

Your Disabled Child's Financial Future

To Ensure Adequate Support, Consider the Special Needs Trust

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If you're the parent of a disabled child, you're probably concerned with the uncertainty of your child's financial future and the realization that you will not always be around to provide for him.

Understanding your disabled child's future needs and eligibility for available resources will allow you to create a plan that will protect his financial security. A supplemental needs trust (often referred to as a special needs trust) has become the preferred method to address these issues and offer assurance that your child will be taken care of after you can no longer do so.

Protecting Your Disabled Child's Eligibility for Government Benefits

Your disabled child may be eligible for certain federal or state benefits such as Supplemental Security Income (SSI) and Medicaid (MassHealth). However, his right to receive these benefits may be jeopardized if he receives funds through a personal injury settlement, inheritance, or insurance proceeds, since SSI and Medicaid are designed for low-income and low-asset individuals. Each program has independent eligibility criteria that set limits on income and financial resources that an individual must maintain to secure or retain the benefits.

In order to qualify for SSI or Medicaid, a disabled individual cannot own more than \$2,000 in assets, excluding certain items such as a car and, in certain circumstances, a home. Fortunately, the government has established rules allowing any additional assets over the \$2,000 limit to be

held in a trust for a recipient of SSI and Medicaid as long as certain parameters are met.

A special-needs trust provides a vehicle to preserve your disabled child's eligibility for federal and state benefits by keeping these assets out of his name and setting aside all assets for expenses other than your child's basic support. A special needs trust may not provide for

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room and board, but can pay for out-of-pocket medical and dental expenses, annual checkups, eyeglasses, transportation and vehicle purchase, education, insurance, rehabilitation, home health aides, entertainment (i.e. vacations, movies, concerts, ballgames), and goods and services that add pleasure and quality of life.

Types of Special Needs Trusts

Generally, there are two types of special needs trusts for disabled people. A self-settled special needs trust is one that holds funds originally belonging to a disabled child or his or her spouse, and a third-party special needs trust is one funded by someone other than the disabled child or spouse.

Self-settled Special Needs Trust

In August 1993, Congress enacted the Omnibus Budget Reconciliation Act of 1993 (OBRA 93) to assure that only the individuals who truly need such financial assistance have access to it. OBRA 93 created two types of self-settled special needs trusts

costs paid on the beneficiary's behalf. However, after Medicaid is reimbursed, any unused assets can go to other family members or friends.

The second type of self-settled special-needs trust is the pooled disability trust, commonly referred to as the (d)(4)(C) Trust. This trust is typically used in a situation where a disabled individual does not meet the criteria necessary to establish a (d)(4)(A) Trust. Unlike the (d)(4)(A) Trust that can only be created for a disabled child under age 65, the (d)(4)(C) Trust may be created for the benefit of a disabled child of any age. Further, this type of trust may be created by the disabled individual himself. It is managed by a non-profit association that pools the funds of multiple beneficiaries for investment purposes, while maintaining separate accounts for each beneficiary.

The (d)(4)(C) Trust also requires a Medicaid payback requirement. Upon the death of the disabled child, a portion of the assets remaining in the trust will be paid to the non-profit entity that managed the assets, and Medicaid will receive reimbursement based upon an accounting of the principal left in the trust attributable to the disabled child. If there is any remaining balance, it can be left to the disabled child's heirs or any other party named by the child. The (d)(4)(C) Trust is often a better option than the (d)(4)(A) Trust when the assets are insufficient to make it practical from an economic standpoint to appoint a corporate trustee to manage the assets.

Third-party Special Needs Trust

A third-party special needs

that may be used by individuals who either presently are, or expect in the future to become, eligible for SSI or Medicaid benefits.

The first type of self-settled special needs trust is an individual disability trust, commonly referred to as the (d)(4)(A) Trust. It is typically used to protect and hold the proceeds of a personal injury lawsuit or an inheritance to which the beneficiary is entitled, so that the beneficiary remains eligible for SSI or Medicaid benefits. To create this type of trust, the disabled child must be under the age of 65, and it may only be created by a parent, grandparent, legal guardian, or a court. The potential disadvantage to a (d)(4)(A) Trust is that those assets remaining in the trust upon the beneficiary's death must first be spent to reimburse Medicaid for any health care

trust is established with funds that belong to someone other than the disabled child. For instance, a parent or grandparent may create and fund it with cash, life insurance, or other assets during their lifetime or upon death.

A third-party special needs trust can be created for a disabled child of any age, and the main advantage is that Medicaid will not be entitled to any form of reimbursement for services when the disabled individual dies. Therefore, any assets that remain in the trust may be designated to other family members or friends. A third-party special needs trust is a good idea for families where aunts, uncles, and grandparents

want to leave money for a disabled child.

An Alternative Solution — Establishing a Caretaker for Your Disabled Child

In lieu of establishing a special-needs trust, an alternative is to leave a fixed sum of money to your disabled child's caretaker, typically a sibling or other close relative, with the understanding that the money will be spent on your disabled child. However, this alternative is problematic for several different reasons.

First, the money left to the caretaker on your child's behalf is

subject to that person's legal judgments and divorce settlements, and it can even be lost in bankruptcy. Second, the caretaker is not subject to any legal obligation to use the funds on behalf of your disabled child, and therefore can spend the money as desired. Third, the caretaker may be subject to negative tax implications, which subject him to a higher tax rate than if the money was held in a Special Needs Trust.

Finally, in the event that the caretaker dies before your disabled child, without leaving a will, or does not provide for your child under his own will, the money would be distributed to his heirs.

Special-needs trusts should be considered when you begin your estate planning, and it's never too early to start planning for your disabled child's financial future. Your plan should be prepared by a qualified attorney to ensure that your goal to provide lifelong care for your disabled child is accomplished.❖

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