

Planning ahead

How to set up a trust to protect a child with disabling conditions **Interviewed by Sue Ostrowski**

When a family learns that a child has a disabling condition, planning for the child's financial future might not be the first priority.

But by starting early and avoiding some key mistakes, a family can ensure that their child has care for life, says Philip S. Kaufmann, partner and chair of Stark & Knoll's Estate Planning and Probate Group.

"Parents want to ensure that, after they die, their child has the highest quality of life possible," says Kaufmann. "The laws are such now that, if complied with, you can get the best of both worlds. You can provide for a child with a disabling condition and not have it affect the child's government benefits. But if you don't plan correctly, you will have serious problems."

Smart Business spoke with Kaufmann about how to leave money to care for a child with a disabling condition and ensure the child gets all the benefits to which he or she is entitled.

How should a family plan upon learning their child has a disabling condition?

The No. 1 thing is to deal with the emotional and family issues associated with the birth. But as soon as that is done, be proactive and look to the future. The more you plan now, the better it will be for the child in the future. You need to ask, 'How can the quality of life that I've begun to give this child continue to exist?' Then, position yourself to make the child eligible for future governmental benefits. Most benefits are not payable until the child is 18, but there are things you can do when the child is younger to make sure you won't have a problem later.

How can a parent leave money to care for a child with a disabling condition?

Many people think you can't leave anything to a child or the child will never get benefits. That's true if you give directly to the child, but if you do it through a trust for their benefit, there's no limit to how much you can leave; parents have the right to provide for a child's quality of life without the child forfeiting the ability to receive Supplemental Security Income (SSI) and Medicaid.

To provide quality of life without endangering such benefits, a parent can set up a Supplemental Needs Trust (SNT).



Philip S. Kaufmann

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To qualify for SSI, a person cannot have more than \$2,000 in countable resources, or \$1,500 for Medicaid, so parents should alert people not to set up custodianship accounts for the child. Under the law, those accounts become the child's at age 18 or 21, and will count against eligibility for government benefits.

As an example of how an SNT works, take, for example, a parent with three children. The parent may want to give each child \$100,000, but if one child has a disabling condition, the parent should, instead, put that \$100,000 into an SNT because for Medicaid and SSI purposes, that money doesn't count against receiving government benefits.

During the child's lifetime, that trust — with no cap on the amount that can be held in it — can be used to provide for anything not considered a necessity. It is not to be used for general support but for things that bring quality of life, such as vacations, computers, entertainment, etc.

How can a parent preserve benefit eligibility if a child with a disabling condition is approaching age 18 and there hasn't been any planning?

There are two types of Special Needs Trusts. The first type of trust is created by

a parent, and the money never goes directly into the hands of the child and it can be used for supplemental needs. If the child passes away, there's no requirement to pay the government back for benefits.

The second type of trust is a Medicaid Payback Trust. Let's say, for example, that a child reaches age 18 and grandma had set up a custodial account which now has \$100,000 in it, under the law, that is a resource because it belongs to the child.

Now what? You want to apply for Medicaid and SSI, but the child has \$100,000 in his name. Here, the best option is a Medicaid Payback Trust, which removes the money from the control of the child to create a trust for supplemental needs. However, there's a big negative to this type of trust. Assume the trust starts with \$100,000, and when the child passes away, there is \$25,000 left. If, during the child's lifetime, Medicaid has provided benefits, Medicaid gets every remaining dollar up to the amount of benefits paid over the child's lifetime.

Oftentimes the child has a substantial amount of money due to a personal injury settlement. In that case, a lot of money may go back to Medicaid after the death of the child, but it's better than spending the money down to zero before the child gets government benefits.

What information does a family need to start planning with an attorney?

First, they need to know in general what their intent is, who may be appointed as trustee and what their goals are. Second, financial information is critical, including the parents' assets; whether the child has money in his or her own name; and what benefits the child may be receiving.

Third, the attorney needs evaluations that have been done, such as a plan done by a county board or a special education plan, information on the child's background, what the condition is, what the medical report shows and what the prognosis is.

By planning early, a family can ensure that a child with a disabling condition is well taken care of for the duration of his or her life. <<

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