

Trust Protects Autistic Children

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The Autism Society designates April as Autism Awareness Month to highlight the growing need for concern and awareness of the complex developmental disability called autism. One in 88 children in America is diagnosed with autism. Though children don't outgrow autism, it is treatable with early diagnosis and intervention.

Caring for a child with autism can be overwhelming emotionally, physically and financially. Estimates for the lifetime costs of caring for an autistic child ranges from \$3.5 million to \$5 million.

For children with developmental disabilities Medicaid benefits are an absolute life saver, but it's often not enough to cover expenses associated with raising an autistic child. The deficit could hinder the child's quality of life.

When someone considers giving money to an autistic child, whether in the giver's lifetime or when they pass away, it must be done in such a way that won't jeopardize the child's eligibility for public benefits.

One way this can be accomplished is to establish a special needs trust or SNT, which allows, for instance, a grandparent to make a penalty-free transfer of assets to his or her grandchild without risking the child's Medicaid coverage.

Some SNTs include self-settled trusts and third-party settled trusts. The first type of SNT is created with the beneficiary's own funds, such as with a personal injury award. The second type is created with funds from a third party, like a gift in trust from grandparents, or via a trust in a Will.

The goal of an SNT isn't to supersede public benefits. For example, an SNT doesn't provide for basics like food, shelter and medical costs that are covered by Medicaid. It is meant to supplement the costs of care of an individual with special needs, sometimes called "extras." These include:

- Medical needs not covered by Medicaid
- Education
- Trips/vacations
- Social needs
- Recreational activities – such as therapeutic equestrian program
- Clothing/shoes

When an autistic child meets all of the requirements for Medicaid except for having too much in the way of assets and income, an elder law attorney can help the individual by establishing a special needs trust.

It's important to understand how an SNT works to improve the quality of life of a disabled person while maintaining vital government benefits.

For example, an SNT is counted as a resource if the beneficiary can revoke the trust or demand a distribution, or if the trustee can make distributions to the beneficiary and the beneficiary's own assets are in the trust.

Testamentary SNTs are created during the lifetime of, say, the child's grandparents, who wish to leave an inheritance to the grandchild when they die. A grandparent should prepare a Will including a trust, conforming to the state laws where the child resides, but that's not set up or funded until the grantor (grandparent) passes away.

Another type of trust that shelters and protects assets in order to maintain public benefits is referred to as an *intervivos* SNT. This trust allows other family members besides the parents to leave money for the benefit of the child upon their death without the additional cost of including an SNT in their own Wills.

The complexities of creating the right SNT and maintaining one as trustee for a disabled child can be overwhelming. It's wise to seek the advice of an experienced elder law attorney to help you with the difficult aspects of drafting SNTs.