

Using Trusts to Improve Quality of Life for Individuals with Disabilities

Q: My son has cerebral palsy. He is employed at a sheltered workshop and receives SSI and Medicaid benefits. He wants to move into his own apartment, but I'm not sure he realizes how difficult it might be to live on his own. Is there any way I can give my son money without causing him to lose his benefits?

A: Yes. Certain trusts can be used to supplement your son's benefits. A trust designed to supplement his benefits and meet his special needs will not affect your son's eligibility if it is properly drafted.

Q: What does the law consider "special needs"?

A: Basically, "special needs" items are those not covered by your son's government benefits, including the cost of a trip, special equipment, training or education, transportation expenses, and entertainment such as books, movies or compact discs.

Q: Are there any restrictions on using money placed in such a trust?

A: Yes. The trust funds cannot be used to provide basic food or shelter for your son. In addition, the money cannot be controlled by or given directly to your son. Your son can, however, be given a spending allowance as long as it would not affect his benefit eligibility.

Q: Do I give the money to my son and then have him establish one of these trusts?

A: There are two types of trust in particular which can be used: a Medicaid Payback Trust or a pooled trust. Either type of trust can be established by a disabled person's parent, grandparent or legal guardian or by a court. Your son can establish the trust if it is a pooled trust.

Q: Can my son be a trustee?

A: No. Your son cannot act as trustee. An individual or institution can be appointed trustee of a Medicaid Payback Trust. A pooled trust must be administered by a non-profit corporation, but a trust advisor can be designated to act as a liaison between the corporation and your son.

Q: My son is 25 years old. Is he still eligible for such a trust?

A: A Medicaid Payback Trust can be established for the sole benefit of a disabled individual under age 65. The trust will not affect your son's eligibility for benefits after he turns 65 as long as he is still disabled. There are no age restrictions on pooled trusts, but a person age 65 or over must be considered "disabled" as that term is defined under Social Security law.

Q: What happens to the money when my son dies?

A: A Medicaid Payback Trust must provide that the State of Ohio will be reimbursed for any Medicaid benefits paid on behalf of your son. Funds remaining in a pooled trust can be repaid to the State at your son's death or distributed to the non-profit corporation administering it.

Q: What happens if there are not enough funds remaining in the trust at my son's

death to repay the state?

A: The state can recover monies it has paid out on your son's behalf during his lifetime to the extent that there are funds remaining in trust at his death.

Q: Are these the only types of trust available to help my son?

A: There are other forms of trusts depending on your son's particular circumstances and who is funding the trust. Consult your attorney in order to select the form of trust most appropriate to your particular needs.

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