child or a dependent adult because the death benefit is:

- federal income tax–free,
- immediately available, and
- usually received without having to go through probate.

Additionally, permanent life insurance provides tax-deferred growth of the cash values that can be accessed during the life of the caregiver.[5]

Coordination between public and private funding is absolutely necessary to provide a reasonably comfortable lifestyle for the disabled family member.

Understanding the Costs of a Disability

Because most advisors have limited experience in preparing for the future of a disabled person, it is important to understand the types of costs associated with the specific disability and their impact on government benefits. Of course, this approach will vary with each client and his or her needs.

Avoiding Common Mistakes

A common mistake is placing money in a Uniform Transfer to Minors Account. While some financial advisors suggest that this is a way to pass assets to children tax-free, the money is held in the child's name and can disqualify him or her from government assistance, usually when the child reaches age 21, although the precise age of disqualification varies from state to state.

Naturally, families wish to set aside as much money as possible to make sure the disabled person has enough to maintain the quality of life to which he or she is accustomed. Unfortunately, this well-meaning act can jeopardize benefits.

Example: The Smith Family

Jim and Jane Smith, both 54, have a 13-year-old son, Mike, who has Down syndrome. The Smiths want to ensure that, should they die or become unable to care for their son, he will continue to receive government services while being able to pay for his education, travel, and other supplemental needs.

Consulting with their financial advisor, insurance professional, and an attorney experienced in special needs planning, Jim and Jane create a Special Needs Trust.

After examining the Smiths' Letter of Intent—the type of care and other provisions they would like for Mike should Jim and Jane no longer be able to care for him—and performing a detailed financial analysis based on the future costs of supplementary items, the Smiths' financial advisor and insurance professional explore the different resources available to fund the trust now and in the future. One of those resources is life insurance. Only life insurance provides instant liquidity in the event of the death of the caregiver.

Remembering Other Family Members

In establishing a Special Needs Trust, a key point is to remember the other brothers, sisters, and family members who may share in the care of the disabled person. The siblings should be considered in the parents' overall estate planning. Additionally, if a relative is named as the trustee of the Special Needs Trust, provisions should be included so that the relative is financially compensated by the trust.

Achieving Important Goals

A Special Needs Trust can help clients with disabled family members achieve vital estate planning and financial goals. With proper legal and financial planning, the family can guarantee that the person with the disability will enjoy a comfortable lifestyle, while preserving governmental program eligibility.

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[1] National Center for Education Statistics, Digest of Education Statistics, 2005.

[2] "SSI Annual Statistical Supplement, 2006," Social Security Online, June 2007.

[3] Health Resources Administration, Maternal and Child Health Bureau. The National Survey of Children with Special Health Care Needs Chartbook 2001.

[4] Centers for Disease Control and Prevention, Department of Health and Human Services, May 2007.

[5] Loans and withdrawals will affect the policy value and net cash value and may also affect the death benefit.

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