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Estate Planning for Special Needs

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What is a Special Needs Trust?

- ▶ A trust established for the sole benefit of someone who is receiving means-tested public benefits (such as SSI or Medicaid) or who may need them in the future
- ▶ Assets that the individual is entitled to or has can be moved to a Special Needs Trust so that eligibility for government benefits can be maintained
- ▶ This type of trust is most often used when an individual receives money from a court settlement or inherits money or assets outright
- ▶ This type of trust requires that the State be the Primary Beneficiary for repayment of all money spent for the individual on Medicaid services
- ▶ A pooled trust is a type of Special Needs Trust

Supplemental Needs Trust

- ▶ A Supplemental Needs Trust can be created now as a stand-alone Revocable or Irrevocable Trust Agreement, or as a testamentary trust in a will that isn't triggered until death
- ▶ Supplemental Needs Trusts are best for “third party” money. This trust is great for parents to create to leave assets to their children.
- ▶ These trusts do NOT require that Medicaid expenses be repaid, and anything left in this trust can be devised to other beneficiaries at the death of the main beneficiary

Why are they needed?

- ▶ To make sure the individual is able to retain or access important needs-based benefits
- ▶ To protect from exploitation
- ▶ To assist with asset management and financial planning
- ▶ To supplement care needs

Some options for assets:

- ▶ Special Needs Trusts (if unavoidable)
- ▶ Supplemental Needs Trusts (during life or at death)
- ▶ ABLE accounts

What can the funds in these trusts be used for?

- ▶ Generally shouldn't be used on food or anything related to shelter (mortgage, rent, utilities) because these should be paid by the government benefits program.
- ▶ Medical and dental expenses not otherwise covered
- ▶ Special equipment like wheelchairs or specially-equipped vans
- ▶ Therapy or rehabilitation services
- ▶ Training and education
- ▶ Travel, which can include the cost of a companion
- ▶ Recreation and entertainment (summer camp, movies, social events, sports equipment)
- ▶ Electronic equipment and appliances, computers
- ▶ Payments for a companion or caregiver
- ▶ Legal or guardianship expenses
- ▶ Insurance
- ▶ Burial expenses

NOTE:

- ▶ Distributions should not be made directly to the Beneficiary. Beneficiaries cannot have the authority to revoke the trust or direct the use of its funds for their own support or maintenance.

Planning in Advance is Crucial- Do not wait!

- ▶ If you care for someone with special needs or who may receive government benefits in the future, proper estate planning is NOT OPTIONAL. There are very serious and easily avoidable consequences to not planning.
- ▶ Utilize a Supplemental Needs Trust for the transfer of assets.
- ▶ Have a care plan in case something happens to you.
- ▶ Determine whether your loved one can sign advance directives or may need a guardianship/conservatorship and make a plan for them.

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