



## Special needs trusts can enhance lives of those with disabilities

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You may recall from our prior columns that there are several options for establishing a trust for the benefit of a disabled person so that the person can maintain important government benefits such as Medical Assistance and Supplemental Security Income. These programs are "means tested," and -- generally -- the disabled person must maintain a very low asset threshold of approximately \$2,000.

Special needs trusts allow funds in excess of these thresholds to be held in a trust and used to enhance the life of a disabled person beyond the bare minimums provided under these government programs.

We previously discussed the use of a "third party" Special Needs Trust, which is established by a third party, such as a parent or other relative of the disabled person (not by the disabled person), for the benefit of that disabled person using assets of the third party, not assets of the disabled person.

We also wrote about a self-settled "payback" special needs trust (established with the disabled person's assets) when proactive planning is not available. This type of trust requires that the state be paid back for its Medical Assistance expenditures paid on behalf of the disabled person when that person dies.

However, establishing and maintaining any type of trust requires ongoing monitoring and administrative duties. Sometimes, the amount to be managed is not large enough to warrant the expense of an independent trustee.

Let's consider the example of Ben, a 40-year-old disabled person living in the community with the help of various Medical Assistance programs as well as a small monthly SSI check to pay for his basic needs.

Ben's father dies, and Ben is one of five children who are to receive a share of the father's estate. After the estate is administered, Ben's net estate share will be \$20,000. While Ben is happy to receive these funds as they are desperately needed, if he accepts them from his father's executor, Ben will have too much money to continue receiving both his Medical Assistance and SSI benefits. Ben's sister has approached several professional trustees who are unwilling to act as the trustee for a separate special needs trust because the amount in question is just too small for the trustee to administer economically.

While Ben is aware that he could receive the inheritance and then quickly spend it down on exempt items for his benefit, he is hoping to stretch the dollars his father left him for more long-term security. Ben also could just waste the money and, in the process lose his Medical Assistance benefits eligibility because, with the receipt of the inheritance, he would be "overresourced."

One answer may be for Ben to utilize a pooled special needs trust.

As the name suggests, this type of trust "pools" the funds of multiple disabled beneficiaries so that the trust can be managed by a single trustee for efficiency of both scale and management. The trustee is a nonprofit organization that internally maintains separate accounts for each beneficiary, yet can invest ("pool") the funds with a common purpose and overall larger asset value.

With the pooled special needs trust there is no need to name (and even find) successor trustees and there are minimal start-up costs due to the use of standardized trust documents. As with the other types of special needs trusts, the trust funds can be used throughout Ben's life to pay for items and services to enhance his standard of living and, with the maintaining of Ben's Medical Assistance benefits, he will have continued access to resources and services that might otherwise be unavailable to him.

A major difference with the pooled trust vs. other types of trusts is that upon the death of the disabled beneficiary, any funds remaining in the pooled trust account either remain in the "pool" to be used for the general benefit of other disabled beneficiaries of the trust or paid back to the state's welfare department.

This practice varies by state. In Pennsylvania a recent federal court case (Lewis v. Alexander) determined that the funds could remain in the pool at the death of the beneficiary, consistent with federal law, rather than being paid back to the state, as Pennsylvania was attempting to have done. Practically speaking, since the amounts invested in a pooled trust are generally smaller amounts, the net effect is not a tremendous windfall to the other pool beneficiaries. However, many families gain comfort in knowing that if their disabled family member does not use all of the money during his lifetime, the balance will be put to good use to help others with disabilities.

Another significant issue which the court decided was whether an age limit exists for funding a pooled trust. Pennsylvania argued that the pooled trust could not be funded after age 64 (as is the case for the stand-alone, self-funded special needs trust). However, the court abandoned this age limitation so that disabled persons of any age can utilize this valuable planning option. (This also may be helpful for elderly people in nursing homes who are seeking Medical Assistance coverage.)

Thus, depending on the situation, an estate plan for a disabled individual (or a person who wants to favor a disabled individual) can utilize several different types of trusts.

It's critically important that the trusts are properly coordinated with each other so that each trustee will know his obligations and the priority of paying for the needs of a disabled trust beneficiary. By utilizing special needs trusts, including the pooled trust when appropriate, a disabled person may be able to live an enhanced life while benefitting others in the process.

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