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Issues to consider when creating a special needs trust

Parents of a child or children with special needs have a lot to think of and do every day. However, they also need to think of the future of that child, especially when the parent(s) are no longer here to provide support, monetary and otherwise. A recent post in Special Needs Answers (<http://specialneedsanswers.com>) lists issues to consider when setting up a special needs trust.

Even before considering the specific issues in the article, parents of a special needs child need to consider the need to shelter assets for that child, especially if the child is receiving or will receive Social Security Insurance (SSI) benefits and Medicaid. When an individual is receiving SSI, then he or she cannot have more than \$2,000 in his or her name. The child may receive an inheritance from a relative, or a settlement related to the cause of the disability, or the parents may predecease the child and leave him or her money. If a special needs trust is not in place or available as part of the parents' estate planning, then the disabled individual, now often an adult, will lose public benefits, including Medicaid coverage, which can be disastrous. The answer is to provide for the individual with special needs in a trust set up by the parent or parents for his or her benefit.

Once the decision to establish a trust is made, there are some additional issues to consider. Special needs trusts, like most trusts, need a grantor or settlor (in this case a parent or grandparent usually), a beneficiary (the disabled individual) and a trustee or trustees to make the decisions on investing and distribution. The identity of the trustee is a choice to be made, not a given like the grantor and beneficiary. The trustee has power and responsibility and needs to understand the beneficiary's needs while not making distributions that do might violate any public benefit program rules. The trustee needs to budget for the long term, invest the money for the beneficiary's maximum benefit, and keep good accounts. It might be best to have a professional trustee and a family member work together as co-trustees.

Should the trustee be given specific directions? The trustee needs as much guidance as possible to ensure that the disabled person gets the best care and support. The trust needs to be discretionary; however, the parent or parents can give direction in Memorandum of Intent instead of including specific information in the document. This way the trustee can know what your child needs, but the trustee is free to react to future realities in a more flexible manner.

Another question to resolve is whether the trust should be irrevocable or revocable. An irrevocable trust is useful if other persons wish to contribute to the trust or there is a sum of money, especially from a settlement. A revocable trust is usually one in a Will (testamentary) especially if it is not clear that the disabled person will need such a trust. A conversation with your attorney is important to help you to clarify how to divide your estate if you have children in addition to the disabled child.

A special needs trust can be very important and having a discussion with a knowledgeable special needs planner is vital.