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ESTATE PLANNING ATTORNEYS



Supplemental Needs Trust Planning Guide

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We look forward to meeting you and discussing your estate planning goals, including how best to provide for your child with special needs. To help make our meeting as helpful to you as possible, we want to introduce you to some of the issues we will be covering and some of the important decisions that you will need to make.

PUBLIC BENEFIT PROGRAMS:

Your child may be receiving public benefits now, or may be eligible to receive public benefits in the future. Public benefits can be divided into two categories: means tested (need-based) and entitlement benefits. Need-based benefits include SSI (Supplemental Security Income) and Medicaid. To be eligible for need-based assistance, a person that has a qualifying disability may have only limited assets (generally less than \$2,000, excluding certain exempt assets, such as a home and personal effects) and limited income. Entitlement benefits, including SSDI (Social Security Disability Insurance) and Medicare, are based upon the prior work record of a disabled person or his or her parent, and such benefits do not have asset limitations.

HISTORICAL CHOICES:

Historically, if parents wished to leave assets in excess of \$2,000 for the benefit of their special needs child, there were only two choices. They could leave assets directly to the child or to a traditional health, support, and education trust for the child's benefit, in which case the child would be disqualified from SSI and Medicaid until those assets were exhausted. Alternatively, in the hope of preserving government benefits, parents could leave assets to a sibling of the special needs child or another close family member or friend, with the hope that the recipient would use those assets for the child's benefit. However, the recipient would be under no legal obligation to use the assets for that purpose.

SOLUTION:

A better solution is now available. Funds for the benefit of a special needs child can be set aside in a **supplemental needs trust** without disqualifying the child from receiving SSI or Medicaid. Supplemental needs trusts come in two varieties.

Third Party Supplemental Needs Trust (15.1 Trust)

A third-party supplemental needs trust (also known a "15.1" trust in reference to the applicable Illinois statute) is created and funded during life or at death by the special needs child's parents or other third parties. Trust assets are to be used to enhance the child's quality of life by providing goods or services not covered by government benefits. Upon the child's death, the government is not entitled to reimbursement from the trust, and the remaining assets in the trust pass to other beneficiaries who were designated by the creator of the trust. A 15.1 trust may be funded at the time the trust is created or at a later date, such as the death of the surviving parent.

Supplemental Needs Payback Trust

A supplemental needs payback trust (also known as a (d)(4)(A) or OBRA 93 trust) is a way to preserve public benefits if a special needs child acquires assets in his or her own name. A payback trust may be created by the child's parent, grandparent, or legal guardian, or by a court, and the child's own assets may be transferred to the payback trust without incurring a penalty for purposes of Medicaid or SSI. Like the 15.1 trust, a payback trust may be used to enhance the child's quality of life by providing goods and services that are not covered by public benefits. However, unlike the 15.1 trust, if trust assets remain at the child's death, Medicaid must be reimbursed from those trust assets for the benefits provided to the child during his or her life.

Even if your special needs child presently has no assets of his or her own, he or she might acquire assets in the future. For this reason, it is often appropriate for the parents of a special needs child to create both a 15.1 trust and a supplemental needs payback trust.

SUPPLEMENTAL NEEDS TRUST OVERVIEW

Funding the Trust

When creating a supplemental needs trust, you first need to determine how that trust will be funded. If you have more than one child, you should consider whether you wish to treat your children equally for inheritance purposes, or whether you wish to direct a larger share of your estate to the supplemental needs trust for your special needs child. Some parents choose to obtain a separate life insurance policy payable to the supplemental needs trust to ensure that the trust has at least a certain minimum level of funding at their death. We would be happy to discuss the various alternatives with you when we meet. To help you begin considering the alternatives, the following are some common choices for funding the supplemental needs trust at your death:

_____ Equal to children, with special needs child receiving his or her portion in the supplemental needs trust

_____ Extra asset or percentage of estate to supplemental needs trust, as follows:

_____ Other:

Choosing the Trustee

Typically, parents will serve as trustees of a supplemental needs trust while either parent is alive. A key decision is choosing the successor trustee. A successor trustee can be a family member, a trusted friend or advisor, or a bank or trust company. A successor trustee should have financial savvy, should have your complete trust, and should be or become knowledgeable regarding your child's needs.

You might note below your initial choices for successor trustees:

1st Choice: _____
2nd Choice: _____
3rd Choice: _____

Role of the Trustee

The trustee is responsible for investing trust assets, making distributions from the trust, and maintaining records of trust income and expenditures, all in accordance with the terms of the trust agreement. The trustee must be careful to make distributions from the trust in a manner that will not cause a reduction or loss of the child's public benefits. The following is a list of trust distributions that, if made directly to the provider of goods or services, generally will not affect public benefits:

- Automobile or van used to transport child, including gas, maintenance, insurance, and adaptable equipment
- Books, compact discs, and DVDs
- Cable or satellite television
- Case management and advocacy services
- Classes and lessons
- Clothing
- Club memberships
- College tuition
- Companion for outings or vacations
- Computer, including internet service, software, training, and adaptive technology
- Dental expenses not covered by Medicaid or private insurance
- Electronics, including television, DVD, and CD players
- Entertainment, including concerts, movies, theater, and sporting events
- Eyeglasses if not covered by Medicaid or private insurance
- Furniture
- Haircuts, manicures, pedicures, salon and personal grooming services
- Health insurance premiums for private insurance
- Hearing aids and batteries
- Hobby supplies and sporting goods
- Home repairs and modifications to home (*i.e.* wheelchair accessibility)

- Household supplies (non-food), including cleaning supplies, paper products, and personal care products
- Job coach
- Laundry and dry cleaning
- Linens
- Medical treatment, drugs, and devices not covered by Medicaid or private insurance
- Personal care attendant not covered by Medicaid or private insurance
- Prepaid funeral contracts
- Private hospital or nursing home room if not covered by Medicaid or private insurance
- Therapy not covered by Medicaid or private insurance (including rehabilitation, speech, physical, occupational, music, and art)
- Telephone and cell phone
- Transportation expenses (including expenses of others to visit child)
- Vacations

Distributing any Remaining Trust Assets at the Child’s Death

It is expected that the funds contributed to the supplemental needs trust will be used for the benefit of your special needs child during his or her life. However, it is possible that some assets in the supplemental needs trust will remain at the child’s death. As noted above, to the extent the supplemental needs trust was funded with the child’s own assets, Medicaid will be paid back from the trust upon the child’s death. However, any assets that were funded by your special needs child in excess of what Medicaid provided, and all trust assets that were funded by you or anyone else other than your special needs child, can pass at the child’s death to any persons or charities that you wish. To help you consider this question, the following are some common choices for the distribution of a supplemental needs trust at the special needs beneficiary’s death:

- _____ my spouse and me (if we are living)
- _____ the special needs child’s descendants (if any)
- _____ your other children or grandchildren (if any) as follows: _____

- _____ other persons or charities as noted: _____

INCORPORATING THE SUPPLEMENTAL NEEDS TRUST INTO YOUR ESTATE PLANNING

In order for a supplemental needs trust to accomplish its intended purpose, it must be coordinated with your other estate planning documents, including wills and living trusts, as well as with your life insurance and retirement plan beneficiary designations so that any assets you are leaving for your special needs child's benefit will be directed into the supplemental needs trust. Likewise, if other family members or close friends wish to leave an inheritance to your special needs child, it will often be advantageous to have them direct that inheritance to the supplemental needs trust.

In addition to preparing supplemental needs trusts, we assist families in comprehensive estate planning, including the review and creation of wills, living trusts, insurance trusts, powers of attorney, and other estate planning documents, and could work with you to integrate your overall estate planning with the supplemental needs trust. For more information regarding estate planning, please see our Estate Planning Guide, available by calling our office or visiting our website at www.rivkinlaw.com.

It would be our pleasure to work with you to accomplish special needs planning for your child.