

Special Needs Trusts Give Caregivers Peace of Mind



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We all know the importance of getting our financial and legal affairs in order. With Alzheimer’s disease, the importance of advanced planning is magnified.

One item often overlooked is what happens if the caregiver passes away before the family member with AD. There is no perfect replacement for a caregiver’s love and care, but some planning methods are better than others.

Consider this situation: John and Sally have a modest estate – a home, some money in the bank and retirement accounts from when they were both working. They also have two adult children: Emily is independent and doing well financially; Charlie is married, bouncing from job to job, and can’t seem to hold onto money when it comes his way. Emily has given up her job to help her mother care for her father, who has Alzheimer’s disease: he is not able to live independently or support himself, and will need a home, income and support system for the rest of his life to avoid going into a nursing home. Charlie is not involved, but has promised to help if anything happens to Sally or Emily.

Without planning, the inheritance John will receive from Sally or Emily if either of them passes away before him may prevent him from obtaining some types of government assistance. For example, if he is on Medicaid, his inheritance could disqualify him from benefits until his money is spent down, since all Medicaid beneficiaries must meet strict asset and income requirements. (John may be entitled to some other benefit programs, but requirements are different for each.)

To avoid this scenario, Emily and Sally are considering leaving all of their assets to the survivor of the two of

them, or to Charlie if anything happens to both of them. But this is not a good solution, because no assets are legally protected for John. Moreover, Charlie may not live up to his commitment to take care of John due to financial problems, illness, divorce or his own death. John’s security is imperiled.

A better solution is the creation of a third-party special needs trust (also known as a supplemental needs trust), which does not rely on the moral commitments of others to be successful. The assets used to fund the trust could be those of Emily and Sally, and the trust part of Emily or Sally’s testamentary distribution plan when they die.

The term “third-party” special needs trust (SNT) means that the assets used to fund the trust do not belong to John: they are assets of a “third-party.” The SNT would be carefully drafted so that the trust’s assets could be used to pay for goods and services that would enhance the quality of John’s lifestyle, without causing him to lose his needs-based benefits.

SNTs are designed to allow the beneficiary to maintain eligibility for most means-tested programs. For example, the state Medicaid system may pay very little in the way of private duty nurses; however, the funds in the SNT can be used for this purpose. Also, the funds in the SNT can be used to take John on vacations or other quality-of-life excursions. Neither of these distributions will reduce John’s needs-based benefits.

Of course, there is no one perfect solution for every family. But it is important to plan ahead to provide care for your family member with Alzheimer’s disease.

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