

The special needs trust: Why it's important to plan ahead

Gina M. Barry, Esq.



Many people in the United States are currently considered disabled as defined by Social Security.

Their disability may entitle them to receive various benefits that are provided by the federal and state government. Some of these benefits, such as Medicaid, Supplemental Security Income (“SSI”), food stamps (“SNAP”), housing or fuel assistance, may only be available to the disabled person if they meet eligibility requirements that require the disabled person to have income or assets less than a certain amount. Should a disabled person receive an inheritance outright, the inheritance almost always causes the asset limit to be exceeded and benefits to be disrupted, or even lost. Fortunately, with proper planning it is possible to leave an inheritance to a disabled person and not disrupt their benefits in any way.

Why a special needs trust?

Often, a parent or family member of a disabled person will choose to leave the disabled person’s inheritance to another family member, who is then expected to provide for the disabled individual. This plan may work if the family member carries out their obligation as anticipated, but this plan in no way guarantees that the

disabled person will receive the benefit of the assets left with the other family member. As such, the best plan includes a Special Needs Trust, which is designed to benefit the disabled person and simultaneously prevent the disabled person from losing any available governmental benefits.

What a special needs trust does

A Special Needs Trust should become the primary vehicle for providing for the needs of the disabled person to the extent that those needs are not otherwise provided for by public benefits or any other source. Thus, the funds held in a Special Needs Trust are typically used to provide for additional quality of life. For example, the trustee of a Special Needs Trust may make distributions to provide household furnishings and repairs, educational opportunities, travel, professional services, non-food grocery items, pet supplies, recreational activities, a modest automobile and operating expenses for the automobile, holiday decorations, cultural events, and the like. In addition, in the event that governmental benefits are ever diminished, trust assets would still be available for the benefit of the disabled person. Upon the death of the disabled individual, any assets remaining in the Special Needs Trust could be distributed to other family members.

Why timing matters

Should an inheritance be left outright to a disabled person or

should the disabled person receive any other type of windfall, the disabled person may also have the ability to create a Special Needs Trust or to have one created for their benefit; however, the disabled person may lose benefits during the time it takes for a Special Needs Trust to be established. In addition, upon the death of the disabled person, any Medicaid benefits paid on behalf of the disabled person will first need to be repaid before any distribution can be made to anyone else. As such, it is clear that the best plan includes a Special Needs Trust created by the person leaving the inheritance to the disabled person as opposed to a Special Needs Trust created by the intended disabled beneficiary.

Adding a care plan

In addition to establishing a Special Needs Trust, if the disabled person is your child, it may be important to establish a Care Plan. Such a plan provides detailed information as to the child’s needs. This plan should be updated every year, and a copy should be kept with the Special Needs Trust. A Care Plan typically sets forth educational, social, financial, and other information related to the daily needs and abilities of your child. Also, a Care Plan may detail your wishes for the future as your disabled child continues to age.

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Planning to ensure that a disabled family member does not lose governmental benefits as a result of your generosity has never been easier. If you intend to leave an inheritance to a disabled beneficiary, you should ensure that your plan includes a Special Needs Trust for their benefit. Otherwise, the benefit that you intend to leave may come with an unintended burden because special needs require special planning.

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