

Do You Need a Supplemental Care Trust in Your Estate Plan?

By Wesley E. Wright and Molly Dear Abshire, as Published in the Houston Chronicle on Thursday, October 15, 2020

If you have a family member with special needs or who is likely to need special care, you may be wise to include a supplemental care trust in your estate plan. The first important step is to make a Will. Without one, your house or other assets may pass to people other than those you intend. Even if the Texas inheritance laws would result in the same people inheriting your estate as whom you would name as beneficiaries in your Will, it is less cumbersome and less costly to probate a Will than it is for a judge to determine who inherits your estate when there is no Will.

If your spouse is elderly or has been diagnosed with dementia or a debilitating illness such that she will need the care of a skilled nurse at home or in a nursing home, she may need Medicaid to pay for that long-term care. If your minor or adult child has special needs, he may receive or need to apply for benefits. To be eligible for benefits such as Medicaid or Supplemental Security Income (SSI), a person cannot have more than \$2,000 in countable assets.

Leaving your estate or a portion of it outright to a family member who receives or is expected to need government benefits could have a significant and detrimental effect on his eligibility. In fact, your good intention of leaving something behind to ensure your family member is cared for after your death may have the opposite effect—it may cause him to lose those supports so desperately needed.

Instead, to protect your loved one, you should consider leaving your estate (or whatever portion you wish) in a supplemental care trust for his or her benefit. A properly drafted supplemental care trust will not count against the beneficiary's eligibility for needs-based government benefits such as Medicaid or SSI. In other words, the trust itself is not a countable asset for purposes of eligibility for such programs and can be the difference between having many supports and services and having none.

Also known as a supplemental needs trust, a supplemental care trust is intended to enhance the quality of life by supplementing the basic support a person receives from government sources. A supplemental care trust can pay for goods and services such as clothing, entertainment, Internet service, travel, therapies, and care manager services.

A supplemental care trust in your Will is also advantageous because it saves your assets for your family. Upon the death of the beneficiary, the funds remaining in the trust will pass according to your Will. For example, if the trust was for your child, the remainder could pass to that child's descendants, or to your other children. If, on the other hand, you leave assets outright to your adult child, she could establish her own supplemental needs trust (if under the age of 65), but assets left in the trust upon her death would have to be used to reimburse the state for all Medicaid expenses paid on her behalf.

If you do not anticipate that a loved one will need or benefit from a supplemental care trust, yet upon your death your spouse or a child has a change in circumstances, such a trust is still

possible. Your Will could actually be changed to create such a trust, even after your death. However, if you already know your family member will benefit from a supplemental needs trust, it is best to plan for that now. This is a specialized and complex area of law; such estate planning should be undertaken by an attorney who practices special needs law or elder law.

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