Transition Planning: Special Needs Trusts

In order for your child to be eligible for government benefits, your child must have less than $2000 in assets. However, government benefits are not usually enough to cover all non-essential expenses. Many families establish a special needs trust to be used for their child's non-essential costs.

When individuals receiving government benefits inherit estates or money, their assets become too high to qualify for government benefits. However, the special needs trust is not counted as a direct asset when calculating assets for government benefits. ***Special Needs Trusts allow disabled individuals to receive lawsuit settlements, gifts, estate inheritances, life insurance policy payouts***, and other funds while retaining eligibility for government programs like Medicaid, Medicare, SSI, and SSDI. Assets outside a special needs trust must be less than $2000 to continue qualifying for government benefits.

Special Needs Trusts are NOT designed to pay for basic support (the money cannot be used to buy food or pay rent). Funds from the special needs trusts CAN be used for non-essential quality-of-life expenses like:

- Education expenses
- Recreation
- Counseling
- Special dietary needs
- Vocational training programs
- Transportation (such as vans for the disabled)
- Dental expenses
- Special needs-related equipment
- Electronic equipment and computers

Why set up a Special Needs Trust?

Many parents that are reluctant to start a trust may not like the idea of putting their child on what may be perceived as welfare, or would prefer to will money to another child or family member to take care of the special needs individual after the parents or guardian pass away. However, willing such funds to other individuals can have unintended consequences, even with the best of intentions. Additionally, qualifying for social security benefits is tied to preserving eligibility for government health programs as well.

- Without government health coverage and support programs, individuals with disabilities will often spend through savings or direct inheritances quickly while attempting to keep up with medical or treatment costs – savings that in most cases, were intended by parents to last a lifetime.

Types of Special Needs Trusts

- **3rd Part Trust** (created by the family or guardian)
- **1st Party** (created by the special needs beneficiary)

Special Needs Trusts can pay for:

- education costs
- vocational training
- recreation
- counseling
- transportation
- special equipment
- special dietary needs
- dental expenses

Resources:

Special Needs Alliance
www.specialneedsalliance.com

- Leaving inheritance money to a trusted relative or friend to provide for a special needs dependent in the long term would preserve the disabled individual's eligibility for government benefits. However, even with people who follow through with this type of moral obligation to care for a person with disabilities, the money could still be lost or or passed on to others through divorce, bankruptcy, lawsuit, premature death or other unforeseen hardship.

- Funds from special needs trust benefit only the designated beneficiary and contribute to a higher quality of life for individuals with special needs over the course of their lives, especially after their parents or primary caregivers are no longer able to care for them directly.

Types of Special Needs Trusts

There are two types of special needs trusts:

- **3rd Party Trust** – A trust set up by parents, family members, or the guardian of the special needs individual. Money from inheritances, gifts, retirement plans, life insurance benefits can be placed into this type of trust. Assets of the trust beneficiary (ex: inheritance left directly to the individual and not to the trust) CANNOT be placed into this type of trust. After the trust beneficiary's death, remaining funds can be directed to family, a charity, or the individual's legal guardian.

- **1st Party Trust** – A trust set up by the special needs individual themselves. Money from lawsuit settlements, inheritances or gifts left directly to the special needs individual, and the individual's own assets (i.e. personal savings, IRAs, savings bonds, etc) can be placed into this type of trust. Upon the trust beneficiary's death, the remaining funds pass to pay the state back for past services. Remaining funds after that ***may*** pass to the family, a designated charity, or the legal guardian.

Setting up a Special Needs Trust

To create up a special needs trust, contact a law firm specialing in estate planning or disability law.

- It is recommended to start a special needs trust by the age of 13, since 5 years of taxes are usually reviewed when applying for adult SSI and Medicaid (at the age of 18)
- Most private firms will charge from $2,500 to $5000 to set up a special needs trust.
- **Pooled 3rd party special needs trusts** may be a better option for families that may not otherwise be able to pay the fee for a traditional special needs trust (i.e. families with modest assets or a relatively small amount of money to put in trust). Pooled trusts combined the assets of multiple families/individuals into one trust, with each beneficiary only able to withdraw the amount added to the trust in their name.
- When you establish the trust, you will need to designate a trustee who will manage the funds and keep good records of the use of the trust.
- Additionally, it is recommended that caregivers keep an updated **letter of intent** (see below) about the disabled individual's medical history, likes and dislikes, etc., to be passed to the trustee. This is not legally binding, but can act as guidelines for management of the funds of the trust.