



Estate Planning for Parents of Children with Special Needs

From the Law Office of
Raymon B. Harvey, P.A.
650 S. Shackleford Road, Suite 400
Little Rock Arkansas 72211
Office: 501-221-3416
www.ArkansasElderLaw.com
E-Mail: info@ArkansasElderLaw.com

2006

Five Choices

Five Choices for Estate Planning

You have five choices with respect to your estate planning and provision for your disabled child:

First - Disinheritance. You can simply disinherit the child. This is not a good idea even if your child has minimal needs, because most needs are being covered by public benefits.

Second - Gift to Disabled Child. The problem is if your child is receiving means-tested public benefits or may receive means-tested public benefits in the future, the gift from you will disqualify your child from receiving those benefits. The medical benefit may be worth hundreds of thousands or even millions of dollars over your child's lifetime.

Third - Distribute to Siblings. You can make a distribution to a sibling with the understanding they will take care of the disabled child. This is a risky proposition. Assets you leave to your disabled child's sibling are subject to creditors of that sibling. If your healthy child is in an automobile accident and has inadequate insurance, the injured party can recover all of your healthy child's assets, including those you wanted set aside for your disabled child. They may also be claimed in a divorce action and there is a risk of misappropriation or mismanagement by the sibling.

Fourth - Support Trust. Establishment of a support trust. Many parents working with inexperienced lawyers establish support trusts for the benefit of their disabled children. These trusts are considered "available" for public benefit purposes and disqualify the disabled child from receiving public benefits.



Fifth - Special Needs Trust. Establishment of a special needs trust. The solution is to establish a special needs trust for the disabled child. The trust is designed so that the assets are not available for public benefits purposes. By utilizing such a trust the child can retain public benefits and also enjoy the assets left by the parent.

Types of Benefits

If your child is receiving or may receive SSI, Medicaid, Section 8 Housing or benefits through the Department of Health and Human Services, these benefits are means-

tested. If your child is simply receiving SSD and Medicare, these benefits are not means-tested. For means-tested public benefits the rule of thumb is that the recipient may not have more than \$2,000 of assets and receipt of income is also considered. If your child is simply receiving SSD and Medicare, a support trust may be more appropriate than a special needs trust. However, if there is any possibility that the child may be receiving means-tested public benefits in the future, a special needs trust is usually the better choice.

Reasons for Trust

Besides protecting public benefits there are other reasons for establishing a trust for your disabled child. These reasons are usually associated with Achieving Independence for your child. The benefits in establishing a trust include the following:

- Control of trust assets
- Protection from friends
- Protection from spouses
- Protection from creditors

ABOUT US

We are an Elder Law and Special Needs Trust Law Firm. Located in Little Rock, Arkansas, we focus on helping individuals obtain Medicaid benefits without losing their home, Long Term Care Planning for victims of Alzheimer's Disease and other related disorders, Special Needs Trust solutions for families with children with special needs, and Preserving Eligibility for Public Benefits for personal injury victims.

DISTRIBUTION OF THIS BOOKLET

Raymon B. Harvey, P.A. encourages you to share this information with anyone who is interested in issues pertaining to the elderly, the disabled and their advocates. The information in this booklet may be copied and distributed, without charge and without permission, but with appropriate citation to Raymon B. Harvey, P.A.

If you are interested in a free subscription to our newsletter The Arkansas Voice, then please contact us at:

info@arkansaselderlaw.com, call us at 501-221-3416, or fax us at 501-221-2689.

Copyright © 2006
Raymon B. Harvey, P.A.

Selection of a Trustee

- Professional money management
- Professional legal advice

Funding the Trust

When you establish your trust decide how much money will be needed to fund the trust. For many families their first instinct is to divide their assets on death equally among their children. When there is a disabled child, this may not be a good formula. Your healthy children probably are able to work and support themselves. Your disabled child may not be able to work at all or his or her work may be limited. What will happen to that child if public benefits disappear?

The best way to answer this question is to focus on the needs of the disabled child. The best way to determine the needs of the disabled child is to prepare a detailed budget that will give you an idea of what you feel your child will need in the future to live a lifestyle that you envision for that child.

One way to calculate the cost of meeting your child's future needs would be to quantify those needs by completing a budget and then multiplying by a factor that will determine the amount of money that would need to be invested to produce an annual income sufficient to meet your child's needs. For example, if you believe that your investments will produce a 5% rate of return, you would use a factor of 20. You divide the number 100 by 5% to get the 20. If you believe that you could get a 3% rate of return, the number would be 33.

Once you have calculated the amount you will need to determine where you will get the money to put into the trust. Most parents would like to leave their healthy children something, so begin by setting aside an amount for them. Then compare the amount you have left over with the amount you feel you will need for your child. In many instances, there will be a significant shortfall. Consider pur-

chasing life insurance to make up that shortfall. Try to avoid buying term insurance, because your child's need will not go away. Over time, the cost of term insurance will increase significantly. You are usually better off buying a smaller amount of whole life insurance.

Selection of Trustee

Parents. Generally, parents will serve as trustee of a special needs



trust as long as either parent is alive. The problem arises when the parents die.

Family Members. The most common option for selection of a trustee is a family member. There are two reasons why family members are preferred. There is a perception that the family member will not charge a fee and a belief that the family member has the best interest of the disabled child at heart. Neither of these assumptions are necessarily valid. Fees charged by professional trustees are modest, usually about 1% of trust assets per year. Because of professional expertise, they are usually able to invest the money to more than offset the 1% charge. Appointing siblings of the disabled person as trustee puts them in a bad position. One of the trustee's jobs is to say "no" to the disabled person if they make unreasonable requests for trust distributions. This builds resentment between the disabled child and the sibling trustee.

Professional Trustee. Professional

trustees include banks, attorneys, CPAs and other professionals. Financial advisors are usually prohibited from serving as trustee if they are going to manage the money. The advantages in selecting a professional trustee are that they are able to provide expert money management and they are familiar with public benefit laws.

Siblings can serve on a Trust Advisory Committee and look after the interest of your disabled child.

Non-profit Organizations.

Certain non-profit organizations are willing to serve as trustees. They often have expertise in dealing with persons with disabilities and know public benefit laws. They also can provide professional money management.

Co-Trustees. Another solution is usually to have a family member and a professional serve as co-trustees. The professional brings the expertise in money management and public

benefits laws. The family member is in a better position to know your disabled person and his or her needs.

Duties of Trustee

In selecting a trustee it is important to understand the trustee's duties. The trustee is a fiduciary, which means that he or she must act in the best interest of the beneficiary of the trust. The trustee is held to a high standard of performance. Trustees must invest the trust assets in accordance with the Prudent Investor Act or the Prudent Man Rule, depending on state law. They must furnish accountings in accordance with the Principal and Income Act. They must carry out the terms of the trust agreement, and they must be loyal to the beneficiary.

The trustee should set an agenda for distributions to the beneficiary. If the trustee distributes cash directly to the beneficiary, it is likely that this will adversely affect the beneficiary's public benefits. It may even cause these benefits to be lost. If the trustee distributes money to third party providers

Trustee Duties

of goods and services, as a general rule, this has no effect on the beneficiary's public benefits. This is the best way to make distributions.

But if a trustee makes distributions to a third party for food and shelter for the beneficiary, this is called in-kind support and maintenance or ISM. These distributions cause a reduction in the SSI benefit of approximately one-third, but do not affect most other benefit programs.

There are certain distributions for goods which are permitted that usually have no effect on public benefits eligibility. These are as follows:

- Purchase a home;
- Household goods of reasonable value;
- Weatherization assistance, such as insulation, storm doors and windows;
- Tools to perform home improvements, repairs and maintenance by homeowner;
- Furniture;
- Handicap van or regular car;
- Durable medical equipment, such as wheelchairs;
- Television, radio and cable service;
- Audio/video equipment;
- Stereo system;
- Telephone, answering machine;
- Recreational equipment, games and crafts; and
- Musical instruments.

In addition, there are certain distributions for services that have no effect on public benefits eligibility. These are as follows:

- Home improvements, repairs, and maintenance by outside source;
- Travel and education;
- Recreation and entertainment;
- Medical insurance;
- Telephone bills;
- Newspaper subscriptions;
- Services of a care manager;
- Vacations;

- Travel expenses of relatives;
- Movies;
- Tax payments;
- Medical treatment for which public funds are unavailable;
- Difference between a private and semi-private room in an institution;

The advantages in selecting a professional trustee are that they are able to provide expert money management and they are familiar with public benefit laws.

Siblings can serve on a Trust Advisory Committee and look after the interest of your disabled child.

- Installation of a burglar alarm or monitoring/response system in home;
- School tuition, books and supplies;
- Health and Life insurance premiums;
- Cleaning supplies and paper products;
- Dental care, physical therapy, massages, support services, and other medical costs not covered by any benefit programs;
- Home care services not covered by another program;
- Personal services, including lawn mowing, house cleaning, grocery shopping and babysitting;
- Airline and other transportation tickets - used for travel by a beneficiary or spouse or parent whose income is subject to deeming is not countable income to the beneficiary if used for travel among the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, America Samoa and Northern Mariana Islands. The ticket is not considered income unless it is converted to cash; and

- Non-domestic travel - a ticket for non-domestic travel must be non-refundable.

Reporting Guidelines

If the beneficiary is receiving SSI, then the reporting requirements of the Social Security Administration must be satisfied. Once the trust is funded, the trust should be sent to Social Security for approval. The following events must be reported to Social Security:

- Address. Change in Beneficiary's address.
- Employment. Change in employment status.
- Living Arrangements. Change in the arrangements (such as adding or losing a roommate).
- Income. All income (including the receipt of any direct income or ISM from the Trust)
- Resources. Any change in countable resources.
- Medical Insurance Coverage. Any change in the Beneficiary's medical insurance coverage.
- Marital Status. Any change in the Beneficiary's marital status.
- Physical or Medical Condition. Changes or improvements in Beneficiary's physical or mental condition (for example, the Beneficiary improves so much that he or she is no longer considered disabled).
- Medical Facility. Admission to or discharge from any health facility or public facility (such as a hospital or nursing home).
- Travel. Any trip outside the United States.
- Other Public Benefits. New eligibility for other public benefits.

As you can see, the establishment and administration of a special needs trust is complex. However, it is critical for your disabled child's future.



Raymon Harvey is a lawyer in Little Rock, Arkansas. His focus is on Elder Law and Special Needs Trust Planning.

From the Law Office of
Raymon B. Harvey, P.A.
650 S. Shackelford Road, Suite 400
Little Rock Arkansas 72211
Office: 501-221-3416
www.ArkansasElderLaw.com
E-Mail: info@ArkansasElderLaw.com

WE'RE ON THE WEB

www.ArkansasElderLaw.com
www.SpecialNeedsAlliance.com
Sign-up for this newsletter

Speaker

If you are interested in having
Raymon Harvey speak at an
event, please call Sherrie at
501-221-3416.

Our Services Include

Medicaid Planning, Applications and Appeals

We assist our clients in qualifying for Medicaid benefits. This includes the submission of a Medicaid application and appeal of a denial for benefits.

Special Needs Trusts

We assist families with children with special needs to avoid the loss of SSI and Medicaid and to enhance the quality of life of the special needs child. We also assist personal injury victims preserve their eligibility for public benefits when they received substantial personal injury awards or settlements and who may require trust services.

Estate Planning

We assist clients in the development of an estate plan which may include all or some of the following documents: Durable Power of Attorney, Health Care Power of Attorney, Living Will, Wills, and Living Trusts. These documents help clients with the management of one's estate during life and its disposition upon death.

Guardianships and Conservatorships

We assist clients and their families with the establishment of guardianship and conservatorships. These are legal processes, utilized when a person can no longer make or communicate safe or sound decisions about his or her property or has become susceptible to fraud or undue influence.

Probate

We assist clients and their families with the initiation of probate proceedings and throughout the probate process. Probate is the legal process of validating a will, supervising the administration of a will, and making distributions of estate assets to beneficiaries.

RAYMON B. HARVEY, P.A.

ARKANSAS ELDER LAW & SPECIAL NEEDS TRUSTS

Raymon B. Harvey, P.A. is an Elder Law and Special Needs Trust Law Firm. We represent older persons, disabled persons, their families, and their advocates. The practice of Elder Law and Special Needs Trusts includes estate planning, estate and trust administration, powers of attorney, advance medical directives, guardianships, conservatorships, and public entitlements (Medicaid and SSI), disability planning, and long-term care planning. For more information about Raymon B. Harvey, P.A., please visit our web site at www.ArkansasElderLaw.com.



Raymon Harvey,
Elder Law Attorney

As the Arkansas member of the Special Needs Alliance, Raymon B. Harvey, P.A. assists injured plaintiffs and personal injury attorneys create special needs trusts. We also assist parents seeking supplement to their disabled child's benefits and maintain a quality of life. The Special Needs Alliance is a nationwide network of disability attorneys. For more information about the Special Needs Alliance, visit its website at www.specialneedsalliance.com.

This booklet is not intended as a substitute for legal counsel. While every precaution has been taken to make this booklet accurate, we assume no responsibility for errors or omissions, or for damages resulting from the use of the information in this booklet.



Member: National Academy
of Elder Law Attorneys



Special needs require special lawyers.

Charter Member:
Special Needs Alliance, LLC

Copyright © 2006
Raymon B. Harvey, P.A.