

What We Know

ARTICLES & INSIGHTS

ABOUT THE AUTHOR



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Estate Planning for Families with Special Needs – Know Your Options

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For families of relatives with special needs, estate planning may be especially important. Many individuals with special needs are unable to manage their assets and cannot live on their own without constant monitoring and supervision. Long-term planning is essential for ensuring that a relative with special needs has the proper care and resources to live a happy and fulfilling life.

Many individuals with special needs receive government assistance, often in the form of Medicaid or Supplemental Security Income (SSI). For these individuals, any assets they may receive from an improperly drafted will or trust could negatively impact their government assistance eligibility or the amount of money they receive in public benefits. For instance, an individual with special needs could lose their public benefits altogether because of what they receive from the trust.

One option for avoiding that situation and ensuring family members with special needs continue receiving all of their public benefits, is setting up a *supplemental needs trust*, which is sometimes called a *special needs trust*.

Supplemental needs trusts allow individuals with a physical disability, mental disability, or chronic illness to have an unlimited amount of assets held in trust for their benefit while continuing to receive all the government benefits they are entitled. Typically, this will work on a "sliding scale", meaning that the funds in the supplemental needs trust will cover the needs of the individual not covered by the government. For example, if Medicaid and SSI cover 40 percent of the expenses for an individual with special needs, the funds in a supplemental needs trust will cover the remaining 60 percent.

Family members must exercise great discretion in choosing a trustee—or, more helpfully, multiple trustees—to manage the trust. It may be beneficial to employ a team of professional trustees to manage different aspects of the trust and make sure that all of the bases are covered. This team of trustees may include a corporate fiduciary trustee (like a bank or trust company), a care manager, a financial advisor, and a lawyer. It is crucial that supplemental needs trusts are properly managed, and that the assets are invested wisely. A loss of assets may be extremely detrimental to the beneficiary, and

often these trusts have to last a lifetime. There is plenty of room for error without the proper guidance, and family members should carefully choose when deciding the terms of these trusts.

Supplemental needs trusts must be carefully drafted to ensure their effectiveness. These trusts require specific language to avoid conflicts with public benefits, and if properly written, the trust can only benefit the person with special needs. If you have a family member with special needs who would benefit from a supplemental needs trust, please contact an attorney familiar with creating these trusts who can offer guidance for establishing one.

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