When you are caring for a loved one with special needs, your life journey moves in a different direction than that of many other people. You learn to appreciate milestones others take for granted. The connection brings both immense joy and worry. One major concern is ensuring that your loved one will be cared for when you're not around to meet their needs.

Unfortunately, you cannot simply give them money or include a bequest in your will to provide cash in the future. Owning property in their own name will disqualify them from receiving crucial benefits such as Medicaid and SSI.

But you can provide for your loved one by creating a special needs trust. This type of trust allows individuals with special needs to receive money to buy things they need or want, but because the money is held in the trust instead of directly in the name of the individual, it does not interfere with their ability to receive government benefits. A special needs trust is one of many tools we use at the Nordhaus Firm to help clients protect their families and reduce worries for the future.

What is a Special Needs Trust?

A special needs trust is a precise type of trust designed specifically to protect assets for the use of a person with special needs. Trusts can be thought of as virtual containers for holding property.

Three Roles Associated with Trusts

Trusts split ownership among three people. These are referred to as the:

Grantor – the person who creates the trust and puts property into it. This is usually a

relative, but if someone with special needs receives property, they can fund their own trust.
Beneficiary—the person with special needs who receives property from the trust when they need something
Trustee—the person or entity who manages the trust

Who Owns the Property in a Trust?

You can put almost anything into a trust, and the trust then owns it. For that reason, the government doesn't consider property in the trust to belong to the beneficiary, even though they ultimately get to use that property.

Since a trust is an abstract legal entity rather than a thinking person, someone has to be appointed to handle the property in the trust. That person is the trustee. The trustee makes decisions about how to manage trust assets and when to provide money or other property from the trust to the beneficiary.

It is important to realize that although a trustee controls property in the trust, they are serving as a caretaker for the beneficiary. Trustees have a legal obligation to make decisions that are in the best interests of the beneficiary rather than decisions that help them personally.

How a Texas Trust Protects SSI and Medicaid Benefits

Many individuals with special needs in Texas qualify to receive benefits such as Supplemental Security Income (SSI) and Medicaid. These programs have strict eligibility requirements. If you have more than $2,000 in assets, then you are not eligible. So, if a young adult is not able to work due to physical or mental disabilities, they can receive monthly SSI payments and Medicaid insurance only if they don’t own much of anything.

If that adult receives a gift from parents or an inheritance from grandparents, that is likely to put them over the limit and disqualify them from receiving SSI and Medicaid. However, if the money is instead put into a special needs trust instead of given to the young adult directly, then the person with special needs essentially gets the best of both worlds. They still receive regular income through SSI, they continue to have health insurance, and they can receive financial benefits from their family.

Types of Special Needs Trusts in Texas

Special needs trusts must meet specific legal requirements to work as intended. Some of those requirements vary depending on the type of trust created. Texas law recognizes three primary types of special needs trusts.

Third Party Special Needs Trusts

A third- party trust is what parents or grandparents usually set up to care for a loved one with special needs. The trust is funded with money belonging to someone other than the beneficiary, which is why it is called a third-party trust. This type of trust does not have any type of payback requirement. If there are assets remaining in the trust after the beneficiary’s death, those assets can transfer to other family members or friends or be given to charity.

First-Party Special Needs Trusts

When a person with special needs inherits money or receives money from a personal injury settlement, they can use the funds to set up their own special needs trust. This is a “self-settled” trust. Because their own money was used to fund the trust, that money can be claimed by Medicaid after the beneficiary passes away. After the beneficiary’s death, the State of Texas will file a claim to be reimbursed for medical care costs that have been covered through Medicaid.

Pooled Trusts

Because it can be a challenge to manage assets in special needs trusts, the assets in these trusts can be grouped together for management in a pooled trust. Property for each beneficiary can be tracked through a separate sub-account.

FAQs About Special Needs Trusts in Texas

Here are some of the questions our clients in Collin County ask about most often.

What can a special needs trust pay for?

To avoid interfering with SSI and Medicaid, the resources from a special needs trust should not be used to pay for needs that government programs are designed to cover. Funds from the trust cannot be used for basic food and shelter or that could cause SSI payments to be reduced or eliminated. Some of the approved uses for trust funds include:

- Education, job training, and camp tuition
- Medical and dental care expenses that are out-of-pocket
- Physical therapy and medical equipment
- Travel and vacations

Companion care
Entertainment, technology, and electronics
Specialized transportation or vehicle modifications

Who should be the trustee of a special needs trust?

It is important to give the matter considerable thought before choosing a trustee of a special needs trust. Unlike revocable living trusts used to avoid probate, special needs trusts are complicated and require ongoing management that may last for decades. It is essential to follow state and federal rules and comply with reporting requirements. Many families choose to appoint a professional to serve as trustee and manage all the trust administration requirements. At the Nordhaus Firm, we can review the trustee's obligations and help you evaluate your options so you can make the right choice for your family.

Is a special needs trust irrevocable?

Yes, a special needs trust must be irrevocable to protect government benefits.

What is the difference between a revocable and irrevocable trust?

When a trust is revocable, it can be changed or canceled at any time by the person who created it. For that reason, property in the trust is still considered to belong to the grantor for most purposes, including taxation. By contrast, an irrevocable trust cannot be easily changed or canceled. Property in it cannot be removed but must be used to serve the purposes of the trust.

Property in an irrevocable trust is protected from creditors of the grantor, trustee, and beneficiary because it does not belong to any of them. Property in a revocable trust, however, would be counted as an asset by the government and could potentially be attached by creditors.

Do we need a special needs trust if we already have an ABLE account?

ABLE accounts often combine well with special needs trusts because they have different limitations. The amount that can be placed in a special needs trust is not limited by law, but ABLE accounts have annual contribution caps of $20,000 and account balance limits of $100,000. On the flip side, the beneficiary can control funds in the ABLE account and is not subject to restrictions on how the funds must be used.

Having a trustee manage the assets in a special needs trust requires extra work, but it also provides substantial protection for beneficiaries who are not ready to take full control of their own finances. When families set up both an ABLE account and a special needs trust, they allow their loved one with special needs to manage some money independently while providing a safety net to protect their overall financial future.

How do I create a special needs trust?

Creating an irrevocable trust is not a DIY project. Mistakes could cause assets to be locked up and inaccessible or could cause the trust to be legally invalid and leave assets open to deprivation. It is important to work with an experienced estate planning attorney who is willing to take the time to review your specific goals and create a legal entity tailored to your specific needs.

How Can You Find Out More About Special Needs Trusts in Texas?

The easiest way to learn what benefits a special needs trust could provide for your family is to talk to a knowledgeable estate planning attorney about your particular family's legal and financial dynamics. At the Nordhaus Firm, we offer free consultations where we can review your objectives and explain the options available to protect your family in the short and long term.

To learn more about how a special needs trust could work for your family, call us at 214-726-1450 or contact us online today to schedule your free consultation.