

FOUNTAINHEAD FORUM FACT SHEET

SPECIAL NEEDS TRUST

WHAT IT IS

A special needs trust (sometimes called a "supplemental needs trust") makes it possible to appoint a trustee to hold property for the benefit of your disabled child after you're gone. A special needs trust provides for the needs of a disabled person without disqualifying him or her from benefits received from government programs such as Social Security and Medicaid.

WHY IT IS NECESSARY

A person loses SSI and Medicaid eligibility if he or she possesses more than \$2,000 in assets (the exact amount may vary by state - check with your attorney). This means a person with disabilities who receives money through an inheritance or a legal settlement will lose government benefits until the money has been spent.

Thus, in order to qualify for the Social Security Administration's Supplemental Security Income Benefits, ("SSI"), a disabled adult can't hold more than \$2,000 in assets, excluding a car and a home. SSI benefits, which average about \$400 per month, must be spent on food, clothing and shelter expenses.

Eligibility for SSI makes a disabled person eligible for food stamps and Medicaid, which pays medical expenses, nursing home care and mental health services. Medicaid eligibility also makes a disabled person eligible for many local community services, as well.

As these benefits add greatly to a disabled person's ability to care for him or herself, you wouldn't want to give your disabled child property that would disqualify him or her from receiving these benefits.

BEQUEATHS TO OTHER FAMILY MEMBERS

While it might seem like a good idea simply to leave a set amount of money to your disabled child's sibling or other close relative, with the understanding that the money will be spent on the disabled child, this often backfires:

- The money can fall prey to judgments or divorce settlements against the relative, or can be lost in bankruptcy.
- The relative can't be legally forced to use the money to benefit the disabled person.

- The relative to whom the money is left may be taxed at a higher rate than the disabled child or a trust.
- Should the relative die before the disabled child, the money would go to his or her heirs.

A special needs trust avoids these potential problems without putting an emotional strain on family relations. Monthly SSI benefits can be spent on food, clothing and shelter. Medicaid covers basic medical care. The special needs trust money can then go toward little extras that make your disabled child's life more rewarding, such as:

- Summer camp
- Airline tickets for travel
- Electronic video games
- Vitamins and grooming supplies

Special needs trust money can also be spent for final funeral and burial expenses.

HOW A SPECIAL NEEDS TRUST PRESERVES SSI AND MEDICAID ELIGIBILITY

Special Needs Trust allows funds to be used for anything not already covered by SSI or Medicaid. For instance, money from a Special Needs Trust cannot be used to pay the rent, because SSI already pays for housing. But money from a Special Needs Trust can be used to pay for furniture or a computer, because SSI and Medicaid do not cover these expenses. Other expenses a Special Needs Trust may fund include education, equipment, transportation, entertainment, travel, and out-of-pocket medical and personal care expenses.

A Special Needs Trust must be irrevocable. This means that once the money goes into the trust, the beneficiary cannot remove it. If the beneficiary has the ability to remove the funds, SSI and Medicaid will count the money in the trust as an asset belonging to the person with a disability.

SPECIAL NEEDS TRUST LANGUAGE

Each state (including Washington) has a Trust Act which describes and mandates the fiduciary duties a trustee has.

To be effective, a special needs trust document:

- Should be titled an "Irrevocable Special Needs Trust f/b/o Your Child's Name"
- Must have language that makes it impossible for your disabled child to demand that the trust funds be distributed
- Must give the trustee full discretion to spend the trust assets as he or she sees fit.
- Must make it clear that the trust isn't intended to be a basic support trust, but that the money is intended to be used solely to supplement benefits that are otherwise available to your child
- Should specify that the trust is to be administered so that eligibility for public government assistance isn't jeopardized

WHO CAN CREATE A SPECIAL NEEDS TRUST?

Self-Settled Special Needs Trusts

Any person with disabilities under age 65 may place assets in a Special Needs Trust to preserve Medicaid and SSI eligibility. However, a self-settled trust contains a 'payback' provision. This means that any money left in the trust at death must be used to reimburse the state for medical benefits before the leftover money can pass to heirs.

Third-Party Special Needs Trusts

Family or friends may establish a trust on behalf of a person with disabilities under age 65. The 'payback' rule does not apply to Special Needs Trust funded by third parties.

FUNDING A SPECIAL NEEDS TRUST

A special needs trust can be funded through a will or gifts from relatives and friends made directly to the trust instead of to your disabled child. Many special needs trusts are funded through "survivorship" or "second-to-die" life insurance policies that cover both parents and pay out on the death of the second parent.

When your disabled child is to receive an inheritance or money from a lawsuit, it's a good idea to set it up ahead of time in what's called a "self-settled trust," to avoid losing Medicaid eligibility. A parent, grandparent, legal guardian or court can establish the trust, with any money left after your child's death going to the state.

WHO CAN BE A TRUSTEE?

A person called a trustee manages the Special Needs Trust. The trustee is in charge of distributing funds to third parties to pay expenses for the person with a disability. Funds cannot be distributed directly to the person with disabilities. However, provisions may be drafted into the trust requiring the trustee to provide a regular accounting of how the trust money was spent.

Trustees should be chosen carefully. The trustee for a special needs trust for a disabled child could be:

- A trusted family member
- A bank or other financial institution, who will take a percentage of the trust assets for administering the trust
- A "pooled account trust" administrator (usually a financial professional), with anything left over after the child dies going to other disabled people
- A committee, with a financial planner and one or more family members working together as a team

- A family friend such as special needs teacher close to the child, or the family's minister
- A social worker