

Providing the best quality of life requires informed decisions.

The best way to provide your special needs child with compassionate care and a comfortable life is to support your legal and financial decisions with reliable information and proven expertise. That's why America's finest disability attorneys have combined their talents to create the Special Needs Alliance.

As attorneys in the field of Disability and Public Benefits Law, we help to enhance your child's quality of life. Every member of the alliance has the resources and legal expertise to help you maintain public benefits for your child and develop effective estate plans that protect your assets.

This brochure is provided as a service of Special Needs Alliance and is informational only. It is not intended to serve as legal advice or replace the advice of a legal professional.



Special Needs Alliance members
are available nationwide.

To contact a member in your area, call

877-572-8472

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www.specialneedsalliance.org

Selecting the Trustee *Of a Special Needs Trust*



Special needs require special attorneys



Mary, age 18, was in an automobile accident and will recover \$1.5 million. Mary receives SSI and Medicaid, and lives in Section 8 Housing. SSI pays Mary \$564 per month, and Medicaid pays her medical bills. Funds from the Federal Housing Act of 1937 pay a significant portion of Mary's rent, and she would not be able to live where she does without that supplement.

Mary's medical bills are expected to total approximately \$200,000 per year. If Mary receives the \$1.5 million net settlement from her automobile accident, she will lose her SSI. If she loses her SSI, she will lose her Medicaid. She also will lose her eligibility for Section 8 Housing because of the income generated by the \$1.5 million settlement.

Unfortunately Mary's immediate family members have proven that they are not financially responsible individuals - her

father's independent business is failing; her mother works part time and has a substance abuse problem, and her brother recently declared bankruptcy.

In this situation, the implementation of a special needs trust is warranted.

Family members frequently want to be named as the trustee; however, they must understand the need to comply with the Prudent Investor Act or the Prudent Man Rule with respect to investments; the Principal and Income Act or other state law with respect to accountings; and be knowledgeable in the area of public benefits law so that the trust distributions do not disqualify Mary from public benefits. In this case, none of Mary's family members appear to be qualified enough to serve in that role.

An independent, non-family member can serve as the sole trustee or, at a minimum, as a co-trustee. An independent trustee can be objective, and usually has a public benefits background and investment expertise. Requiring the trust to have an independent trustee also prevents a family trustee from being caught in an endless series of conflicts of interest.

It may be appropriate to appoint a family member or an independent trustee. The trust document should clearly delineate the responsibility of each of the trustees. Perhaps the appointment of a managing trustee with broad authority, including investment authority, should be considered.

An alternative solution might be to name an independent trustee and appoint a trust advisory committee in the document. The trust advisory committee could be comprised of a family member, an attorney, a social worker, an accountant and/or a nurse. The trust advisory committee would meet and recommend distributions to the trustee and could even be given the power to remove and replace the trustee.

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