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Special Needs Trusts and Achieving a Better Life Experience (ABLE) Accounts

Caring for a loved one with a disability can be taxing physically, mentally and financially. Two options available to help with the financial component of disability treatment are Special Needs Trusts (SNTs) and the more recently created, ABLE Accounts.

Medicaid benefits and Social Security Income (SSI) both have challenging components that can jeopardize an individual's ability to receive benefits. For example, having more than $2,000 in cash available, owning a house with a value of greater than $500,000 value, or owning more than one car may lead to refusal of Medicaid benefits for an individual. An unexpected $10,000 inheritance from a long-lost relative could spell disaster for a disabled person relying on Medicaid for expensive health care coverage. This is just one instance where the existence of a Special Needs Trust or an ABLE Account is particularly helpful.

How Special Needs Trusts Work

Special Needs (or Supplemental Needs) Trusts are generally created to avoid just such a situation. The Trust is set up to receive property for the benefit of a disabled loved one, either through inheritance, settlement or gift. A discretionary trustee generally has control over the Trust's property and will make all decisions regarding how the funds are disbursed. By taking the funds out of the disabled individual's hands, their eligibility for SSI and Medicaid is retained.

In addition, SNTs provide some financial protection for beneficiaries. For example, the trustee of an SNT is required to provide funds *only* for the well-being of the beneficiary. If there is a concern about undue financial influence or the inability of the beneficiary to manage funds, a SNT account provides assurance that the available funds are used solely for the care of the disabled individual. It also means that a spendthrift beneficiary does not have control over the assets.

SNT funds are further protected from creditors and claims against an estate. If a disabled adult child files for bankruptcy, gets divorced, or gets sued, assets left to that child are left vulnerable. A Special Needs Trust protects trust assets from just such a threat. There is also no limit to how much can be contributed to an SNT account.

On the downside of SNTs, assets remaining in the trust following the beneficiary's death may be subject to paying back Medicaid for expenses the beneficiary incurred during his or her lifetime.

SNT assets also may not be used to pay for the beneficiary's food or shelter or are subject to reducing or revocation of SSI and Medicaid benefits.

How ABLE Accounts Work

Oregon is one of only ten states that currently have active ABLE plans. There are two Oregon plans: The Oregon ABLE Savings Plan (the Plan) is only open to all state residents, while the ABLE for ALL Savings Plan (ALL Savings Plan) is available for US citizens resident to the United States. Both plans have an account limit of $310,000. The Plan can help take some of the burden of planning for expected costs off of families and provide a vehicle to hold up to $100,000 in assets for people with disabilities without restricting their access to Medicaid.

ABLE Accounts allow families to set aside up to $14,000 per year, per beneficiary for use towards education, transportation, housing, personal, support services, health care, legal fees, funeral and burial expenses, and other costs associated with living with a disability. Individuals are eligible for the plan if their significant, ongoing disabilities began prior to turning 26, their disability has either lasted a year or has an expected duration of more than one year, and meets certain Social Security restrictions. It is important to highlight, individuals do not need to be under the age of 26 to have an account, but their disabilities must have started prior to reaching the age of 26.

The $14,000 annual contribution to an ABLE Account may be made in addition to the $14,000 maximum individual gift tax exclusion allowed by the IRS. Earnings within the account are not taxed, although contributions are made using post-tax dollars and are not federally tax deductible. Holding an ABLE Account does not impact Medicaid eligibility. However, any funds remaining in the account after the beneficiary's death may be subject to reclamation by Medicaid.

Having a child with a significant disability, or being a person living with a disability can have a tremendous negative effect on a family or individual's financial security. Special Needs Trusts and ABLE Accounts are a couple planning tools that can help provide more support and independence in managing disabilities. For more information about Special Needs Trusts or ABLE accounts, please contact your estate planning attorney.

Allen Capital Management/Allen Trust Company can help you with questions regarding financial planning. If you are one of our clients, or think you might want to be, please contact us at (503) 292-1041 or via email at allison@allentrust.com.