

Success Strategy Planning for Special Needs



As someone who loves and cares for an individual with special needs, you may be concerned about ensuring that your loved one continues to receive the care he or she needs throughout lifetime. The financial aspect of ensuring a high level of ongoing care and support can appear to be a daunting task as you consider your loved one's care needs over the long term. How can you ensure your loved one has the resources needed to lead a comfortable life whether you are here or not?

By analyzing your financial situation, assessing your loved one's care needs and creating a Special Needs Trust (SNT) funded with life insurance, you can create a source of money to help provide the care your loved one needs. Furthermore, if properly designed, an SNT may be able to preserve your loved one's current or future access to government benefits and/or specialized care, should he or she qualify.

UNIQUE NEEDS OF YOUR SPECIAL NEEDS LOVED ONE

Individuals who are described as having "special needs" fall into a wide spectrum of persons with physical, mental and emotional abilities. In order to maximize the quality of their lives, they may need additional medical care, special educational support, physical, occupational or speech therapies, as well as financial help to adapt their living environment to their unique set of needs in an effort to establish and maintain a relative degree of independence.

GOVERNMENT BENEFITS

Government programs are extremely limited in the types and amounts of services they offer. The government benefits may not be sufficient to address your loved one's many daily life care needs, including medications, education, training and transportation needs, living accommodations, home modifications, implementation and maintenance of adaptive equipment, specialized computers, and other aids for independent function, for example. It can be challenging to effectively supplement

what the government provides through Medicaid and SSI to ensure that your special needs individual can maintain an acceptable quality of life throughout his or her lifetime.

HOW A SPECIAL NEEDS TRUST WORKS

A properly drafted SNT can be designed to supplement the government benefits a special needs individual receives by providing for care and services not covered by those benefits. Simultaneously, SNTs strive to ensure that any distribution from the trust does not disqualify the special needs individual from receiving ongoing governmental support. However, SNTs are often used to provide ongoing care for a special needs individual whose abilities are such that he or she will not need, or qualify for, government benefits. For such special needs individuals, these supplemental trusts are generally designed to supplement the care of the special needs beneficiary. Many times, the SNT is drafted in such a way that if the special needs individual's abilities change the trust will not prevent the beneficiary from qualifying for government benefits.

PLANNING FOR ALL FAMILY MEMBERS

At the death of the special needs beneficiary, the remainder of the SNT's property can be paid to other beneficiaries, such as the special needs individual's siblings. In this way, the terms of the SNT can be structured to benefit both the special needs individual and other family members.

FUNDING OF AN SNT

An SNT can be funded with a variety of different assets, including gifts, retirement and savings accounts, and life insurance, for example. A life insurance policy can be an effective liquidity tool. The policy can be purchased on your life, as caregiver, to replace the loss of your services and support should you die prematurely. Alternatively, life insurance can be used to equalize an inheritance or to create liquidity for the future needs of your loved one.

BENEFITS OF AN INSURED SPECIAL NEEDS TRUST

- Provides the funds to help replace the services of a caregiver.
- Life insurance death benefit provides cash to fund the trust over the lifetime of the special needs individual, enhancing and/or supplementing the benefits provided under government programs.
- The life insurance proceeds are generally received income tax free¹ but may be subject to estate tax, depending on the design of the trust.
- Provides liquidity to help equalize an inheritance for the benefit of heirs.
- The life insurance allows for the completion of funding needs through the death benefit regardless of the performance of other assets in the trust.
- Depending on the state, the life insurance policy proceeds may not be subject to the claims of creditors.²

CONSIDERATIONS WHEN USING AN INSURED SPECIAL NEEDS TRUST

- If you are trying to preserve the availability of government benefits for your special needs individual, extra care should be taken in planning. Please consult an attorney familiar with special needs trusts.
- If the life insurance is to be owned by the insured, the SNT, rather than the special needs individual, should be named as beneficiary for the intended share of the proceeds that are to benefit your loved one. Otherwise, a direct payment of the proceeds to the beneficiary could jeopardize his or her eligibility for government benefits.
- A revocable *Third-Party SNT*³ will be includible in the grantor's taxable estate unless the trust is properly established during lifetime as an irrevocable trust. Transfers to an irrevocable SNT trust are subject to gift taxes. As a result, you may want to create a giving program to maximize your use of lifetime gift tax exemptions and to minimize gift taxes.
- Trusts should be drafted by an attorney familiar with such matters in order to take into account income and estate tax laws, including the generation-skipping transfer tax applicable to beneficiaries who are more than one generation removed from you. Failure to do so could result in adverse tax treatment of trust proceeds.
- The amount of life insurance protection you qualify for will be subject to medical and financial underwriting requirements.
- Life insurance policies have charges associated with them such as the cost of insurance and potential surrender charges. Please consult with your tax advisor for more information.

By analyzing finances, assessing a loved one's care needs and creating a Special Needs Trust (SNT) funded with life insurance, a source of money can be created to help provide the care your loved one needs.

1. Life insurance death benefit proceeds are generally excludable from the beneficiary's gross income for income tax purposes. There are a few exceptions such as when a life insurance policy has been transferred for valuable consideration.
2. Creditor protection is not available for a life insurance policy when the owner/insured is insolvent or is contemplating filing for bankruptcy.
3. A *Third-Party SNT* is created and funded for a special needs individual with the trust's assets coming from someone other than the special needs beneficiary. Also called a Supplemental Needs Trust, it can be used as an estate planning vehicle so that other family members can make gifts directly to the trust, increasing the pool of assets available for the special needs individual's care.

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