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Professor Irwin Corey celebrated his 95th birthday at the Players Club.

Financial Trusts for Special Needs

How to care for a disabled child when you're gone

BY DAVID A. CUTNER, ESQ.

This article is the fifth in a series.

In recent articles, we have discussed the strict eligibility requirements for obtaining Medicaid benefits, and some of the legal techniques available to obtain benefits while, at the same time, preserving assets or income. As Elder Law attorneys, we are frequently asked whether there is anything we can do for disabled persons.

Sometimes these questions come up when an elderly parent has cared for a disabled child all his life, and the parent wants to make provision for the child's care after the parent has passed on. The parent is worried that, by leaving money to the child in her will, the child might lose his Medicaid or other benefits.

In other cases, someone has been severely injured and now needs care for the rest of his life. He is receiving Medicaid benefits, but is worried that a settlement or judgment in the lawsuit brought to recover compensation for his injury might prejudice his right to receive Medicaid in the future.

Fortunately, there are good answers to these questions. Yes, if you are disabled you can preserve your Medicaid or other benefits such as SSI and have access to money provided by a gift, bequest, or lawsuit recovery. The way to do it is with a Supplemental Needs Trust. There are several kinds to meet different circumstances.

Let's say you are disabled and on Medicaid. You inherit some money, or receive a lump sum settlement in a lawsuit. These amounts put you well above Medicaid eligibility limits (\$13,050 in resources for an individual). What to do?

The answer, provided that you are under 65 years of age, is: put the money into a First Party Supplemental Needs Trust. This type of trust can be created with your money by a parent, grandparent, court, or legal guardian. In order to preserve your Medicaid benefits, Medicaid must approve the trust and be named as the first beneficiary of the trust. This means that, when you die, if there is any money left in the trust, Medicaid is entitled to be paid back for the value of benefits it provided during your lifetime. For this reason, the First Party Supplemental Needs Trust is sometimes referred to as a "payback trust."

If you knew in advance that you were going to receive a gift or bequest, you might want to suggest to your benefactor that, rather than making a direct gift or bequest, it would make a lot more sense to create a Third Party Supplemental

Needs Trust. A Third Party trust can be created for a disabled person of any age, and it is not a “payback trust.” The creator of the trust can name his or her own beneficiaries. During your lifetime, the money in the trust can be used for your needs without prejudicing your right to receive Medicaid or SSI benefits. When you pass on, any money left in the trust will go to the beneficiaries named by the creator of the trust.

The Third Party trust can be created during the grantor’s lifetime, or in his will. So, if your “rich uncle” has concerns about parting with his money while he is still alive and unsure of his own needs, he can make a bequest in the form of a Supplemental Needs Trust in his will or in his lifetime trust.

When funds are held in a Supplemental Needs Trust, they cannot be counted by Medicaid as “resources” of the disabled person. The trustee can spend the funds held in the trust for goods and services that will benefit the disabled person. While the disabled person cannot obtain any cash from the trust, he can use his SSI for “cash” needs.

Supplemental Needs Trusts can make a huge difference in the quality of life of a disabled person. Whenever a disabled person receives or is in a position to receive Medicaid or SSI, the use of a Supplemental Needs Trust should certainly be considered.

David A. Cutner is a founding partner of Lamson & Cutner, P.C. (www.lamson-cutner.com), a New York City law firm that is devoted solely to the practice of Elder Law and protecting the rights of the elderly and disabled.

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