

Planning for a Special Needs Child

A Case Study by Kim Rosenberg

PROBLEM: Dad and Mom are anxious about how to plan for a sensitive family situation: Along with two adult sons, they have a 20-year-old daughter who was born with cerebral palsy and intellectual disabilities. Daughter needs constant care and makes frequent trips to a variety of physicians. After she was born, Mom had to interrupt her career as a registered nurse to provide care for her and her two older brothers. Mom and Dad share their concern about what would happen to Daughter in the event of their death or disability.

SOLUTION: While living, families often supplement the governmental benefit income received by their family member, but they worry about the future when they are no longer there to provide such supplemental assistance. One planning approach is to create a special needs trust. A special needs trust can ensure that beneficiaries who are physically or mentally disabled will receive the benefit of property which is intended to be held for them. In addition to personal planning reasons for such a trust, there may be fiscal advantages as well, not the least of which is that, if properly drafted, such trusts may help prevent beneficiaries from losing access to essential government benefits.

Creating a special needs trust improperly could adversely impact the special needs beneficiary's eligibility for government benefits. Setting up the trust requires coordinated planning with an attorney who is knowledgeable in special needs planning and can draft an appropriate trust. It is vital that the trust language specify that the assets of the trust are intended to supplement, not replace, benefits available from governmental programs. Another very important consideration is selection of the trustee. This individual must be able to provide proper supervision, management and distribution of trust assets, and perhaps most importantly, be someone Mom and Dad trust to hold their child's best interests as highly as they do.

Funds for the special-needs trust can come from lifetime gifts, distributions from a will or a living trust, IRA or 401(k) distributions, a pension plan or other sources. However, these sources can create another problem. When a trust is funded, the amounts are considered gifts and may be subject to significant gift tax. For 2011 and 2012, the gift tax exemption is \$5 million so, in most cases, this should not be a concern. Unfortunately, no one knows what will happen beginning in 2013. The exemption could return to \$1 million with a top tax bracket of 55 percent, the current amount could continue, or some other amount might be chosen. It should be noted that the Congress is presently engaged in identifying additional revenue sources so it might be prudent to act while the current law is in place.

One approach that can greatly reduce the necessary gift is the use of life insurance on a parent or caregiver due to its flexibility and ability to create an "instant estate" at an affordable cost. Sometimes, this may be the only means by which the family can afford to provide adequate security after the death of the parents.

In this case, Dad, knowing that Mom’s nursing skills might be seriously eroded after so many years away from her career, had already obtained sufficient coverage on his own life to allow Mom to continue her role as caregiver should Dad predecease her. Mom and Dad also needed to keep premium outlays as low as possible. They selected a survivorship policy, owned by the special needs trust, to fund the trust after they were both gone. This type of life insurance covers two lives and pays an income-tax free death benefit to fund the trust at the second death. Generally, the premium for such a contract is significantly less than for a single life policy, making premiums affordable even after Dad is no longer there. In order to treat Sons fairly, Mom and Dad decided to leave the balance of their estate to them. They may also choose to obtain another survivor policy to create an additional legacy for Sons.

A properly executed special needs trust can help ensure:

- That there are sufficient funds to allow Daughter to continue her present lifestyle,
- That there is appropriate management of funds by someone Mom and Dad trust, and
- That Daughter’s eligibility for governmental benefits is not impaired.

The special needs trust helps provide confidence about Mom and Dad’s most valuable asset – their family.

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