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## **Planning for Your Special Needs Beneficiary**

Special Needs Planning involves setting aside assets which will benefit the disabled person but will not disqualify her for government benefits. A disabled person with assets will be disqualified for certain types of benefits. There are different categories of assistance. Entitlement Programs such as Social Security Disability Income (SSDI) has no income or asset test; eligibility is based solely on meeting the requirement of being “disabled.” Means-tested programs include Supplemental Security Income (SSI), Medicaid, In-Home Supportive Services, Subsidized or Section 8 Housing and Temporary Aid to Needy Families (TANF). To qualify, the individual, or his family, will have to show actual financial need. It is for this reason that anyone who is receiving or who may become eligible for such benefits not have assets in his own name.

Since these Means-Tested Programs generally do not allow a person participating in the program to have more than \$2,000 in assets, the receipt of an inheritance will disqualify a Special Needs beneficiary from being eligible for benefits until she has spent the inheritance down to \$2,000. There are options to protect the disabled person’s eligibility for benefits. The first option is to simply disinherit the person, but what message does that send? There would also be no funds set aside to care for the needs or

wants of the person that are not covered by government assistance. The second option is not much better; you could leave the inheritance to someone else and request them to use the funds for the disabled individual – but what happens if that person dies or just decides to keep the assets for herself. Finally, you can establish a Special Needs Trust to hold assets for the sole benefit of the disabled person.

A Special Needs Trust (also referred to as a “Supplemental Needs Trust”) enables a disabled person to qualify (or maintain eligibility) for government benefits. The main purpose of a Special Needs Trust (SNT) is to enhance the quality of life for the disabled person by providing funds that will supplement what the individual otherwise receives from the government. Assets in the SNT cannot be used for anything which is covered by the benefits the individual receives, or may receive, from government programs such as food, shelter, and medical care. So, what does the trust provide? It provides money which can be used to make the beneficiary more comfortable and have a better quality of life than he could have otherwise.

There is a distinction between trusts which are intended to be funded using the assets of a disabled person and trusts that are intended to be funded using the assets of a someone other than the disabled person (such as a parent or grandparent). Where the disabled person’s assets are to be used, the trust must conform to the requirements of 42 U.S.C. § 1396p(d)(4). A trust established for the benefit of a disabled person with the funds of someone other than the disabled person is known as a third-party trust. A trust established with the funds of the disabled individual is known as a self-settled trust. A third-party trust can be either revocable or irrevocable, and can be drafted as either a stand-alone trust, a sub-trust under the grantor’s revocable living trust, or as a testamentary trust under a will. A self-settled trust can only be established by a parent, grandparent, legal guardian, or a court, and the beneficiary must be under the age of 65

and meet the Social Security Administration's definition of "disabled." Additionally, the trust must provide that the state Medicaid agency will be reimbursed from trust corpus at the disabled person's death for any public assistance given to the disabled person. Any excess trust corpus not needed for repayment can be directed to remainder beneficiaries as the disabled person desires.

A properly-drafted SNT is going to limit the trust assets to being used for the supplemental comfort, safety, health, education, and welfare of the beneficiary which would be in addition to and over and above the benefits he would otherwise receive as a result of his disability from any local, state or federal government, or from any other private agency, which provides service or benefits to persons with disabilities.

In 2014, the ABLE ("Achieving a Better Life Experience") Act was signed into law. While an ABLE account does not replace the special needs trust, it is a tool that adds an option for us to consider in serving our clients with special needs. An ABLE account is basically a savings account for a disabled person. The program is modeled after the 529 college savings accounts. ABLE accounts may accumulate up to \$100,000 without disqualifying the beneficiary for government benefits; anything over the \$100,000 limit will be treated as an available resource. The Act provides a comprehensive list of what the funds may be used for such as education, housing, transportation, employment training and support, assistive technology and personal support services, health, prevention and wellness, financial management and administrative services, legal fees, expenses for oversight and monitoring, and funeral and burial expenses. Any growth in an ABLE account will not be subject to income tax so long as it is used for permissible expenditures.

An ABLE account may be established by anyone including a parent, friend, family member or the disabled person herself. The eligible beneficiary of the account must be an individual who meets the standard for disability prior to turning the age of 26.

*This publication is intended for general information purposes only and is not to be construed as providing legal advice. You must consult an attorney to discuss how the laws apply to your specific situation and how to best implement a plan that will meet your individual goals and objectives. If we can be of assistance in that regard, please call us at (757) 969-1900 to schedule a consultation appointment.*