

PLANNING FOR THE DISABLED CHILD

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An often neglected aspect of estate planning is planning for the disabled child. This tendency stems not due to lack of concern, but more often because people are often unaware of the planning opportunities that are available. The natural tendency of most parents is to want to pass a financial legacy to their children. In families with multiple children, the typical estate plan divides the estate in equal shares amongst the children. When one of the children is disabled, certain questions often arise with such a plan. Is the disabled child capable of managing his inheritance, and if not, who can take on this task? And, how will receipt of an inheritance affect the disabled child's eligibility for public benefits programs such as MaineCare (Medicaid) or Social Security? Without the knowledge of the planning possibilities, many parents either don't provide for the disabled child at all in their wills, often relying on the goodwill of their other children to provide for that child. This might work in some families, but even in the most cohesive of families, it can put undue burdens on children; often falling more on the shoulders of one child than others and with unintended estate and gift tax consequences for that child. In less than cohesive family situations, the disabled child often simply goes without.

The good news is that there is a perfect solution at hand. Many planning concerns centering on the disabled child can be handily addressed with use of supplemental needs trusts (also referred to as special needs or supplemental care trusts). A trust is a legal entity created by someone (the grantor) to manage assets by a designated person (the trustee) for the benefit of another person (the beneficiary). Thus, when establishing a supplemental needs trust, like any other trust, the grantor will decide who the trustee will be to manage the trust for the disabled child. The Trustee may be the grantor, but usually at least one alternate trustee will be named. The trust will also specify when the trust will terminate (usually upon the death of the beneficiary) and to whom the remaining trust assets will be distributed at that point. This can be anyone of the grantor's choosing.

What differentiates a supplemental needs trust from any other trust is language that restricts direct payment of cash to the disabled child and that directs the use of the trust funds only for payment for goods and services that are not paid for by the beneficiary's public benefits programs. Such restrictions are necessary to comply with Social Security and Medicaid laws that allow the funding of supplemental needs trusts for disabled individuals without causing the funds to be deemed as available to the disabled child for

purposes of their eligibility for these programs. Thus, as long as the trust is properly drafted, the trust can be funded with an unlimited amount of funds without affecting the disabled child's eligibility for most public benefit programs.

Another advantage of setting up a supplemental needs trust for a disabled child is that it can further one's own long term care planning objectives. For elderly parents facing nursing home care, transferring assets to expedite their own eligibility for long term care assistance has become a mine field of transfer penalties subject to a five year look back period. There are some exemptions from the transfer penalty periods, however. One exemption is for transfers, whether in trust or not, to a disabled child, defined as a child of any age who is disabled as determined under Social Security Administration guidelines. Another exemption is for transfers to a supplemental needs trust for any individual. One caveat is that there are certain restrictions that are beyond the scope of this article when one transfers assets to a supplemental needs trust for his own long term care planning purposes.

In summary, supplemental needs trusts are an excellent planning device for disabled individuals; particularly one's children. Not only do they provide a mechanism for the safe management of funds and the inheritance of a disabled person, but they will not interfere with that person's eligibility for benefits programs, such as MaineCare and Social Security.

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