



WHAT HAPPENS IF YOUR CHILD WITH SPECIAL NEEDS IS THE BENEFICIARY OF YOUR LIFE INSURANCE OR OTHER PLANS?

Most of us have some form of life insurance, whether it is insurance we bought ourselves, through work, or perhaps even with the credit union (you know – that \$2000 or \$5000 policy you get when you open the account). Don't forget that small AARP policy, too.

But what happens if we name our children as the beneficiary of your life insurance or annuity or IRA? Many parents typically name their children, both disabled and typical as the beneficiary of their life insurance, annuity or IRAs.

While this may seem a good idea as it may leave money for the future - if your child is disabled and receiving Supplemental Security Income (SSI), (a needs based program), they may become disqualified from receiving benefits if they receive a lump sum at your death.

The Social Security Administration (SSA) will audit a disabled person's financial situation, and (and if they have more than \$2000 in countable assets), may terminate SSI benefits, which is a qualification for receiving Medicaid (Quest in Hawai'i). In Hawaii a disabled person can only have \$2000 in assets to remain eligible for government benefits. This loss is immediate, and the disabled person will have to spend down that inheritance before they can become eligible again.

SSDI (Social Security Disability Insurance) is not a needs based program, and is based on the parent's work contributions to the Social Security system. These are not needs based; however there is a limit as to how much a family can collect.

THERE IS AN ANSWER: in 1993 congress passed the Omnibus Budget and Reconciliation Act (OBRA), which allows such inherited assets to be placed into a special kind of trust, called an OBRA d(4)(A) trust. These trusts usually have a payback provision in that any remaining funds in the trust at the disabled persons death may be paid back to the State to the extent the State has paid for care.

Instead of an OBRA d(4)(A) trust generally established after property has been left to a disabled person, parents or grandparents might first establish what is called a "third party trust," where life insurance and other inheritances can be left directly to the trust for the benefit the child.

So you may be looking at 2 types of trust in planning for your child. One in which you can leave money, such as your cash or life insurance, and the other, the OBRA d(4)(A) trust (sometimes referred to as the "oops trust,") where money that is left *directly* to your child can be held. Proper

planning would use the funds in the OBRA d(4)(A) trust first for the benefit of the disabled person and then use the Third Party Trust funds, because, if there are any funds left over in the Third Party Trust, they can be left to other family members, if the trust is properly drafted.

The laws and concepts of planning for special needs are very complex and *always* changing. It may be a good practice to consult an attorney and/or financial professional who is well versed in special needs planning. Remember, that most attorneys and financial professionals are not familiar with this type of planning. It could be a costly mistake to seek advice from a professional not current on special needs planning.

For more information, please call: Kirk S. Barth, CFP[®], CLU[®], ChFC[®], LUCTF, CLTC at Special Needs Hawai'i... kbarth@jhnetwork.com or visit my website: www.specialneedshawaii.com 808-469-4884 – cell – (808)258-3733

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