Financial Planning for Special Needs - Special Needs Trusts

Adapted from the Texas Health and Human Services Website, April 2023
https://www.hhs.texas.gov/handbooks/medicaid-elderly-people-disabilities-handbook/f-6000-types-trusts
and the Navigate Life Texas Website, April 2023
https://www.navigatelifetexas.org/en/family-support/wills-and-trusts

Financial planning for a child with a disability or special health care needs comes with unique challenges. Many federal and state programs limit the amount of money or property a person can have to still qualify for benefits. The Supplemental Security Income (SSI) program, for example, sets the limit at $2,000. If your child has more than this in savings at any time, they could lose these benefits. Although you want your child to get access to services, you also want to save money for your child's future, so they can afford things that make their lives better but aren't covered by their benefits. Fortunately, with good estate planning and tools like a Special Needs Trust, you have the chance to provide for your child's future.

A special needs trust is a revocable or irrevocable trust established with the assets (income or resources) of a person under age 65 who meets the SSI program's disability criteria. The trust must be established for the person's benefit by a parent, grandparent, legal guardian, a court or the person. The trust must include a provision that the state is designated as the residuary beneficiary to receive, at the person's death, funds remaining in the trust equal to the total amount of Medicaid paid on their behalf.

In general, a trust is a legal way to manage money and property for someone else.

A Special Needs Trust, sometimes also called a Supplemental Trust, is a way to store an unlimited amount of money or property for a person with a disability or health care needs without affecting their federal and state benefits.

Although you might think of a trust as something only for wealthy families, a Special Needs Trust can hold a modest amount of money and make sense for a child who receives benefits like SSI or Medicaid.

There are two common types of Special Needs Trusts:

- A self-funded trust. This type of trust holds money or property that your child puts directly into it. This includes an insurance or personal injury settlement; or money or property that went directly to your child instead of into a third-party funded trust.
- A third-party funded trust. This type of trust is funded by pretty much anyone other than the child. This includes gifts or inheritance from you, or any uncles, aunts, or grandparents who want to set aside money or property to take care of your child.

The biggest difference between these trusts only shows up in how the assets of the trust are distributed at the end of your child's life, which we all hope will be a long, long time away. With a self-funded trust, Medicaid could take a repayment for what it has paid for your child's medical expenses. This will not happen with a third-party funded trust. Any leftover money from a third-party funded trust is protected and can be left to family members or charitable organizations.

How Do I Create a Special Needs Trust?

It is a very good idea to work with an estate attorney and a financial advisor who knows the unique requirements for adult children with disabilities or special health care needs.

- An estate attorney can help you with the legal side of setting up your trust.
- A financial advisor can help you plan and manage the money or property that you'd like to put into the trust.

Be very careful about using Internet documents to create a trust. These were not created with your family's unique requirements in mind.

Facing these issues can be pretty tough. But once you get started, you should take a deep breath and relax, knowing that you've taken big steps toward securing your child's future.

Tips for Finding a Financial Planner or Attorney

- Ask for references from other parents or support groups.
- Call your local bar association for attorney recommendations or search for a lawyer online. Some attorneys volunteer their time to help families of children with disabilities or special health care needs.
- Before you hire an attorney or financial planner, ask them how many times they have worked with families of children with disabilities or special health care needs.
- Ask for a written quote on the cost to set up a trust.