CORREIRA & IACONO LLP

PBN Guest Article:

Disabled Have New Solution To Financial Dilemma

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Thousands of Rhode Island citizens and their families face daily challenges because of debilitating birth defects, mental illness, and other disabilities. Adding to this challenge are mounting state budget constraints, implementation of the state's federal Medicaid waiver program, and increased concern about rationing of health care if mandatory federal health care is implemented.

And imagine that your disabled family member obtains an unexpected financial windfall when a relative provides a small inheritance or when a minor settlement from an auto or other accident is paid out only to learn a loss of benefits results. You envision these funds supplementing the government resources your disabled family member now receives to pay for the "extras" that will be life-enhancing. However, in many circumstances, the newfound gain is counted as an asset or income and, ironically, jeopardizes the disabled individual's ability to obtain government benefits.

In one particular client instance where the father of a disabled individual died, the disabled person should have immediately have received an adjustment to his benefits to reflect the additional income from his father's Social Security. However, the adjustment took two years to be recognized and was, ultimately, paid in a lump sum.

The disabled individual then received reduced monthly government benefits as a result of the lump-sum payment that was counted as an asset rather than as the result of government delay. If this individual had access to a pooled trust, he could have immediately sheltered the asset with no adverse impact to his monthly benefits and without the need to create his own trust.

Disabled persons are faced with a major dilemma: managing their finances to obtain the highest quality of life possible while maintaining only minimal assets in their own name to qualify for or preserve eligibility for public services.

<u>Sheltering Assets Via Pooled Trusts</u>

Under current Federal law, any assets held in trust are counted against the recipients of public benefits when those benefits have asset and income limits. Any portion of the trust funds that can be reached are counted as an asset and any portion of the interest that could be paid out is counted as income. The result: disqualification of benefits needed to meet basic needs.

Federal law creates another option that is referred to as a "pooled trust." Disabled or elderly individuals who place their assets in a pooled trust are not subject to the rules that normally apply to trusts. Pooled trust assets are not counted as available resources; interest on the assets is not counted as income.

Investment-savvy families often elect to establish more commonly known disability trusts to shelter assets from the formula used by the Federal government to calculate benefits: testamentary discretionary trusts, special needs trusts, and supplemental needs trusts.

Most often, the clients who establish such trusts do so either as part of an elaborate estate tax plan which includes business and other assets and, most importantly, where the disabled beneficiary needs special provisions. Sometimes, the court steps in to require a trust be created in conjunction with a major personal injury or medical malpractice case.

Unfortunately, because of the time, expense and complexity of planning associated with these types of trusts, many families shy away from the need for planning all together. That is why the Community Provider Network of Rhode Island (CPNRI) created a pooled special needs trust.

<u>Innovative Non-Profit Leads The Way</u>

CPNRI represents twenty-six providers of services and supports over 3,500 people with developmental disabilities in Rhode Island.

The genesis for the pooled trust was, as expected, based on observation and need. Executive Director Donna Martin of CPNRI recognized the dilemma the disabled individuals in her network faced when an unexpected asset was received. Not only did individuals and their families want a place to shelter assets to avoid a drop in benefits, they often sought to steer clear of the expense and perceived hassle of dealing with a lawyer.

To combat the families' inexperience with investing and reluctance to work with lawyers, **CPNRI joined forces** with Brad Simonds, a Special Care Financial Planner and **Correira & Iacono LLP** to create the first special needs pooled disability trust in the State of Rhode Island. Executive

Committee members of the Community Provider Network signed the trust documents and related forms for the Internal Revenue Service on Thursday, September 17, 2009 in their North Kingstown offices.

Important Features

The pooled trust allows disabled individuals to invest their “extra” assets for use in the long-term to enhance their lives. The trust can substitute for families creating their own special needs trusts and provide management by the trustees of multiple accounts for many beneficiaries. This is especially helpful when smaller sums are involved.

The trust money can be used to purchase any goods or services that SSI or Medicaid does not pay for such as nonsupport items that are other than essential medical care, food, shelter, and clothing. The money belongs to the trust, which is required by law to distribute the money to or for the beneficiary's best interests, subject to certain limitations.

One important feature of the pool trust is that monies in the trust do not have to be subjected to a state lien and may remain in the trust for all beneficiaries if a person dies before her or her personal needs trust sub-account is fully spent. These trusts are authorized by Congress under 42 U.S.C. section 1396p(d)(4)(c) and are currently operating in a number of states **but, until now, there has not been a pooled trust established in Rhode Island.**

Government Benefits Alone Are Not Enough

When dealing with individuals with disabilities, estate planning is especially challenging. The old notion that a family doesn’t have to worry about a disabled family member who is on state and federal benefits is disappearing. No longer can families assume they should leave nothing to a disabled child or relative in their estate plan because the government will provide.

Depending on the family situation and the level of care needed, a pooled trust can be the perfect solution for amounts ranging from several thousand dollars to fifty thousand dollars or more, depending on the circumstances. The trust will allow disabled Rhode Islanders to supplement their needs in the quest for the highest quality of life possible, and, ultimately, to preserve assets without compromising Social Security and Medicaid and other benefits.

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