

Elder Law: Special Needs Trusts and Public Benefits Examined

Dr. Temple Grandin came to Houston recently and participated in the Temple Grandin Conference sponsored by Bank of Texas, Cadence Bank and Wright Abshire, Attorneys. The conference was held at St. Luke's United Methodist Church.

Dr. Grandin as you may know was the subject of the inspirational HBO movie called, *Temple Grandin* and was based on her life story. At the conference she spoke on autism and future employment for those who have autism. Wesley E. Wright of Wright Abshire, Attorneys, presented on special needs trusts.

As Dr. Grandin stated at the conference, autism covers a broad spectrum, from those who are extremely high functioning and may work in Silicon Valley to the other end of the spectrum in which you will find persons who are severely autistic and non-verbal.

For those who are disabled, to the degree that they may need Medicaid or other means tested public benefits, now or in the future, special needs trusts are a way of uplifting the life and monetary care for the person without jeopardizing the loss of eligibility for those programs.

The next thing to understand is that there are various sources of money to provide for a potential special needs trust beneficiary and all are good but some are better than others.

Let's say that a grandparent wants to leave money to his granddaughter who is disabled and receiving Medicaid.

Should the grandparent leave the assets directly to the granddaughter in his Will? No, it would be better if he set up a testamentary special needs trust in his Will so that the gift would be insulated within the trust. If drafted correctly, the trust assets would not be considered a countable resource which otherwise would jeopardize the granddaughter's public benefits.

If he left the money directly to the granddaughter in his Will, then the money would be treated differently by Medicaid because the money "vested" in the granddaughter and actually became the owner of the money upon the death of the grandfather.

In this case, the money would then need to be self-settled into a first party trust and be drafted to include a federally required payback provision in the trust. This means that the trust, upon the death of the granddaughter, would be required by Medicaid to pay the State of Texas back to the extent that Medicaid benefits had been paid out on the granddaughter during her lifetime.

The previously mentioned testamentary trust would, in contrast, be considered a third party trust and require no pay back. Any money left at the death of the granddaughter would pass to contingent beneficiaries who had been named by the grandfather.

You may email your questions to education@wrightabshire.com or visit our website at www.wrightabshire.com. Wesley E. Wright and Molly Dear Abshire are attorneys with the firm Wright Abshire, Attorneys, P.C., with offices in Bellaire, the Woodlands, and Carmine. Both Wright and Abshire

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