Planning with Special Needs Trusts

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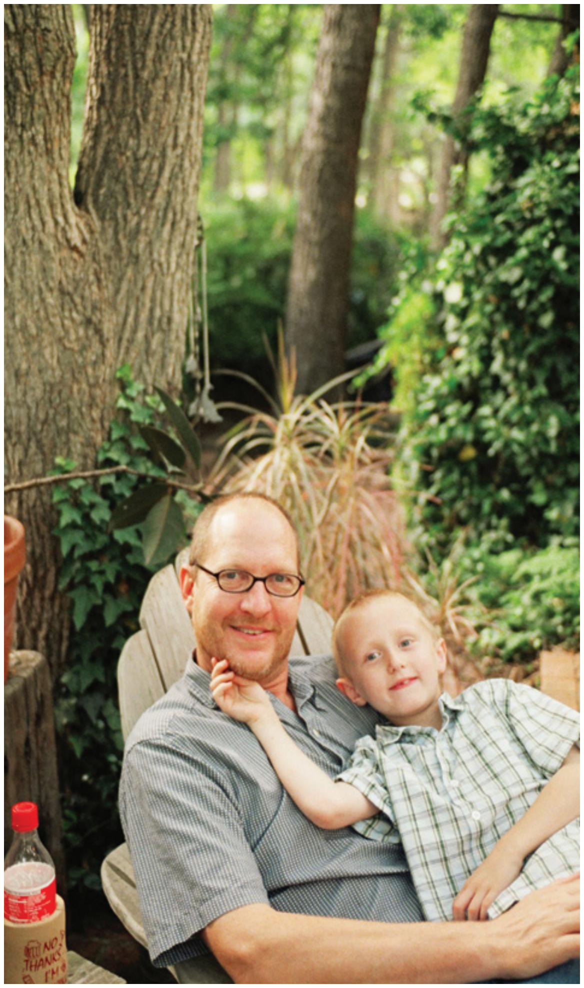
Almost 15 percent of Americans over age five are disabled. Disabled individuals are living longer than ever before, outliving the parents who support them. Many rely on benefits such as Medicaid for their support. Some planners advise parents to disinherit a child in order to preserve the child's benefits. However, these benefits rarely provide more than subsistence, and this "solution" does not allow the parents to help their child after their incapacity or death.



Consider using a "Special Needs Trust." This trust will provide funds to pay for certain expenses that enhance a disabled person's quality of life, while preserving access to governmental benefits. There are two categories of Special Needs Trusts--those created with the beneficiary's money (self-settled), and those created with someone else's money (third-party).

Under the Medicaid rules, when a Medicaid beneficiary transfers assets, he or she is penalized. A self-settled Special Needs Trust is funded with the beneficiary's assets and is an exception to the rules. It is often referred to as a "pay back trust" because it must include a provision requiring that Medicaid be paid back upon the beneficiary's death for Medicaid services provided, to the extent funds remain in the trust. In addition, the trust must be established and funded for a beneficiary under age 65.

A third-party Special Needs Trust is one in which another person, such as a parent, creates a trust for a disabled person and uses his or her own assets, and not the disabled person's assets, to fund the trust. Because of this, no Medicaid pay back provision is required in the trust. Third-party trusts thus provide wonderful planning opportunities for families.

To determine if a Special Needs Trust is appropriate, it is necessary to know the type of benefit the disabled person is receiving, SSI, Medicaid or SSDI. Supplemental Security Income (SSI) and Medicaid are means-tested programs with essentially the same eligibility criteria. "Means tested" means that the disabled person's eligibility is based on financial status, as measured by income and resources, and, thus, a Special Needs Trust may be needed to preserve eligibility. SSI and Medicaid recipients are allowed to have $2,000 in resources. Some resources are excluded from consideration for eligibility consideration, such as a home and a car.

The Social Security Disability Insurance (SSDI) program pays benefits to people who are unable to work for at least one year because of a disability. It is not a means-tested program. Thus, a Special Needs Trust is not needed for an SSDI recipient.

Trustees of Special Needs Trusts have the same basic duties as other trustees, but also have some added responsibilities. A trustee of a Special Needs Trust must develop a working knowledge of the government benefits for which the beneficiary is qualified because the trustee must understand which distributions are appropriate and which are not. The trustee must know the long term care plan for the beneficiary, his or her life expectancy, and what activities are reasonable to expect. All distributions of income and principal must be in the discretion of the trustee. The trust document should describe permissible distributions, such as recreation, travel, entertainment, and medical care not otherwise provided by Medicaid.

A Special Needs Trust provides a means for preserving assets to benefit disabled family members. The trust can be a vital part of a managed support system for the disabled person which maximizes the use of government provided services while supporting the family's care and enhancing the comfort of and enjoyment of life for the disabled person.