

## Special Planning for Special Needs

*Edge Magazine*  
08.2019

Just as caring for a family member with special needs requires extra effort, so does estate planning for families with a special needs beneficiary. There is more to consider than nominating a guardian to care for their physical well-being. Careful planning is necessary to properly provide for the financial well-being of a special needs beneficiary.

Government assistance programs generally provide the most significant role in providing financial support for individuals with disabilities. Programs such as Medicaid, Medicare, Social Security Disability Insurance, Supplemental Security Income, and Veteran's Benefits may provide assistance for basic living expenses and limited health care coverage. However, certain of these programs are means-tested; that is, eligibility for benefits is based in part on the value of the applicant's assets. If their assets exceed the allowable amount, the applicant will be required to spend-down their assets before they are eligible to receive government benefits. If they have already qualified and are receiving government benefits, but subsequently receive an inheritance, an otherwise well-intentioned benefactor may inadvertently cause the beneficiary to lose their eligibility for benefits.

Parents and grandparents who want to avoid causing a break in benefits for their special needs beneficiary have a better alternative than disinheriting them or leaving assets to another family member and hoping he or she will use the assets to benefit the special needs individual. Instead, they should establish a third-party special needs trust.

### ATTORNEYS

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### PRACTICE AREAS

Estate Planning and  
Administration

Tax

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A third-party special needs trust is a trust that is established by someone other than the beneficiary to hold assets that never belonged to the beneficiary, such as assets that parents or grandparents own and want to pass at their death to their descendants. A responsible trustee is named to manage, protect, and expend the assets for the special needs beneficiary in a way that supplements expenses beyond what government benefits provide. The trustee is specifically directed not to supplant the beneficiary's government benefits. As long as the beneficiary is not able to directly access the funds in this type of trust, the trust will generally not be counted as an available resource for purposes of determining or maintaining eligibility for government assistance. Additionally, assets remaining in the trust at the beneficiary's death may be protected from Medicaid estate recovery.

Special needs trusts are valuable tools that may be incorporated into an estate plan to allow for protection of benefits, while also enhancing the quality of life for a beneficiary with special needs.

*To view this article in the original publication please visit: <http://edgemagazine.com/special-planning-for-special-needs/>*