

Special Needs Planning for Disabled Individuals

by Barbara S. Hughes
for 50 Plus Lifestyles

Many families include a special needs individual—a child or grandchild, a brother or sister, even one of the spouses. Sometimes a disability is present from birth on, or becomes evident in early childhood. While mental illness or disorders often become symptomatic in early adulthood, accidents with disabling consequences can occur at any age, as can debilitating chronic medical conditions such as multiple sclerosis. Dementia tends to arise later in life, but at times afflicts individuals in their 50s or even earlier.

Safety nets

Regardless of the kind of disability, it often affects the individual's ability to provide adequate income from work. As a result, we have "safety net" programs to assist permanently disabled individuals in meeting their medical and basic living needs. Supplemental Security Income (SSI) and Medicaid (MA, also known as Medical Assistance or Title 19) are government benefits programs for which a disabled person can qualify based upon dire economic need, with "countable" assets under \$2,000 and very low income. For a disabled person with sufficient earned income history, there also is the Social Security Disability Insurance (SSDI) benefit and Medicare, neither of which has unearned income or asset limitations. It can be a challenge to maintain eligibility for the welfare benefits programs (SSI and MA).

Estate planning for persons with disabilities also poses a challenge: Providing for the individual's needs without causing loss of the public benefits program eligibility on which the disabled person depends for her health insurance and income—modest though it may be. If an individual on SSI and MA receives income or a direct gift or inheritance or is named the outright beneficiary of life insurance or retirement accounts, the result will be loss of those government benefits. Even if a disabled individual does not receive SSI or MA, acquiring income, a gift or an inheritance may create problems due to the recipient's inability to manage the increased financial resources.

Avoiding loss of government benefits

With proper planning, there are ways to avoid these problems. Thus, parents, grandparents, siblings and other relatives or friends wanting to provide for their disabled family member or friend should

consider including a special needs trust in their respective estate plans.

Special ("supplemental") needs trusts can be used to protect gifts for disabled individuals to avoid the loss of government benefits eligibility. These trusts supplement what the SSI or SSDI and MA provide, to improve the beneficiary's quality of life. A special needs trust can be created in a will, as a sub-trust in a revocable living trust or as a stand-alone trust document.

The primary benefit of creating a stand-alone trust is that the trust can be funded at any time by anyone: parents, siblings, grandparents, friends, even a "benefit" held by friends, neighbors and colleagues. This makes it immediately useful, since any one of those people can name that special needs trust as a beneficiary of life insurance, an annuity, a bank account or the donor's own will or trust. The trust creator ("settlor") may also wait to fund the trust until death. If the special needs trust is contained in a will or is a sub-trust of the settlor's revocable living trust, the funding can't occur until the settlor's death.

Special estate planning can be done to provide for a spouse who is disabled. Most



trusts will prevent the disabled spouse from qualifying for MA. However, an estate plan which includes a special needs trust in the other spouse's will may preserve assets for the non-support needs of the surviving disabled spouse who has already qualified for MA. A marital property agreement and a financial durable power of attorney including several special powers are both often appropriate.

Trustees

A special needs trust must have a trustee. In some cases, the trustee can be a family member, but there are times when a bank or trust company is a better choice—especially when the beneficiary can be “difficult,” bombarding the trustee with requests, for example. If the trust will be relatively small, it may be impossible to find a bank or trust company willing to accept the role of trustee, often because the administrative costs will in time wipe out the trust's principal balance.

In Wisconsin, we are fortunate to have an excellent pooled trust which has a “sub-account” for each beneficiary and accepts smaller accounts. This is the WisPACT (Wisconsin Pooled and Community Trust) Trust II. Like an attorney-drafted stand-alone trust, the WisPACT trust can be funded during the settlor or donor's lifetime or at the donor's death. See www.wispact.org. WisPACT requires attorney consultation and assistance in completing the forms to set up a new sub-account.

Because of the variety of trust possibilities, the unique circumstances of each disabled beneficiary and family, and the different benefits program qualifications, it is crucial to consult with an attorney experienced in estate planning for disabled persons, who stays current with the constantly changing federal and state laws, regulations and policies concerning qualification for these benefits programs. It is much easier and less expensive to plan appropriately from the outset than to correct problems after the plan becomes irrevocable and the disabled person loses government benefits.



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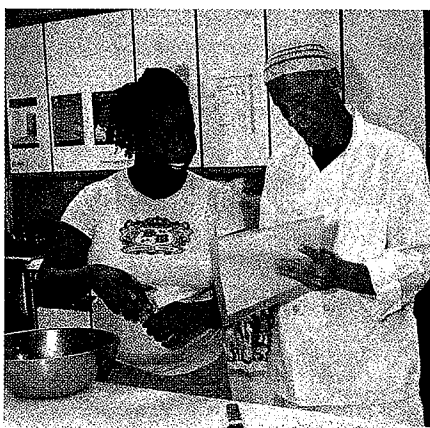
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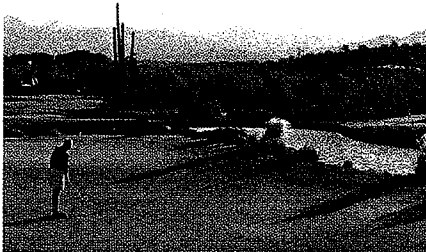


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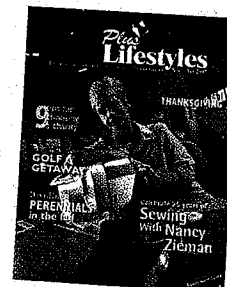
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On the cover: Nancy Zieman, creator of the business Nancy's Notion and TV series *Sewing With Nancy*, celebrates her show's 25th year. Photo by C & N Photography.

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