

# Special Needs Planning and Medicaid Law Newsletter



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**A FREE LEGAL UPDATE FOR ELDERS AND OTHERS WHO SEEK ASSET PROTECTION ♦ DECEMBER, 2016 EDITION**

## Funding a Special Needs Trust With Life Insurance

Funding a special needs trust with enough money to pay for the needs of a child with special needs can be a daunting task for many families. The costs of providing a home and care, as well as a care manager to take the place of the parents when they are no longer around, exceed the resources of most families.

A solution for many parents is to fund a special needs trust with a form of life insurance. In these instances, a parent will take out a life insurance policy on his or her life to ensure that once the parent is gone, monies will be available to care for the special needs child.

The benefits of funding an SNT with life insurance are many. Life insurance proceeds can be paid to an SNT free of taxation.

Life insurance also typically pays proceeds in a short time period and so can ensure that the special needs child has the cash needed to provide for her long-term care.

Further, a paid-up life insurance policy will guarantee an SNT future funding while keeping the parents' estate intact for other family members.

The various types of life insurance that can be used to fund an SNT include:

**Term Life Insurance:** Term life insurance provides coverage for a defined period of time, normally the time in which premiums are paid. After that period ends, the policyholder can choose to continue to pay for the policy or end coverage.

A term policy pays a benefit should the policyholder die within the period covered under the policy. The premiums for term policies typically increase each year as the insured gets older or are level for a specified number of years, such as 20, after which the policies are typically dropped due to the steep increase in premiums at the end of the guaranteed term.

**Whole Life Insurance:** Unlike term insurance, a whole life policy lasts for the policyholder's entire lifetime and provides both death benefit protection and cash value. Part of the premium paid by the policyholder goes into a cash account which accumulates over time.

The cash value tends to accumulate at a higher rate when the policyholder is younger and lessens as she ages. Further, many of these policies pay dividends,

which add additional value to the policy.

Policyholders may withdraw money from their whole life policy but will be charged a fee or, in the case of a loan, the holder will be obligated to pay back the borrowed amount with interest.

**Universal Life Insurance:** A universal life policy permits the policy holder to adjust death benefits and premium payment to fit any change of circumstances for the holder. Premiums can be credited to an accumulation fund from which premium costs are deducted and to which interest is credited.

**Variable Life Insurance:** The variable life insurance policy's cash value is tied to the performance of financial markets.

**Survivorship Life Insurance:** Also known as a second-to-die life insurance, this policy is taken out on the lives of two people and provides benefits only upon the death of the second insured person.

## 5 Issues to Consider When Creating a Special Needs Trust

Here are some of the questions you will need to consider in guiding your attorney to create the trust:

**Choice of Trustee.** This can be the most difficult decision because the trustee will have ultimate power and responsibility over how the trust funds are invested and spent for the beneficiary. The trustee must know and understand the beneficiary's needs, make sure not to violate the rules of any public benefits program, budget for the long term, invest wisely, and keep accurate accounts. We often find that the best solution is to have both a family member and a professional trustee share the role as co-trustees.

**Revocable or Irrevocable?** In most instances, the special needs trust should be irrevocable, especially if other people, such as grandparents or aunts and uncles, might contribute to it. If only the parents will contribute and don't expect to do so except as part of their estate plan, then the special needs trust can be revocable, meaning you can change it at any time.

**How specific should the trustee directions be?** As a parent, you are going to want to provide the trustee with as much guidance as possible to make sure that your child gets the best care and support and that your innate knowledge about her needs and wishes is not lost.

But this information often is best imparted in a side document -- a memorandum of intent -- rather than in the trust itself. The trust needs to be discretionary and relatively unlimited so that the trustees can react

to future realities, whether they have to do with your child's development or changes in laws and services available.

**What about a trust protector or care committee?** Some special needs trusts include a so-called "trust protector" to oversee the work of the trustees or a "care committee" to advise the trustees.

These additional parties can contribute significant benefits and help reduce your worries about how the trustees will act on behalf of your child. But these mechanisms should be used only on a case-by-case basis where the benefit outweighs the added cost and difficulty of involving additional people in the trust management.

**How much money should go into the trust?** It's hard to get a definite answer on this question. In most cases, the answer is "as much as possible." This is because there's usually not enough to pay for a child's entire support. However, if you have other children you'll want to be "fair" to them as well.

The availability of public benefits programs, of course, lowers the need for self financing, but we can never be sure what will happen to existing programs in the future. A financial planner who focuses on special needs financial planning can help with these calculations. One solution many people choose is to divide their estate equally among all of their children, but to provide additional funds for the special needs trust through life insurance.

## News You Can Use

### 2016 FLORIDA MEDICAID LIMITS

Gross Monthly Income Limit for Medicaid Applicant:	<b>\$2,199.00</b>
Personal Needs Allowance:	<b>\$105.00</b>
Asset Limit (Individual):	<b>\$2,000.00</b>
Asset Limit (Couple):	<b>\$3,000.00</b>
Community Spouse Resource Allowance:	<b>\$119,220.00</b>
Minimum Monthly Maintenance Income Allowance:	<b>\$1,966.25</b>
Maximum Monthly Maintenance Income Allowance:	<b>\$2,980.50</b>