

7 Tips for Helping Families with Special Needs

This article examines the unique planning requirements of families with children, grandchildren or other family members (such as parents) with special needs. There are numerous misconceptions in this area that can result in costly mistakes when planning for special needs beneficiaries. Understanding the pitfalls associated with special needs planning is a must for all of us who assist families who have loved ones with special needs. With the growing number of special needs children and adults, who develop special needs later in life due to disease or accident, it is not uncommon for families to encounter the need for special needs planning.

Tip #1: Avoid Disinheriting the Special Needs Beneficiary

Many disabled persons receive Supplemental Security Income (“SSI”), Medicaid or other government benefits to provide food, shelter and/or medical care. The loved ones of the special needs beneficiaries may think it is prudent or may have been advised to disinherit them - beneficiaries who need their help most - to protect those beneficiaries’ public benefits. But these benefits rarely provide more than basic needs. And this solution (which normally involves leaving the inheritance to another sibling) does not allow loved ones to help their special needs beneficiaries after they themselves become incapacitated or die. The best solution is for loved ones to create a special needs trust to hold the inheritance of a special needs beneficiary.

Planning Note: It is unnecessary and in fact poor planning to disinherit special needs beneficiaries. Loved ones with special needs beneficiaries should consider a special needs trust to protect public benefits and care for those beneficiaries during their own incapacity or after their death.

Tip #2: Procrastinating Can be Costly

None of us know when we may die or become incapacitated. It is important for loved ones with a special needs beneficiary to plan early, just as they should for other dependents such as minor children. However, unlike most other beneficiaries, special needs beneficiaries may never be able to compensate for a failure to plan. Children without special needs can obtain more resources as they reach adulthood and can work to meet essential needs, but special needs beneficiaries may never have that ability.

Planning Note: Parents, grandparents, or any other loved ones of a special needs beneficiary face unique planning challenges when it comes to that child. This is one area where families simply cannot afford to wait to plan.

Tip #3: Don't Ignore the Special Needs of the Beneficiary When Planning

Planning that is not designed with the beneficiary's special needs in mind will probably render the beneficiary ineligible for essential government benefits. A properly designed special needs trust promotes the comfort and happiness of the special needs beneficiary without sacrificing eligibility.

Special needs can include medical and dental expenses, annual independent check-ups, necessary or desirable equipment (for example, a specially equipped van), training and education, insurance, transportation and essential dietary needs. If the trust is sufficiently funded, the disabled person can also receive electronic equipment & appliances, computers, vacations, movies, payments for a companion, and other self-esteem and quality-of-life enhancing expenses: the sorts of things families now provide to their child or other special needs beneficiary.

Planning Note: When planning for a beneficiary with special needs, it is critical that families utilize a properly drafted special needs trust as the vehicle to pass assets to that beneficiary. Otherwise, those assets may disqualify the beneficiary from public benefits and may be available to repay the state for the assistance provided.

Tip #4: A Special Needs Trust Does Not Have to be Inflexible

Some special needs trusts are unnecessarily inflexible and generic. Although an attorney with some knowledge of the area can protect almost any trust from invalidating the beneficiary's public benefits, many trusts are not customized to the particular beneficiary's needs. Thus, the beneficiary fails to receive the benefits that the parents or others provided when they were alive.

Make sure you are using the right type of Special Needs Trust for the situation. A 1st Party Trust, which is funded with the individual with disabilities' own assets, must contain a payback provision to repay government benefits at death. However, a 3rd Party Trust, which is funded by a parent, grandparent or other family member for the benefit for the individual with disabilities, does not need to have a payback provision. So, 3rd Party trust assets can pass to other family members at the beneficiary's death. You can further provide for the beneficiary's needs by preparing a memorandum of your wishes for your loved one to aid the trustee in administering the trust.

Tip #5: Use Great Caution in Choosing a Trustee

Loved ones or family members can manage the special needs trust while alive and well if they are willing to serve and have proper training and guidance. Once the family member or loved one is no longer able to serve as trustee, they can choose who will serve according to the instructions provided in the trust. Families or loved ones who create a special needs trust may choose a team of advisors and/or a professional trustee to serve. Whomever they choose, it is crucial that the trustee is financially savvy, well-organized and of course, ethical.

Planning Note: The trustee of a special needs trust should understand the trustmaker's objectives, be capable of investing the assets in a manner most likely to meet those objectives and retain competent counsel to aid in the administration of the trust.

Tip #6: Invite Other to Contribute to the Special Needs Trust

A key benefit of creating a special needs trust now is that the beneficiary's extended family and friends can make gifts to the trust or remember the trust as they plan their own estates. For example, these family members and friends can name the special needs trust as the beneficiary of

their own assets in their revocable trust or will, and they can also name the special needs trust as a beneficiary of life insurance or retirement benefits. Unfortunately, many extended family members may not be aware that a trust exists or that they could contribute money to the special needs trust now or as an inheritance later, which disrupts prudent planning by the immediate family members.

Tip #7: Relying on Siblings to Use Their Money for the Benefit of a Special Needs Child Can Have Serious Adverse Effects

Many family members rely on their other children to provide, from their own inheritances, for a child with special needs. This can be a temporary solution for a brief time, such as during a brief incapacity if their other children are financially secure and have money to spare. However, it is not a solution that will protect a child with special needs after the death of the parents or when siblings have their own expenses and financial priorities.

What if an inheriting sibling divorces or loses a lawsuit? His or her spouse (or a judgment creditor) may be entitled to half of it and will likely not care for the child with special needs. What if the sibling dies or becomes incapacitated while the child with special needs is still living? Will his or her heirs care for the child with special needs as thoughtfully and completely as the sibling did? Siblings of a child with special needs often feel a great responsibility for that child and have felt so all of their lives. When parents provide clear instructions and a helpful structure, they lessen the burden on all their children and support a loving and involved relationship among them.

Planning Note: Relying on siblings to care for a special needs beneficiary is a short-term solution at best. A special needs trust ensures that the assets are available for the special needs beneficiary (and not the former spouse or judgment creditor of a sibling) in a manner intended by the parents.

Conclusion

Planning for special needs beneficiaries requires particular care and knowledge on the part of the planning team. A properly drafted and funded special needs trust can ensure that special needs beneficiaries have sufficient assets to care for them, in a manner intended by their loved ones, throughout the beneficiaries' lifetime. Please contact us if you have any questions or would like to discuss any information in this document further.

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