



## **Elder Law Guys More progress made in special needs planning**

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Planning to help a person with long term disabilities, especially at a young age, is a lifelong process.

There are several basic planning concepts involving obtaining quality medical care, funding that care through insurance or Medicaid, establishing surrogate decision-making both during and after parents' lives as well as finding quality caregivers. As with all things, the circumstances and the laws and regulations change over time.

Some changes (or lack thereof) are good, others bad.

For example, the Supplemental Security Income asset test threshold of \$2,000 has not been increased to keep up with inflation since — get this — 1984. Using this logic, we should all be using an Apple IIe computer. (Unfortunately, recent attempts to increase this threshold for the first time in 40 years, despite bipartisan support, failed in late 2022.)

On the other hand, we've seen broad implementation of ABLE ("Achieving a Better Life Experience") accounts across the country to help people with disabilities self-manage significantly more funds than the aforementioned SSI limit without disrupting benefits (and there's more good news on the way in the future for ABLE accounts.)

One area in Pennsylvania where a lack of change has been helpful is the exemption of an individual retirement account or other tax qualified investment owned by the spouse of a Medicaid recipient. This is not the national norm and some states count the IRAs of both spouses.

Speaking of individual retirement accounts, that brings us to the most recent change (and it's a good one) regarding planning in this area.

The explosion of IRAs is relatively young as far as the nation's history goes, having gone from a novel idea in the 1980's for corporate tax deferral of employee salaries to over \$26 trillion (yes, with a "T") in about 40 years.

Now, for the overwhelming majority of people in this country, the individual retirement account is their single most valuable liquid asset. It's easy to get into, yet more complex to unwind because of all the back-end income tax recapture. It is thus common that parents planning to leave money to a child with special needs will fund a trust for that child with the parents' IRAs.

In concept, this maneuver accomplishes the funding needed to pay for ongoing living expenses, medical care and other assistance.

Particularly in the past few years, various interpretations and law changes have caused IRA owners to meander through a tax maze loaded with traps for the unprepared.

Funding a trust for a disabled person through an IRA beneficiary designation should be done with care and the need to check all the boxes that the Internal Revenue Service deems appropriate to allow the trust beneficiary to enjoy the trust benefits without accelerating the deferred income tax that has been sitting quietly by for several decades.

Many parents who fund a trust with an IRA also have the desire to leave any remaining funds in the trust, after the death of the disabled beneficiary, to a charity so that other similarly situated families who may not have the financial means can benefit from the organization's mission. Or they may

simply want to help support a charitable organization rather than leave the remaining IRA funds to a private person.

Until now, this planning technique was difficult because of the way the IRS looks at not only the current trust beneficiary's life expectancy, but also the succeeding beneficiary for which such trusts are designed to allow discretionary distributions to the primary disabled beneficiary.

The result is that under certain circumstances, the disabled primary beneficiary of the trust could suffer a tax penalty in the form of accelerated income taxes during the beneficiary's lifetime simply because of the generosity of the trust creators (the parents) naming a charitable organization as the remainder beneficiary.

Through the collaborative efforts of many organizations, including the Special Needs Alliance ([www.specialneedsalliance.org](http://www.specialneedsalliance.org)), the Special Needs Trust Improvement Act of 2022 was passed on Dec. 29 and became effective in 2023. The major benefit of this new law now allows most charities to be named as the remainder beneficiary of a trust for the primary benefit of a disabled person.

This relatively minor change in the wording of the law will have a major positive effect on both the lives of disabled people and the charitable organizations that serve those in need.

And remember that, even if a person fails to name a Special Needs Trust as beneficiary of an individual retirement account prior to the IRA owner's death, there are some ways to "cure" this issue without having to liquidate the entire IRA and accelerate the income taxes. The bottom line is to seek specialized advice in this area when planning in advance or reacting to a change in circumstances.

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