THE SPECIAL NEEDS TRUST

A thoughtful financial move for a loved one with a disability.

Presented by William "Bill" Otto

If you have a child with special needs or care for an adult relative who is mentally or physically challenged, you face long-run financial demands. In all probability, federal and state assistance won't help you meet all of them.

Enter the special needs trust, an irrevocable trust designed to provide for an individual or family member's supplemental needs, assorted care and lifestyle needs that cannot be met using government assistance. A trustee uses such a trust to make various purchases of goods and services on behalf of a "permanently and totally disabled" person.[1]

Even wealthy families have these trusts in place – for good reason. Just to offer one example, the Autism Society estimates that 60% of autistic children will require adult services, with the average lifetime cost of care currently around $3.2 million per individual. So a special needs trust may be a wise move.[2]

These trusts were officially recognized by Congress in 1993; before that, they were established based on case law. They give families a smart alternative to other, potentially flawed arrangements to provide for these individuals over a lifetime.[3]

It is still common for a sister or brother of a newly disabled person to hold assets that once belonged to their sibling. Too often, these assets became "easy pickings" in a bankruptcy, litigation or divorce. Other families set up pooled trusts for distributing funds to their children, naming all their kids as beneficiaries; this move keeps disabled children eligible for federal and state benefits, but it also invites other siblings to fight over or lay claim to the pooled assets.[2,3]

Monies in a special needs trust are not exposed to creditors and are still non-countable assets so that the beneficiary can continue to qualify for social services programs and medical benefits.[3]

How do these trusts function? Trust assets are typically invested in securities, with the resulting income stream being used to paying for the beneficiary's needs. Conceptually, they work according to a sliding needs scale; for example, should government services somehow be able to provide for 100% of the beneficiary's needs, the trust will provide 0% and vice versa.[3]

The core principle is that the trust assets *supplement* the government benefits. This holds true if the beneficiary falls into Medicare's "doughnut hole"; it also holds true if

the trust buys goods and services to improve and enhance the lifestyle of the beneficiary. The trust does not exist simply to pay for the beneficiary's basic living expenses; it may do more.[3]

Many of these trusts are funded with life insurance, others with assets from parents or grandparents. Still others are funded using a disabled individual's own assets, or money received from a settlement. (Intended beneficiaries of special needs trusts may not create or revoke them, even if they are mentally competent and pour their personal assets into them.)[1]

Sometimes parents will establish a special needs trust, yet not fund it until they pass away; a will transfers an inheritance that would go to a disabled child into the trust. The special needs trust can also be designated as a beneficiary of this or that asset, be it a life insurance policy or something else.[1]

Which requirements must be kept in mind? Here are some basics. The beneficiary of a special needs trust cannot have more than $2,000 in assets in his or her own name (this limit does vary by state). He or she must also be younger than 65 when the trust is established.[2,3]

In a *self-settled* trust created with funds owned by the disabled individual, leftover trust assets are wholly or partly paid back to Medicaid after the beneficiary dies to cover its costs for caring for the beneficiary during his or her lifetime. There is no such requirement for *third-party special needs trusts* funded by parents or grandparents. Assets within these trusts may be transferred to anyone after the death of the first beneficiary.[1,2,3]

The trust document's language must express a purpose to provide "supplemental and extra care" beyond what government and social services agencies offer to the trust beneficiary (not basic financial support). The trust must also be without a Crummey clause: a proviso allowing future interest gifts to be treated as present interest gifts, thereby making them eligible for the annual gift tax exclusion.[3]

If you wish for your loved one to have a good quality of life for years to come, a special needs trust may prove instrumental in allowing you to provide it.

Feel free to reach out I am happy to answer any questions you may have.
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Citations.

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2 - online.barrons.com/article/SB50001424052748704526104578117223803459976.html [12/1/12]
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