

Disability Rights Nebraska

Protection and Advocacy for People with Disabilities

This is basic information and does not constitute legal advice.

Special Needs Trust Financial Planning for Adults with Disabilities

What is a trust?

A trust is a financial planning tool which gives a person the right to the use or benefit from property that is legally titled to another. It is essentially money or property which is held by one person (the trustee) at the request of another (the settlor) for the benefit of a third person (the beneficiary).

The person setting up the trust is called a settlor and they must put some sort of property into the trust (land, money, securities, etc.). The settlor must then choose someone to oversee the management of the trust – the trustee. The trustee then manages the trust property for the benefit of the person named by the settlor – the beneficiary. There are many different types of trusts available and each can serve a slightly different purpose depending on how it is set up, however the idea remains the same in each of them – property owned by someone is used for the benefit of someone else.

What are the effects of trust income on benefits eligibility?

SSI and Medicaid provide payments and extended services to persons with disabilities but only those whose assets do not exceed certain very low limits. Most trust income is considered an asset and as such, can prevent beneficiaries from receiving those benefits and services they need. Simple gifts of money or assets must be spent before eligibility for benefits can resume, so simply leaving money to a recipient can often do more harm than good. The answer then could be a special needs trust...

The Special Needs Trust

What is a special needs trust?

Trusts for persons with disabilities receiving needs-based public benefits (such as SSI and Medicaid) are known as supplemental trusts (as a supplement to the public benefits) or,

more commonly, special needs trusts. The law does not allow the use of trust funds for the basic needs of food, clothing, and shelter. If there are available trust funds for those “essential” needs, SSI and/or Medicaid funds will be denied for as many months as it will take to use up those assets. If the trust funds are not available for those “essentials” then SSI and Medicaid may not consider them as assets that must be spent. The trust allows the beneficiary to remain eligible for public benefits and maintain coverage for his/her “essentials” while still having access to money to cover their special needs. In order to accomplish this, a special needs trust must be drafted very carefully.

How is a special needs trust created?

The settler must very clearly indicate their intent to provide for the supplemental needs, and not the basic support of the person with a disability, as well as the absolute discretionary nature of the trustee’s authority to make distributions of the trust income to or for the benefit of a person with a disability. The key features of this type of trust are that the beneficiary can not have any control over the trust funds or disbursements and the intent to create such a trust must be very clear.

In certain instances, the grantor and beneficiary can be the same person (a self-settled trust), but the beneficiary can never serve as the trustee. In the case of a self settled trust, the person with a disability often has received a large sum of money from an inheritance or lawsuit. The self-settled special needs trust requires even more care in drafting and will likely require the addition of a clause which will reimburse the state for the SSI and Medicare expenditures made on behalf of the beneficiary upon their death.

How does a special needs trust work?

The special needs that are covered by special needs trust are the everyday items that can go a long way to ensuring that the happiness and comfort of a person with a disability are maintained. This type of trust can provide for a wide variety of goods and services that governmental benefits will not, including: medical and dental needs, equipment, training programs, education, treatment, rehabilitation, eye care, transportation (including vehicle purchases), spending money, radios, CD players, television sets, movies, trips, payments to companions, and a wide variety of other needs. This additional method of meeting the needs of a disabled individual while maintaining the governmental support of SSI and Medicaid, can greatly improve an individual’s quality of life.