

There's More than One Plan to Provide for Disabled Grandchildren

By Wesley E. Wright and Molly Dear Abshire, as published in the Houston Chronicle Senior Living Section on March 24, 2010.

Grandparents who are interested in providing an inheritance for grandchildren who have special needs should be careful how this is accomplished.

Depending on the severity of a grandchild's medical condition, it may be the grandchild is eligible for government benefits now or may be eligible in the future.

Most government based benefits provided to persons who have disabilities are means tested.

That means, particularly for Medicaid programs, that the beneficiary's countable resources must remain below a \$2,000 limit which is determined at 12:01 a.m. as of the first day of each month.

Income limitations also tested and will vary depending on the program involved. If the beneficiary is over the resource limit at the time of determination, the person loses the Medicaid benefit until the resources are properly dealt with.

Let's say a grandchild is on Supplemental Security Income (SSI), which is a federal cash assistance program that provides cash assistance for individuals with special needs who meet eligibility requirements.

The funds are meant to provide for food and housing and the program is administered by the Social Security Administration. Texas is an SSI/Medicaid linked state meaning that if you qualify for SSI, then you automatically qualify for Medicaid. Medicaid, in general, provides for medical assistance to those who qualify.

For many children who have disabilities Medicaid benefits are an absolute life saver, considering that if the individual requires frequent and /or lengthy admissions to hospitals, the costs can be staggering and few people are able to pay on their own.

It is imperative then that grandparents be wise about how money is given for the use of grandchildren in light of Medicaid limitations.

Grandparents should beware of giving money directly to a grandchild in these circumstances. If the grandparent wishes to leave an inheritance to the grandchild, then the grandparent should prepare a Will that includes a trust that is not set up and funded until the grantor, the grandparent in this case, passes away.

This type of trust is generally referred to as a testamentary special needs trust (SNT). This type of trust must be written in conformity with the laws pertinent to the state where the grandchild resides.

Special needs trusts allow assets to be sheltered and protect the grandchild from losing benefits.

Another type of trust that may help in these circumstances is referred to as an intervivos special needs trust. Let's say that the parents have been approached by other family members such as grandparents, siblings, aunts or uncles indicating a desire to leave money upon their death for the benefit of the child who has a disability but they would prefer to avoid the cost of having a special needs trust drafted in their own wills.

The parents could accommodate these requests by creating an intervivos special needs trust which is a trust, which is a trust that comes into being during the life of the grantor. It has to be funded with at least a small amount of money and does not have to be fully funded during the life of the grantor.

The other family members then may give the inheritance in their Will naming the intervivos trust that already is in existence. The trust also may be written to allow insurance proceeds and gifts by people while the donor is still living.

These types of trusts are used in conjunction with very complicated laws and rules.

It is important then to seek the advice of an attorney who is very experienced in this type of law.