

Life Insurance and Children with a Disability

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Historically many people, especially the older generation, purchased life insurance policies on their new-born children. The parent would be the owner and beneficiary of the policy.

Many of these policies were known as "industrial policies" or "debit policies." An agent would visit the home every week or month with a little book or tablet and record the premium payment, which ranged from as low as 15 cents to \$1.00 a week. There were several purposes for these policies, including providing a death benefit, adding cash value, and guaranteeing insurability. While this quaint method of handling life insurance business has changed over the years, the need for insurance has not.

When purchasing life insurance designed to benefit a child with a disability, careful consideration of several facets of the policy is required. Usually, there are four parties to a policy: the insurance company, the owner, the insured and the beneficiary. One should be certain that the correct owner and beneficiary are named because there can be adverse consequences if the policy is not issued properly. Normally the insurance agent will review these options with the applicant before the policy is issued or applied for, but sometimes, and particularly if one applies for a policy over the internet, the care and attention that should be given to these issues is not provided.

Should insurance be purchased on the life of a child with a disability? In many cases the child may be disabled to the extent that he or she is not insurable. Even if insurance is available, it may be "rated" due to the health of the child. If a policy is purchased, one must consider the issues

raised above. The first is choosing the appropriate owner of the policy. Typically, unless the parents have a significant taxable estate, one of the parents should be the owner of the policy. In order to avoid subjecting the policy to probate if that parent predeceases the child, the other parent can be designated as the contingent or successor owner of the policy. If the other parent is not alive or is not an appropriate successor owner, another person can be named as the successor owner. The important thing is that the successor owner can be trusted to use the policy proceeds as intended -- often for funeral and related expenses of the child.

Having considered who should own the policy, next one must address who the beneficiary should be. If the policy insures the life of the child, often the parents will be the primary beneficiaries, and the siblings or other relatives of the child, or perhaps a deserving charity that has assisted the child, will be secondary or contingent beneficiaries.

The more difficult question is who should be listed as the owner and beneficiary of a policy that insures someone else, such as a parent, where the proceeds are to benefit the child with a disability. If the policy is large, one option may be to name an irrevocable insurance trust as owner and beneficiary. It is critically important not to name the child as the owner or beneficiary of the policy, as doing either could cause the child's assets to exceed the resource limitation for eligibility for public benefit programs. Keep in mind that if the child's siblings are named as beneficiaries, there is a danger that they may not use the proceeds as intended for their sibling.

Therefore, the best option may be to name what is known as a special needs trust as the beneficiary of the policy. The special needs trust will allow the funds to be uti-

lized for the child as intended without causing a loss of public benefits. It will further provide peace of mind that the funds will in fact be used only for the benefit of the child. The trust instrument itself will designate the contingent beneficiaries to receive any remaining funds after the death of the child. These might include charities, family members, or possibly the providers of services to the child during his or her lifetime.

The owner should not be the parent if there is significant cash value -- if the parent becomes incapacitated, the cash value of the policy may have to be accessed and spent for the parent's long-term care. In that case, a special needs trust should be the owner.

If a policy has been issued without the attention being given to the appropriate owners and beneficiaries, it is important to contact the agent or the company to discuss the options available. If the child is the owner, perhaps the need for the policy is no longer present, in which case it might be more appropriate to cash in the policy and use the proceeds to purchase life insurance on the parent as a means of providing additional funds for the child when the parent is deceased.

An insurance checkup is appropriate every several years. There are always new products to be considered, and the needs of the family change from time to time. Hopefully, this article will help you focus on some of the important issues to keep in mind.

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Life Insurance on a Child with Special Needs: Benefits and Challenges

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His areas of expertise include all areas of estate planning, probate and elder law. Darling is past president of the Hampden County Estate Planning Council and also a Certified Elder Law Attorney. In addition, he is a past president of the Hampden County Bar Association, he teaches law at Bay Path College, and is an adjunct professor at Western New England University School of Law - LLM program, teaching Elder Law. He serves on the boards of many charitable entities, including the National Planned Giving Committee of the American Cancer Society and is former chair of the Baystate Health Systems Professional Advisors Committee. Darling is a frequent lecturer on various estate planning and elder law topics at both the local and national levels. He earned his J.D. from Western New England University School of Law and his A.B. from Boston University. Darling lives in Longmeadow.