

## Using Qualified Special Needs Trusts To Protect Assets When A Parent or Grandparent Enters A Nursing Home

By Theresa M. Varnet, Esq.

The greatest fear that parents of special needs children have is what is going to happen to their child or grandchild with special needs when the parent or grandparent dies? Due to their concern, many parents or grandparents include a special needs trust into their estate plan that provides funds to provide for goods and services that the government will not provide or for a higher quality of care than the government provides. If parents die with their estate intact, the share of the inheritance for the special needs child flows (or pours over) into what is typically called a 3rd party Special Needs Trust.

One question that still haunts parents is what happens to the special needs child if the parent or grandparent, who intended to leave part of their estate to provide for supplemental needs for the child throughout his or her lifetime, enters a nursing home and the parent's life savings dwindle due to the costs of nursing home care? If a parent or grandparent spends down his life savings on privately funded nursing home care, there may be nothing left to fund the 3rd party special needs trust.

Generally, when a person enters a nursing home, he or she is not allowed to 'give away' his or her assets for a 5 year period. This is called the 'look back' period and it is meant to keep people from giving away their money and forcing the government to pay for their care in the nursing home. There is a little known exception for parents or grandparents of special needs children.

Many parents and grandparents are not aware that a gift to a Qualified Special Needs Trust for the SOLE benefit of a child or grandchild with a disability is not subject to the 5 year look back period. A parent or grandparent can give away his/her money today to a Qualified Special Needs Trust and qualify for Medicaid tomorrow. A parent can protect against the loss his entire estate by signing a durable power of attorney that provides that should he or she require long term nursing home care, their agent is given the authority to transfer their assets to a properly written Qualified Special Needs Trust. This trust differs from the typical 3rd party special needs trust that most parents include in their estate plans. The major difference is that the Qualified Special Needs Trust can only be created by a parent, grandparent, legal guardian or court of law and the trust must be for the SOLE

benefit of the special needs child. If there are funds remaining in the Qualified trust when the special needs child dies, the funds must first be used to payback the state for the costs it incurred during the child's lifetime.

We further recommend if this issue is of concern to a parent or grandparent that he or she not only sign a power of attorney with the special gifting language mentioned above, but that the parent or grandparent also create a 'stand by' Qualified Special Needs Trust so that there is a trust in existence to transfer the parent's or grandparents funds in the event nursing home care is needed. This will save time and preserve money as the elder who needs the nursing home will not be eligible for Medicaid funding until he or she transfers his/her assets to the trust. If the trust is not yet in existence, the elder will have to pay privately at costs, which at current rates, are \$300 to \$400 per day for private pay care. The cost of drafting a stand by Qualified Special Needs Trust will provide tremendous peace of mind should an unexpected nursing home placement threaten to wipe out a lifetime of savings. If you are interested in more information about adding special gifting powers to your durable powers of attorney or including a 'stand by' Qualified Special Needs Trust to your estate plan please call us to discuss these options.

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