

## **SPECIAL NEEDS TRUST PLANNING QUESTIONNAIRE**

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**As often is the case, attorneys view creation of a special needs trust as a panacea. Placing all of a disabled individual's assets into an irrevocable trust, however, is much more complicated than filling in the blanks on the trust documents and turning over a funding check. Proper planning requires that the attorney look at the unique aspects of each disabled person's case to determine how and if the trust serves his/her current and future goals. A special needs trust is not, on its own, a care plan. It is one component, one tool, of a well-crafted care plan that is designed to maximize the benefits available to the disabled person, as well as maximize his or her independence.**

**The following is a list of information needed by the trustee to assist in assessing whether the IDA can be a value-added in serving as trustee:**

**A. Beneficiary Profile:**

1. Age:
2. Diagnosis:
3. Prognosis:
4. Functional deficits...how independent is the person (i.e. daily living skills)?
5. Medications? Compliant?
6. Married?
7. Children?
8. Minor children or adult dependent children?

**B. Current Care-plan:**

1. Current residence:
  - a. Residing in the community?
  - b. Residing in an institutional setting?
2. Social network—level of involvement...how are they assisting?
  - a. Family?

- b. Friends?
  - c. Volunteers?
- 3. Receiving custodial care?
  - a. Skill level:
  - b. Functions being performed:
  - c. Days and hours:
- 4. What gaps exist as it relates needs/wants that are currently being unmet?
- 5. Receiving any ancillary programming?
- 6. What does the person like to do? Are there any impediments to them doing it?
- 7. Currently receiving Medicaid?
- 8. Currently receiving Medicare?
- 9. Currently receiving Medicare Supplemental insurance?
- 10. Currently receiving SSI (how much)?
- 11. Currently receiving SSDI (how much)?
- 12. How stable (likely to change) is the current care-plan?

C. Financial Issues:

- 1. Trust Funding:
  - a. Current market value?
  - b. Stocks\*/bonds/cash?
  - c. annuities:
    - self-directed, e.g., variable annuity
    - right to payment/monthly or episodic disbursements
    - trust should own irrevocably both current and post death disbursement
  - d. Existing debt?
- 2. Budget:
  - a. Current budget/total annual expenditures:
  - b. Proposed budget:
  - c. Income/government benefits?
    - Who will do the Medicaid application?
  - d. Disbursements that negatively affect SSI?
  - e. Private Health Insurance?
- 3. Is there Real estate?
  - a. How is the real property titled?
  - b. Are capital improvements/expenditures expected? (note: the Trust may require that lien be placed on house so as to allow the trust and/or the state to recoup its interest/payback)

4. Automobiles
  - a. Current ownership?
  - b. Who is driving it?
  - c. Are the vehicle and all the drivers insured?
  - d. Is a vehicle purchase contemplated? (note: trust will not own but will place a lien on the title)
  
5. Tax Treatment
  - a. The income generated by the trust will be picked up by the beneficiary's 1040...it is the obligation of the beneficiary or her fiduciary to cause the preparation, execution and filing of return.....ensure guardian or agent has the authority to do same
  - b. Provide prior two years of tax returns to trust

D. Legal Issues:

1. Is there an existing Fiduciary?
  - a. Guardian of the estate?
  - b. Guardian of the person?
  - c. Power of attorney for property?
  - d. Power of attorney for health care?
  
2. Who is settling the trust?
  - a. A Third Party, e.g., uncle on behalf of a nephew with disabilities?
  - b. Self-Settled, i.e., the grantor/beneficiary's own money or from a settlement?
  
3. Remaindermen:
  - a. Does beneficiary have testamentary capacity?
  - b. What is the pre-existing titling of assets? Is it for testamentary or convenience purposes?
  - c. Is there a putative will?

E. Other Considerations:

1. Level of sophistication:
  - a. Will the beneficiary understand the complexity of the limitations placed on disbursements by the trustee per federal and state law?
  - b. Will the fiduciary understand the complexity of the limitations of disbursements?

- c. Can the attorney sufficiently manage the expectations of the beneficiary/fiduciary?
2. Prepaid funeral/\$2,000 set a side
- federal law disallows post-death disbursements for funeral until payback to the state is made in full .....has a prepaid funeral been purchased? (i.e. service, burial, marker)
  - allowed to keep up to \$2,000 (one-time) outside trust

\*cost basis