

Information  
of interest to  
people with  
disabilities  
and other  
special needs  
and their  
families.

## Choice of Guardian and Trustee Crucial To Success of Special Needs Trusts

Since its inception more than 20 years ago, the Special Needs Trust has become a tool that is frequently used by parents and other caregivers to provide lifetime financial security for children and young adults with disabilities and special needs. These trusts, also referred to as "Supplemental Needs Trusts" or "Discretionary Trusts," were authorized by Congress in the Omnibus Budget Reconciliation Act of 1993 and allow the trust settlor, such as the parent of a child with a disability (the trust beneficiary), to provide supplementary support and care for their child without jeopardizing his or her eligibility for government needs-based benefits, such as Supplemental Security Income (SSI) and Medicaid.

**Crucial Choices: Trustee and Guardian**  
***The success or failure of the Special Needs Trust, as well as the well-being and future care of the trust beneficiary with special needs, often depends on who is chosen to serve as the beneficiary's guardian and selected as trustee for the trust. These choices are crucial to the prudent investment, management and distribution of trust funds, as well as to insure that the child with special needs leads as high a quality lifestyle as possible.***

The parents of the child often serve as his or her guardian because they are usually the individuals with the child's best interests at heart, and are also those most capable of knowing and understanding the child's desires and needs. As guardians, the parents establish the special needs trust for the child's benefit and must name a successor to act as the child's guardian when they are no longer able to do so. The successor guardian will be responsible for the distribution of trust benefits for the beneficiary, while the trustee continues to oversee the financial management of the assets.

Sometimes parents name the same person, such as a family member or close relative, to serve as both trustee and successor guardian. However, many attorneys that specialize in special needs issues advise against doing so because an individual may not provide the best trust management. An institutional trustee, such as a bank, offers the advantages of continuity and professional money management, investment and financial audit capabilities. Splitting the trust management responsibilities between family members and a corporation, as co-trustees, is therefore often recommended as the best of both worlds. The relative-trustee is usually the person best able to know the needs and desires of the special needs beneficiary, and the professional trustee is best able to administer the financial and legal aspects of the trust.

In setting up the special needs trust, the parents can pre-determine the level of responsibility for successor guardians and trustees. "Financial matters are secondary only to health care and the disability situation itself," says Jerry Hulick, Special Care Planner<sup>1</sup> at The Washington Group in Fairfax, Va., a general agency of Massachusetts Mutual Life Insurance Company (MassMutual). "I encourage [parents] to set it up as a working model so they can see how it benefits the person with the disability," said Hulick. "What they're building is a long-term care vision. There are a lot of factors, depending on the individual needs of the trust beneficiary. You're going through the whole gamut of that person's lifestyle needs."



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According to Hulick, the successor guardian must have regular contact with the beneficiary and be very familiar with the particular challenges of that person's disability and special needs. He says that special care planners work with families' banks, accountants, financial services professionals and lawyers, as well as social workers and health care providers, to develop solutions that meet the needs of the individual with a disability.

Firms such as The Washington Group can provide integrated services helping to coordinate the financial, legal and medical needs of the person with special needs. Parents may also consider naming an advocacy or disability organization as a successor trustee.

## Institutional and Pooled Account Trusts –

While institutional trustees, such as specialized insurance companies, banks and other corporate trustees, can often manage the assets of a special needs trust in a more professional manner than a family member, and can also provide ongoing management after family representatives are unable or unwilling to do so, the use of an institutional trustee may not be appropriate in all situations.

Most institutional trustees customarily require the value of the trust assets to equal a certain threshold value—perhaps \$250,000 or more—before the institution will act as trustee. Families with smaller amounts of money may want to consider looking for a Pooled Account Trust.

The Pooled Account Trust may be used in the case of a “small” trust with assets valued below the threshold imposed by institutional trustees. According to the SSI rules, the pooled trust – as opposed to the separate accounts within the trust for each beneficiary – must be established and maintained by a nonprofit association. Under these trusts, the individual with disabilities maintains a separate sub-account under a master trust agreement. Funds are co-mingled and the trust portfolio is commonly invested. The pooled trust administrator manages all of the trust's investment and tax functions.



The separate or sub-account within the trust must be set up for the sole benefit of the person with a disability by the individual, his or her parent or grandparent, or by the individual's guardian or under court order. The trust must provide that if, upon the death of the beneficiary, any funds remain in his or her account, such funds will first be used to reimburse the state for the amounts expended for the beneficiary's health care under the State Medicaid\* plan. Then the funds remaining after payment are used for the benefit of other individuals with a disability in the pool.

## PREFERRED QUALITIES IN SPECIAL NEEDS TRUSTEES

### *An effective trustee of a Special Needs Trust Should—*

- **Be thoroughly familiar with the trust beneficiary's disability, including his or her health-care history, required medications, and treating physicians**
- **Have an understanding of the beneficiary's special needs, including assistive equipment and technologies, dietary requirements, etc.**
- **Be experienced in the establishment, maintenance and ongoing operation of the trust, including the rules relating to federal and state benefit eligibility**
- **Have an understanding of state law as it relates to the special needs trust**
- **Have strong advocacy and money management skills**

## When to Set Up Trust

While parents often create a special needs trust on a testamentary basis to take effect when one or both parents are deceased, many experts advise parents to create the trusts much earlier to observe how they operate and help them build assets through investments.

Cynthia Gavenda, Special Care Planner with Lee-Nolan Associates, Inc., a general agency of MassMutual in New Jersey and mother of a special needs child, says that while many families may not have a lot of assets to place in trust for the benefit of a child with a special need, setting up the arrangement early provides many advantages. She noted that "if the trust is contested, you want to fight that battle yourself rather than leaving it up to a trustee."

"Sometimes, people don't have the assets to fund the trust. Insurance that pays upon the death of the second spouse is a cost-effective way to fund special needs trusts," said Gavenda. Parents may also need to consider long-term care insurance to make sure their own medical expenses don't jeopardize the benefits in the trust established for the care of the individual with a special need.

"There's no minimum financial requirement [for establishment of a special needs trust]. The most important thing is we're preserving assets for the benefit of the child," said Gavenda. Distributing even a few hundred dollars in assistance to an individual with a special need is best done through a trust to preserve government benefits such as SSI and Medicaid.

According to Ms. Gavenda, Special Care Planners can assist parents in a review of their estate and an inventory of assets. "We help parents project the needs over the lifetime of the child based on their special challenges. Then we develop solutions based on the availability of assets," she said. ♦



MassMutual has carried the Exceptional Parent (EP) Symbol of Excellence since receiving it in 2004 in recognition of its commitment and service to people with disabilities and other special needs and their families.

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The Special Care Planner receives advanced training and information in estate and tax planning concepts, special needs trusts, government programs, and the emotional dynamics of working with people with disabilities and other special needs and their families. The certificate program is offered by The American College in Bryn Mawr, PA, exclusively for MassMutual financial professionals. State insurance departments recognize that the Special Care Planner certificate program provides essential information on the profession of special care by granting continuing education (CE) credits (varies by state).

A Special Care Planner through MassMutual's SpecialCare<sup>SM</sup> program can assist parents in drafting Letters of Intent and can help make a difference in the quality of life for an individual with special needs, their caregiver and other family members. Through SpecialCare you will learn valuable financial strategies, identify financial strategy solutions, access vital information, and meet certified specialists who will work with you and your professional advisors – your banker, accountant or financial planner, lawyer, social workers and health care providers – to review your financial picture and offer options to fit the needs of each situation. For more details, visit MassMutual's website at <http://www.MassMutual.com/specialcare>, or call 1-(800)-272-2216.

#### About MassMutual

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