Lifetime of Hope

LIFETIME PLANNING

Potential Planning Pitfalls

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Planning for families having a member with special needs requires a specific understanding of the needs and resources of the family member with special needs as well as how available resources can be impacted if a proper plan is not in place. As such, the assistance of advisors with experience planning for individuals with special needs should be utilized to ensure that any estate plan or financial strategy implemented aligns with the goals and objectives of the family. Following are some examples of planning mistakes that often occur when families with a person with special needs fail to adequately plan.

1. **Failure to Plan.** Often, caregivers of individuals with special needs spend a significant amount of time, energy and money managing the day-to-day needs of their family. Considering the additional stress and demands placed upon families with a loved one with special needs, it is understandable that these families often delay developing a formal plan until "later." However, without a plan, the person with special needs could become disqualified from government benefits or may have insufficient assets to provide for his/her needs.
2. **Distribution Scheme.** Even if a plan is put in place, often the distribution provisions included in wills or trusts unintentionally jeopardize the support of the person with special needs. If assets are left to the individual with special needs outright or if assets can be used to provide food or housing, his/her eligibility for government benefits could be compromised.
3. **Improperly Drafted Special Needs Trust.** To ensure an individual with special needs maintains access to government benefits, it is important that assets are left to a special needs trust, instead of to the individual outright. A special needs trust can provide for a beneficiary's ongoing needs in a manner that will not disqualify him/her from available government benefits. However, if the special needs trust is not drafted properly, assets of the trust could be considered a resource of the person with special needs, frustrating the purpose of the trust.
4. **Funding Special Needs Trust with Wrong Assets.** Since special needs trusts are used to provide a beneficiary with support not otherwise provided through government benefits, funding the trust with the wrong type or amount of assets could impact the beneficiary's ongoing care. For example, where a trust will be funded with life insurance, consideration should be given to the type of product and determining the appropriate insured. Since the beneficiary's need is often permanent, term insurance may not be appropriate. Though insurance is often considered for the primary income earning spouse, where the other spouse is the primary caregiver of the beneficiary, insurance on the caregiver spouse should also be considered.
5. **No Letter of Intent.** Caregivers of individuals with special needs use wills/trusts to provide direction to a fiduciary regarding the individual's assets and financial support. However, a will/trust will not provide fiduciaries and successor caregivers with the necessary information to help maintain the individual's day-to-day needs. A letter of intent is a powerful tool to educate others on the person with special needs' daily routines, behaviors, medical background, ongoing medical needs, and most importantly, the caregiver's expectations and wishes for the individual. Failing to provide such information often puts the successor caregivers in the impossible position of making decisions regarding every aspect of the individual's life with no direction or background information.
6. **No Plan for Finances.** Planning for a family with a person with special needs often requires a "two generation" plan. Failing to engage in the planning process regarding finances may result in the caregivers of an individual with special needs underestimating the assets and income that will be required for the person's support. Engaging in the planning process can enable the caregivers of a person with special needs to implement a strategy to provide for their own retirement income as well as the lifelong support of the individual with special needs.
7. **Failure to Coordinate Beneficiary Designations with Estate Plan.** An otherwise appropriate estate plan will be ineffective if beneficiary designations are not reviewed and updated to coordinate with the plan. If a beneficiary designation leaves assets to a person with special needs outright, the individual's eligibility for government benefits could be affected until those assets are depleted. Beneficiary designations typically control the distribution of qualified plans, IRAs, life insurance and annuities.

8. **Wrong Fiduciaries.** Naming the right team of individuals to manage an individual with special needs' assets and care may be the most important component of the plan. Designated trustees and advisors should have experience with special needs trusts and should be sympathetic to the circumstances of the person with special needs. Building a team of fiduciaries to support the individual's day-to-day needs will be crucial to protecting his/her lifelong support.

9. **Failure to Coordinate Plan with Family.** Failure to consider the impact of another family member's estate plan could jeopardize the person with special needs' eligibility for government benefits. If family members or other benefactors are not alerted to the risks of leaving assets outright to an individual with special needs, a generous gift or bequest could unintentionally terminate the person with special needs' access to government benefits.

10. **No Guardianship.** When a person reaches the age of majority, he/she is considered an adult and therefore will be able to make his/her own decisions regarding care and asset management. Individuals who have suffered disability often have guardianships established for them; however, it will be necessary to appoint a legal guardian to act on their behalf upon the person reaching the age of majority. Without such guardianship, a caregiver may lose the right to control decisions pertaining to the person with special needs' health and finances and may lose access to the individual's health information.