



Estate Planning for a Special Needs Child

Written by Hal R. Terr, CPA, PFS, CFP, AEP
Tax Senior Manager at WithumSmith + Brown

The costs of specialized medical services for disabled persons can be astronomical, and many disabled people are forced to rely on public assistance for basic necessities. The cost of medical care to the government is also tremendous and has put pressure on states and the federal government to seek reimbursement for their expenditures from the disabled person's family and estate. The ultimate goal of planning for public aid for a loved one is, of course, to reduce the assets and income of a disabled child below the required level, yet ensure adequate support for the disabled child throughout his or her life.

Gift-giving is one commonly used technique in providing for disabled individuals. Receipt of an outright gift, however, may disqualify an otherwise qualified applicant. The gift may also be subject to cost-of-care liability, i.e., recovery by the state, if not expended before the disabled child's death. Families of special needs children generally avoid outright gifts or devices to disabled individuals that may result in their ineligibility for benefits.

To avoid both disqualification of the intended beneficiary from public aid and reimbursement claims by the government, many parents of special needs children create "special needs" trusts which are intended to supplement (not supplant) government benefits. Typically, a family member transfers assets into a special needs trust (also known as a "supplemental needs" trust), for the benefit of an individual receiving public aid and limits the trustee's discretion to distribute funds for uses that will not jeopardize the public aid.

The nature and amount of a disabled person's income and assets often serve to reduce or eliminate the government benefits available through various state or federal agencies. Therefore, these trusts are typically structured so that neither the assets, nor the benefits they could, or actually do, provide to the beneficiary are counted for determining the amount of government benefits available. These trusts can only be used to provide for items and services other than food, shelter, clothing or other benefits currently supplied by the beneficiary's governmental assistance program. To avoid having the beneficiary receive cash, which

could potentially cause the beneficiary to lose governmental assistance, most benefits paid by the trust are made as in-kind distributions.

A supplemental needs trust is used by parents to transfer an inheritance and allow the disabled child to receive benefits from the parent's estate. Once the child dies, the remaining trust assets can pass to another heir. The use of a supplemental needs trust avoids having to disinherit a disabled child and prevents the child's share of the parent's estate from passing entirely to the governmental entity providing assistance.

Estate planning for the special needs family is the first of many steps that should be taken by parents in their journey of caring for all their loved ones. Financial planning, retirement planning, housing issues, caretakers, and personal assistants also need to be considered, especially as pertains to a special needs child. Legal, accounting, financial and other professionals can help guide parents along the way to provide peace of mind as they plan for a special needs child.

NOTE:

To ensure compliance with US Treasury rules, unless expressly stated otherwise, any US tax advice contained in this communication is not intended or written to be used, and cannot be used, by the recipient for the purpose of avoiding penalties that may be imposed under the Internal Revenue Code.

This article is provided to our readers courtesy of the accounting firm
WithumSmith + Brown, PC

For more information please contact:

Theresa Richardson, CPA - Senior Manager
3040 Route 22 West, Suite 110
Somerville, NJ 08876
www.withum.com

P 908-526-6363
F 908-526-9944
C 908-625-3273

trichardson@withum.com