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**TIPS FOR HELPING FAMILIES WITH
SPECIAL NEEDS**

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This article examines the unique planning requirements of families with children, grandchildren, or other family members (such as parents) with special needs. There are many misconceptions in this area that result in costly mistakes in planning for the special needs beneficiaries. It is therefore very important to ensure that our clients understand all their options.

Special needs individuals include those who receive SSI (Supplemental Security Income), Medicaid health insurance, or other needs based programs.

COSTLY MISTAKE NUMBER ONE: Disinheriting the child.

Many disabled people rely on SSI, Medicaid or other government benefits to provide food and shelter. Some people with special needs children may have been advised to disinherit their disabled child - the child who needs their help most - to protect that child's public benefits. But these benefits rarely provide more than basic needs. And this "solution" does not allow you to help your child or other disabled love one after you becomes incapacitated or pass away. When a child requires, or is likely to require, governmental assistance to meet his or her basic needs, parents, grandparents and

others who love the child should consider establishing a Special Needs Trust.

Planning Tip:

It is unnecessary and in fact poor planning to disinherit a special needs child. People with special needs beneficiaries should consider a Special Needs Trust to protect that beneficiary's public benefits and care for the special needs beneficiary during your incapacity or after your death.

COSTLY MISTAKE NUMBER TWO: Procrastination

Because none of us knows when we may die or become incapacitated, it is important to plan for a beneficiary with special needs early, just as it is important to plan for other dependents, such as minor children. However, unlike most other beneficiaries, a child or adult with special needs may never be able to compensate for a failure to plan.

A minor beneficiary without special needs can obtain more resources as he or she reaches adulthood and can work to meet essential needs, but a child or adult with special needs may never have that ability.

Planning Tip: Parents, Grandparents and other loved ones of a special needs beneficiary face unique planning challenges when it comes to that special needs beneficiary. This is one area where you simply cannot afford to wait to plan.

COSTLY MISTAKE NUMBER THREE: Failure to coordinate a planning team effort

It is critical to include a planning team: an attorney who is experienced in this estate planning area; a life insurance agent who can ensure that there will be enough money to maintain the benefits of a Special Needs Trust for the special needs beneficiary; a CPA who can advise on the Special Needs Trust tax return; an investment advisor who can ensure that the Special Needs Trust fund's resources will last for the special needs beneficiary's lifetime; and any other key advisors that may support the goals of the Special Needs Trust going forward.

Planning Tip: Special Needs planning dictates that the client's advisors work together to ensure there are sufficient trust assets to care for the Special Needs Trust beneficiary throughout his or her lifetime.

COSTLY MISTAKE NUMBER FOUR: Ignoring the special needs when planning for the child's benefit.

Planning that is not designed with the beneficiary's special needs in mind will probably render the beneficiary ineligible for essential government benefits. A properly designed Special Needs Trust promotes

the special needs person's comfort and happiness without sacrificing the person's eligibility for needs based programs, such as SSI and Medicaid.

Special needs can include medical and dental expenses, annual independent check-ups, necessary or desirable equipment (for example, a specially equipped van), training and education, insurance, transportation, and essential dietary needs. If the trust is sufficiently funded, the disabled person can also receive electronic equipment and appliances, computers, vacations, movies, payments for a companion, and other self-esteem and quality of life enhancing expenses: the things you now provide to your disabled loved one.

Planning Tip: When planning for a person with special needs, it is critical that you use a Special Needs Trust as the vehicle to pass assets for the benefit of that person. Otherwise, those assets may disqualify the disabled person from public benefits and may be available to repay the state for the assistance provided to the person with special needs.

COSTLY MISTAKE NUMBER FIVE: Creating a "generic" Special Needs Trust that does not fit the disabled beneficiary.

Some Special Needs Trusts are drafted as a generic one size fits all, or with unnecessary lack of flexibility. Although an attorney with some knowledge of the area of Special Needs Trusts can protect almost any trust from invalidating the disabled beneficiary's public benefits, many Special Needs Trusts are not customized to the particular disabled beneficiary's needs. Accordingly, the beneficiary fails to receive the benefits that the beneficiary's family provided when they were alive.

Another frequent mistake occurs when the Special Needs Trust includes a "pay-back" provision to Medicaid rather than allowing the remainder of the trust to pass to other beneficiaries upon the death of the special needs beneficiary. While the "pay-back" provisions are necessary in some certain types of Special Needs Trusts, an attorney who knows the difference can save your family a great deal of money.

Planning Tip: A Special Needs Trust should be customized to meet the unique circumstances of the disabled beneficiary and should be drafted by a lawyer familiar with this area of the law.

COSTLY MISTAKE NUMBER Six: Failure to Properly "Fund" and Maintain the Plan

When planning for individuals with special needs, it is absolutely critical that there are sufficient assets available for the special needs beneficiary throughout his or her lifetime. In many instances, this requires utilization of a funding vehicle that can ensure liquidity when necessary. Oftentimes, permanent life insurance is the perfect vehicle to fund a Special Needs Trust.

Also, because this is an ever-changing area, it is important that clients revisit their funding plans frequently to ensure that it continues to meet the needs of the special needs beneficiary.

Planning Tip: Clients should consider permanent life insurance as the funding vehicle for special needs beneficiaries, particularly when the special needs beneficiary is young, given the often staggering costs anticipated over that beneficiary's lifetime.

If you may be subject to the estate tax, consider having an Irrevocable Life Insurance Trust own and be the beneficiary of your life insurance policy. The Irrevocable Life Insurance Trust would name the Special Needs Trust as the beneficiary of the life insurance proceeds. Alternatively, in a no estate tax situation, you may wish to consider naming your revocable living trust as the beneficiary of your life insurance policy, which would then name the Special Needs Trust as the beneficiary of the life insurance proceeds.

COSTLY MISTAKE NUMBER SEVEN: Choosing the Wrong Trustee

During your life, you can manage the Special Needs Trust by naming you as Trustee of the trust. When you are no longer able to serve as the Trustee of the Special Needs Trust, you have made clear in the Special Needs Trust document that you choose successor Trustees who will serve according to the instructions you have provided to them. You may choose a team of advisors, a family member and/or a professional Trustee. Whoever you do choose as Trustee, it is crucial to keep in mind that the Trustee must be financially savvy, well-organized and, of course, ethical. If you doubt a family member's abilities to act as a Trustee, you should consider using a professional Trustee. If you are concerned that a corporate Trustee might be too impersonal, you can always name a friend or family member to be a Co-Trustee.

COSTLY MISTAKE NUMBER EIGHT: Failing to Invite Contributions from Others to the Special Needs Trust

A key benefit of creating a Special Needs Trust now is that the beneficiary's extended family and friends can make gifts to the Special Needs Trust or remember the Special Needs Trust as they do their own estate planning. For example, the family members and friends can name the Special Needs Trust as the beneficiary of their own assets in their revocable living trust or Will, and they can also name the Special Needs Trust as a beneficiary of life insurance or retirement benefits. (As to military survivor benefit plans, see below.)

Planning Tip: Creating a Special Needs Trust now allows others, such as grandparents and other family members, to name the Special Needs Trust as the beneficiary, or one of the beneficiaries, of their own estate planning.

COSTLY MISTAKE NUMBER NINE: Relying on Siblings to Use Their Money for Your Child's Special Needs Benefit

You may be considering relying on your other children to provide for your special needs child from their own inheritances. This can be a temporary solution for a brief time, such as during a brief incapacity if your other children are financially secure and have money to spare. However, it is not a solution that will protect your special needs child after you have passed away or when your other children have their own expenses and financial priorities.

What if the inheriting sibling divorced, lost a lawsuit or incurred unanticipated bills? The inheriting sibling's spouse or creditor may be entitled to a large portion of that sibling's assets and the money is no longer available to take care of the special needs child. What if the inheriting sibling dies or becomes incapacitated while the child with special needs is still living? Will his or her heirs care for your child with special needs as thoughtfully and completely as your child's siblings did?

Siblings of a special needs child often feel a great responsibility for that child and have felt so all of their lives. If you create a Special Needs Trust, it lessens the burden on all of your children and supports a loving and involved relationship among them.

Also, consider that the law requires the special needs beneficiary to report to Social Security and to Medicaid money or other assets the special needs beneficiary receives from outside sources. This requirement allows Social Security and Medicaid to consider whether your special needs beneficiary had received enough money to disqualify him or her from Social Security and Medicaid.

SSI payments are offset by income received by the disabled child. Any unearned income over \$20 offsets SSI income dollar-for-dollar. Once SSI income reaches zero, SSI is lost and, in most cases, Medicaid is lost. As a result, giving the special needs child money outright may very well do more harm than good.

However, a Special Needs Trust is operated such that your special needs beneficiary typically does not directly receive money paid to the beneficiary by the Special Needs Trust Trustee - rather the money is usually paid to others FOR your special needs beneficiary. For example, your special needs beneficiary wants to fly to Florida to visit a relative. The SpecialNeeds Trust Trustee would buy the ticket for the beneficiary, rather than give the beneficiary the money to purchase the ticket himself or herself.) This way, your child has the plan ticket, and does not risk losing SSI and/or Medicaid benefits.

COSTLY MISTAKE NUMBER TEN: Failing to protect the child with special needs from predators

A Special Needs Trust has a named Trustee to manage the special needs beneficiary's assets and to pay the income and assets for purposes that

supports the special needs beneficiary. If a financial predator were to try to take advantage of your special needs beneficiary, that financial predator would have to deal with the Trustee of the Special Needs Trust; and would likely get no where.

MILITARY SURVIVOR BENEFIT PLAN AND THE DISABLED CHILD

Many military families with disabled children face a dilemma when they retire - whether to choose the Survivor Benefit Plan (SBP) or not.

SBP will pay up to 55 percent of the military member's retirement pay to a spouse and/or a dependent child. The member can also select a lesser benefit at less cost. The military member can select between coverage for a spouse only; a spouse and children; or children only.

In addition to or in place of SBP, a military member can provide an array of benefits for a child with a disability. In most cases, a disabled child over age 18 can be designated as an Incapacitated Dependent (DD Form 136-5) and be permanently eligible for military post privileges as well as TriCare health benefits.

However, military benefits do not include supported living programs or vocational opportunities, and the SBP and TriCare benefits are often not enough to support a child with a disability, so the family looks to other programs.

If the disabled child is over 18 and has assets of less than \$2,000 and a minimal income, the disabled adult child will usually be eligible for Supplemental Security Income (SSI) and Medicaid. Although SSI only pays \$674 per month and Medicaid may seem to duplicate TriCare, these programs can be critical to the long term support for a disabled child.

If a disabled child is living independently, SSI pays for food and shelter while Medicaid pays for supported living programs, day programs, job coaching and other supports. As a result, TriCare does not provide the same benefits as Medicaid; but they do compliment each other for the disabled child.

SSI payments are offset by income received by the disabled child. Any unearned income over \$20 offsets SSI income dollar-for-dollar. Once SSI income reaches zero, SSI is lost and, in most cases, Medicaid is lost. If the military member dies having chosen SBP for his or her child, the disabled child receives 55 percent of the member's income. If that 55 percent of retirement pay amounts to more than \$674.00 monthly (the 2009 benefit amount), the disabled child will lose SSI and Medicaid health care benefits.

In Virginia and many other states, if the SBP exceeds \$2,022 per month, then all supported living assistance, job coaching, respite care and other services provided under Medicaid "waiver" programs are lost.

An example is a person who has lived in a group home for 18 years and attended a day program for people with disabilities. His only income

was SSI, and those benefits paid by Medicaid - the group home and the day program. Then his father, a retired Navy officer, died. The adult son began to receive SBP in the amount of \$2,030 per month. This SBP made him ineligible for Medicaid. The private pay for the programs was \$8,600 per month - and the SBP could not cover that. He lost his group home placement as well as his day program.

I very much hope a legislative fix is made to this problem, thus allowing the SBP to be paid to a Special Needs Trust. Unfortunately, so far no legislative efforts to fix this problem have been successful.

Should you have any questions or comments, please feel free to contact me.