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SPECIAL NEEDS TRUSTS

Parents of children with special needs face unique challenges, both in providing for them while both parents are alive as well as providing for them after both parents are deceased. This is true whether the children are minors (i.e., under age 18 in most states) or adults.

The expenses of caring for a family member with special needs can



be overwhelming. Specialized equipment and skilled professional assistance may be required for many of life's otherwise routine tasks. Ongoing and expensive medical care is common, often without private health insurance to cover the bills. While assistance may be available from state and federal governments, such assistance is subject to strict financial eligibility requirements.

Planning Challenges

Given these unique challenges, the estate plans of parents (and grandparents) must be carefully tailored and monitored to meet objectives beyond

probate avoidance and estate-tax minimization. Although the challenges differ in each case, there is one fundamental objective common to all: Assure adequate care throughout the lifetime of the family member, without disqualifying them from government assistance.

Do No Harm

In medicine, the first rule is to do no harm. So it is with planning for the requirements of a family member with special needs. Parents (and grandparents) should be discouraged from establishing *custodial accounts* for a minor child with special needs. Why?

INSIDE

Caring for a family member with special needs can be difficult enough, without losing government assistance. Our lead article reviews common mistakes, and a government-approved strategy to maximize support for the person with special needs.

On page three we examine two alternative trusts that supplement (but do not supplant) government assistance provided to a family member with special needs. Also, we will consider a proven method to finance their long-term security.

Once the minor child reaches the age of majority under state law, the custodial account is distributed to the now adult child (or to their lawfully appointed guardian/conservator on their behalf). This distribution may disqualify them from government assistance.

Similarly, if parents (and grandparents) leave assets directly to or for the benefit of the family member with special needs, whether *outright* or in a *plain-vanilla* trust, then the same disqualification may result. When assets exceed established financial resource limits, the individual may be disqualified from both

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Supplemental Security Income (SSI) and Medicaid until the disqualifying funds are depleted.

Supplement, Don't Supplant

Even if an adult with special needs qualifies for SSI and Medicaid, the benefits provided are limited. With most, if not all of the SSI benefit is used for food and shelter, little if any financial resources are left for life's extras. For example, Medicaid covers medical care and prescription drugs, but not dental work. The goal, then, is to provide for those extras without disqualifying for government assistance.

Moral Obligation Planning

Avoid the temptation of relying on moral obligation estate planning to provide for a family member with special needs. For example, some parents leave an inheritance to another relative, with the understanding that it is to be used to supplement the needs of the family member with special needs.

Problem #1: The selected relative may lack the morals to honor the obligation.



Problem #2: The selected relative could lose the inheritance through their own divorce, lawsuit or bankruptcy.

Problem #3: If the selected relative dies, then the inheritance is part of their own estate and subject to its terms.

Payback Trusts

As part of the Omnibus Budget Reconciliation Act (OBRA) of 1993, a trust containing certain statutorily required provisions may be established to administer and distribute trust assets for a beneficiary with special needs

without disqualifying them from government benefits.

These special provisions require the trust to payback the government for benefits provided to the (special needs) trust beneficiary after his or her death. If trust assets are depleted or are otherwise insufficient to fully repay the government, no further reimbursement is required. However, if trust assets remain after the payback, the remaining assets may be distributed to additional beneficiaries designated under the trust.



Ask Yourself ...

These Questions Regarding "Special Needs Trusts."

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|---|-----|----|----------|
| 1. I know that establishing a <i>custodial account</i> for a family member with special needs may disqualify them from government assistance. | Yes | No | Not Sure |
| 2. I know that leaving an inheritance <i>outright</i> or in a <i>plain-vanilla trust</i> for a family member with special needs may disqualify them from government assistance. | Yes | No | Not Sure |
| 3. I know that a government-authorized <i>payback trust</i> for a family member with special needs must reimburse the government post-mortem for any lifetime benefits provided by the government. | Yes | No | Not Sure |
| 4. I know that <i>special needs trusts</i> and <i>blended discretionary trusts</i> may allow me to provide for all of my family members, both with and without special needs, and avoid government disqualification or reimbursement. | Yes | No | Not Sure |
| 5. I know that life insurance is an effective method of funding the long-term financial security of a family member with special needs (and other family members, too). | Yes | No | Not Sure |

SECURING SECURITY

Appropriate estate planning can help secure the financial well-being of a family member with special needs.

Trust Alternatives

A *Special Needs Trust* can provide distributions only for those extra needs (see below) that do not disqualify the beneficiary from government assistance. Distributions are made at the discretion of a *disinterested* Trustee. Authorized distributions may include dental expenses, special schooling, travel expenses or even a television. Upon the death of the beneficiary, the remaining trust assets may be administered on behalf of other family members.

In some Special Needs Trusts, a *poison pill* provision may be included. Such a provision may instruct the Trustee to distribute the trust assets to other family members if the trust is or may be deemed to disqualify the intended beneficiary from government assistance. Should this poison pill provision be triggered in the future, the other beneficiaries could be under a moral, though not a legal obligation to provide the trust assets for the special needs of their family member.

A *Blended Discretionary Trust* is often used for general asset protection purposes to protect an inheritance from the potential divorces, lawsuits or bankruptcies of its beneficiaries. This trust has multiple beneficiaries, each with no specific right to any distribution of income or principal from the trust assets.

To be most effective, any distributions must be at the sole and absolute discretion of the *disinterested* Trustee, without regard to any *ascertainable standards* such as health,

education, maintenance or support. Nevertheless, the Trustmaker(s) may prepare a non-binding letter of intent to provide guidance to the Trustee.

Leveraged Funding

Special Needs Trusts and Blended Discretionary Trusts both require one common denominator to effectively finance the long-term security of a family member with special needs: cash. [Note: The life span of Americans with special needs has been on the increase since the 1970s, and many have life spans equal to that of the general population.]

One of the most powerful financial tools to accomplish this funding requirement is life insurance. Simply put, life insurance provides a sum certain in cash at an uncertain time in the future with dollars purchased in advance at a discount.

In addition to individual life policies, a married couple may be insured together under a joint life policy that only pays its death



benefit after the death of the surviving spouse. As a result, a joint life policy typically provides a greater return on investment than would two individual life policies insuring the same people for the same total death benefit. In addition, through careful legal planning, the death benefits of life insurance policies and their eventual proceeds may be excluded from the estates of the insured parents (or grandparents).

POCKET PROTECTORS

Tips to help you protect your pocket!

Resources for Family Members with Special Needs

If you or someone you know is a parent (or grandparent) of a minor or adult child with special needs, here are some internet resources that may be of interest, along with their self-descriptions:

1. www.familyvillage.wisc.edu: *Family Village is a global community that integrates information, resources, and communication opportunities on the Internet for persons with cognitive and other disabilities, for their families, and for those that provide them services and support.*
2. www.thearc.org: *The Arc promotes and protects the human rights of people with intellectual and developmental disabilities and actively supports their full inclusion and participation in the community throughout their lifetimes.*
3. www.ncd.gov: *The National Council on Disability (NCD) is an independent federal agency making recommendations to the President and Congress on issues affecting 54 million Americans with disabilities.*

“Be true to
your work,
your word, and
your friend.”

— Henry David
Thoreau.

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