

Special Needs Trusts for Disabled Children of Military Retirees

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If you are a military retiree and a parent of a special needs child, a bill in Congress will make it easier for you to provide for your special needs child after you die. The military allows retirees with special needs children to participate in the Survivor Benefit Plan, which permits monthly benefit stipends up to 55% of the military retiree's pension to be paid for the benefit of a disabled child. Currently this survivor benefit must be paid directly to the disabled child. The Disabled Military Child Protection Act will allow the survivor benefit to be paid directly to a d4A or d4C special needs trust. If the benefits are distributed directly to the trust, the child will remain eligible for needs-based benefits such as Supplemental Security Income ("SSI") or Medicaid.

On May 23, 2013, Senator Kay Hagan (D-NC) introduced S.1076, which will provide for the payment of monthly survivor annuities under the Survivor Benefit Plan to be paid to a special needs trust for the benefit of a veteran's disabled dependent child. It is anticipated that Congressman Jim Moran (D-VA) will introduce a similar bill on June 3rd when the House returns from recess. A press conference with Senator Hagan and Congressman Moran will be held on June 4th to promote the bill.

Currently, veterans are allowed to designate a certain percentage (up to 55%) of their Survivor Benefit Plan to go to a dependent disabled child upon the veteran parent's death. Because of the size of the pension benefits, in some cases, this places the disabled child in a position that s/he has a significant spend-down requirement each month in order to receive Medicaid. This bill, if passed, will ensure that a dependent disabled child will continue to qualify for Medicaid without a spend-down. The disabled adult child will also qualify for or remain eligible for other needs-based benefits such as food stamps or Section VIII housing subsidy after the veteran parent dies. It is important that you contact your legislators to ask them to support and vote for this critically needed legislation.

Note: There is a major distinction between a d4A or a d4C special needs trust and the typical trust that a parent provides in a will or living trust for a disabled child. The d4A or d4C special needs trust is funded with money that belongs to the disabled individual (called a first-party special needs trust). The type of trust that parents create in their wills is funded with an inheritance that never belonged to the disabled child and is considered a "third-party-funded special needs trust." All first-party special needs trusts must contain a payback clause indicating that state and federal funds under Medicaid that are paid for the benefit of a disabled beneficiary be paid back from the trust should there be funds remaining upon the death of the beneficiary. If the first-party trust has been spent down for the sole benefit of the beneficiary, no payback is required. The state will require a detailed accounting to confirm that all funds were spent down for the beneficiary and that funds were not used for the benefit of others.

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To learn how we can assist, contact our Special Needs Practice Group Leader Frederick M. Misilo, Jr. at 508.459.8059 or fmisilo@fletchertilton.com.

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