

Planning for Special Needs Beneficiaries: An Integrated Approach

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Key Players

(a) Advisor who identifies the need

Advisors in any profession can identify the need for a special needs trust. If a client mentions that they have a child or grandchild with autism, downs syndrome, cystic fibrosis or mental retardation, a special needs trust should be considered for that client. Often this can lead to referrals to other family members for unrelated work. For example, a financial planner found out that a client's niece had special needs. The planner took the lead in introducing the client and the child's parents to the concept of a special needs trust. The child's parents became clients of the planner too.

On the other side of the coin, some professionals have been found liable for failure to mention a special needs trust when it is appropriate and, as the field grows, so will this liability.

(b) Litigation attorney, if relevant

Sometimes, litigation regarding an injury that created a special need leads to funding for a special needs trust. Litigation attorneys must always ask themselves when they are bringing in a settlement or judgment whether the beneficiary could benefit or is benefiting from eligibility for government programs.

(c) Special Needs Planning attorney

The Special Needs Planning attorney may have been sought out by the parents or may have been brought in by another professional. The right special needs trust attorney devotes a major portion of his or her practice to special needs planning and is recognized in the community as a competent or excellent planner. The author is a co-Founder of the largest national organization of special needs planning attorneys in the country: www.specialneedsplanners.com.

(d) Financial Advisor

Once the SNT is created, it must be funded. That is, money needs to go into the trust to provide for all the goals of the trust to be realized. Whether the funding source is an IRA, real estate, stocks or insurance, the right professionals need to be involved to ensure the trust is sufficiently funded.

(e) Tax Accountant

The SNT, when it earns income, will file its own tax return. When the income is distributed for the benefit of the beneficiary, it will be reported on the beneficiary's own tax return. Taxable income is not the same as benefits income.

Definition of a special needs trust

(f) Discretionary

The trustee can spend money for any purpose that is in the beneficiary's best interests. These do not work in all states but are particularly attractive to wealthy families who know that their child may someday need public benefits but who hope to be able to fund their child's needs privately.

(g) Supplemental

The trustee can only purchase goods and services that supplement what is provided by government programs.

(h) Litigation-related

State laws vary on the provisions that must be included in litigation-related trusts. These trusts are a sub-specialty within special needs planning.

Typical benefits that an SNT preserves

(i) Supplemental Security Income

A needs-based program that provides around \$800 per month for food and shelter. While \$800 is not much in most places, SSI recipients automatically receive Medicaid, which can be worth hundreds of thousands of dollars.

(j) Medicaid

The federal welfare health insurance program.

(k) State-specific needs-based programs

These may include in-home treatments, work training programs or educational funds.

Uses of SNT funds

- Special medical needs
- Clothing
- Entertainment
- Personal grooming, etc.

Key SNT provisions

(l) Advisory Board

This board can be as small as three people but ought not to be larger than 12. It is a formal board with informal powers -- the power to advise the trustee. These boards are a great way to keep extended relatives or non-relatives involved in the life of the person with the special needs when the parents are no longer there to hold the team together.

(m) Advocate

An advocate may be an assertive family member or a professional with experience and training in the area of the beneficiary's particular special needs. This person ensures that the beneficiary's quality of care is acceptable and may make recommendations regarding living arrangements and therapeutic regimens.

(n) Trustee

The most important role, because it has the power of the purse and all the liability that goes with that. The trustee may be a bank or professional or may be a family member or friend. Very few team members (attorneys, CPAs, financial advisors) are equipped to serve as trustee. However, all are excellent advisors to the trustee.

Taxation of SNTs

Distributions are taxable to the beneficiary. Retained earnings are taxable to the trust. Using tax-exempt bookkeeping simplifies dealing with government agencies.

Funding SNTs adequately

A quick note before we discuss the opportunities available to financial professionals: the size of this market has been underestimated. One in every 166 children will develop autism (just one of many forms of disabilities). One in six families has a member with a special need.

(o) How much is enough

Special Needs Trusts are typically funded with as much as \$2M. For many families, this is more than they can accumulate in savings. To help a family determine how much is enough, many planners use web calculators designed for this purpose. http://www.metlifeiseasier.com/metdesk/calc_step1.asp provided by MetDesk is one example. In severe cases, a life care planner may be brought in as a member of the team to estimate the life-long need.

(p) Where does the money come from

Life insurance is the key to most families' SNT plans. Because the need for funding does not go away when the child graduates from college, term insurance does not

make sense. Permanent policies ensure the trust will be funded regardless of how long the insured lives. Survivorship policies are particularly popular. Because so few planners are conversant in this area of planning, the opportunities are tremendous.

Assets Under Management

The SNT may not be funded until the parents have died or it may be funded right away (as in the case of a litigation-related SNT).

(q) Trusteeship

Once the parents are gone or if the litigation-related special needs trust is particularly large (often prompting the court to demand co-trustees), parents have few options for an individual trustee. Most have poured their energy into following and ensuring therapies are provided to their children and they have little time to build relationships with trustee candidates. These clients look to corporate trust departments to fill the need.

(r) Investment Advisor to the Trustee

When an individual is chosen as trustee, or when the parents are serving as trustee (as is common in litigation-related trusts), they are required to make reasonable and prudent investments. Few parents would feel comfortable making these investment choices without the assistance of a professional advisor.