



“Planning Your Estate: Special Needs Trusts for Disabled Children”

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Parents of children with special needs that are not expected to abate in the future should consider utilizing a Special Needs Trust when planning their Estate. The use of a Special Needs Trust will protect their disabled child’s eligibility for important, most often essential, public benefits. When parents of a child with special needs create a Last Will and Testament, any assets left to their disabled child will be considered a resource of that disabled child and will disqualify them from receiving public benefits, if these assets cause the resources of the disabled child to exceed two thousand dollars. If parents of a special needs child do not create a Last Will and Testament, any assets will pass through the laws of intestacy, which would also potentially disqualify their special needs child from receiving public benefits. It is also important for other family members, such as grandparents, are advised only to leave assets to disabled relatives via a Special Needs Trust.

Special Needs Trusts are designed to permit financial resources to remain available to assist a disabled individual who receives, or may receive in the future, Medical Assistance (or Medicaid), Supplemental Security Income (SSI), waiver services through the Department of Mental Health/Mental Retardation, as well as other public benefits. Special Needs Trusts have been permitted in Pennsylvania since 1987 for trusts funded with monies not owned by the disabled individual. Because these assets funding the Special Needs Trusts are owned by a third party (i.e. parent or grandparent), there is no payback to the Department of Public Welfare upon the disabled individual’s passing.

In order for a Special Needs Trust to be considered valid by the Department of Public Welfare and Social Security Administration, several factors must be considered in establishing a Special Needs Trust. It must be clearly stated in the Special Needs Trust that it is the intent of the settlor to supplement and not supplant public benefits and that such benefits be considered prior to the distribution of any trust income or principal. The Special Needs Trust must be irrevocable, meaning that it cannot be revoked once it is established. The Trustee of the Special Needs Trust must have total, absolute and unfettered discretion to pay, or refuse to pay, income or principal from the trust to the disabled beneficiary (i.e. the disabled individual for whom the Special Needs Trust is established).

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Special Needs Trusts can be used to purchase items, goods, and services for the sole benefit of the beneficiary of the Special Needs Trust. In order for purchases to be made on behalf of the disabled beneficiary, the Trustee of the Special Needs Trust can pay vendors directly. A receipt or invoice should be provided to the Trustee. The Trustee should not provide cash payments or put cash in Beneficiary's account. The Trustee may reimburse the family for receipts of actual payments already made, however, this is sometimes rejected by the Social Security Administration. In some cases, a credit card can be provided to the disabled beneficiary. Finally, non-transferable gift cards issued by the Trustee can be utilized for purchases.

It is also important to carefully consider whether the Trustee should or should not make payments for food and shelter expenses. These expenses are considered income to the disabled beneficiary, as "in-kind support and maintenance", and may impact the beneficiary's public benefits, such as reducing the Supplemental Security Income received. Should the determination be made to make purchases for food and shelter from a Special Needs Trust, there is a "Presumed Maximum Value Rule", which limits the reduction of the Supplemental Security Income to about one third of the maximum Supplemental Security Income. For example, if the beneficiary of a Special Needs Trust receives \$630 in Supplemental Security Income, and their Special Needs Trust is used to pay for food and shelter expenses in the amount of \$500 in a given month, the Supplemental Security Income check would be reduced by only \$210.

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