

Protecting a Loved One's Benefits With a Special-Needs Trust

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Caring for someone with special needs is both a burden and a privilege. Although the challenges can be all-consuming, the rewards are often deeply gratifying. Few of us who don't bear this burden can fully understand the level of commitment required.

For many caregivers, this commitment extends to remembering the individual with disabilities in their wills. This is a commendable impulse, but it is important to proceed cautiously. Without proper planning, an inheritance left to someone on government assistance can lead to nothing short of disaster.

The difficulty stems from the nature of public assistance. Some benefits, such as Medicaid and Supplemental Security Income (SSI), are "means-tested." This means they are available only to individuals with disabilities whose assets are below a certain level. Leaving any kind of inheritance to someone who receives means-tested assistance can cause these benefits to be taken away.

And for the person with disabilities, government benefits can be critical.

SSI is a federal program administered by the Social Security Administration that pays monthly stipends to people who are elderly or disabled. Medicaid provides health care benefits and many other programs that can enhance the quality of life of people with disabilities. Importantly, Medicaid coverage is automatically granted to individuals receiving SSI in Maryland and many other states.

Under Social Security rules, a person with disabilities with more than \$2,000.00 in assets cannot receive SSI and, therefore, will not qualify for Medicaid. As a result, leaving a bequest to an individual with disabilities can do more harm than good.

This problem can be circumvented by setting up a special-needs trust. This type of trust includes language that requires the trustee to pay only for items the government isn't paying for. In this way, the trust supplements the person's public benefits without jeopardizing them.

Because the beneficiary cannot compel the trustee to make a distribution, the government does not take the trust assets into account when determining whether the beneficiary qualifies for public assistance. In other words, a special-needs trust creates the illusion of poverty, which allows someone with special needs to receive an inheritance while leaving their government benefits intact.

Choosing the right trustee is essential. In addition to having the beneficiary's needs at heart, this person must understand special-needs trusts and their rather arcane rules. For example, the trustee may not pay for the beneficiary's food or shelter

unless they are enjoyed while the beneficiary is away from home—say, on a vacation. Sending the beneficiary a gift card is also not allowed unless it's for an establishment like a gas station that sells only things that are allowable expenses under the trust rules. The trustee should consult with an attorney to avoid any missteps.

As a practical matter, a special-needs trust is typically set up through the caregiver's will. Called a *testamentary trust*, it can be funded with the caregiver's ordinary assets like bank accounts and real estate. In addition, the trust can be named as the beneficiary of the caregiver's life insurance policy or retirement account.

Another approach is to establish the trust in the caregiver's lifetime. This type of trust, called an *inter vivos* trust, can be funded directly by contributions from the caregiver or from the friends and family of the beneficiary. These individuals can also name the trust as a beneficiary of their wills and other assets.

Whether a testamentary or *inter vivos* trust is to be established, the assistance of an attorney is essential. The tax implications of setting up a special-needs trust are numerous and complex, and the laws affecting trusts in Maryland have recently changed. Properly done, however, the trust can be an essential legacy to help someone with special needs.

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