

A no-nonsense newsletter for estate planners and financial advisors from The Dayton Foundation

The Ohio Community Pooled Trusts Are Helping to Aid People with Disabilities

By Kevin R. Hayde, Executive Director, The Disability Foundation, a Supporting Organization of The Dayton Foundation

“The Disability Foundation’s Pooled Special Needs Trusts can be a cost-effective tool to preserve eligibility for Supplemental Security Income (SSI) and/or Medicaid.”

—Kevin R. Hayde

As someone who has personal experience in regard to a relative with a disability, I am well aware of the anxieties associated with assisting a loved one with his or her future financial planning. My brother-in-law, James, has a developmental disability that requires that he receive “Needs” resources from Medicaid and Social Security. These supplements have asset caps of \$1,500 and \$2,000 respectively.

What will happen to those resources if he should receive an inheritance from his mother’s estate? If the inherited assets can be protected, who will monitor the expenditure of those funds to ensure that they meet all state and federal regulations? This is where The Disability Foundation can help.

A Solution to Aid People with Disabilities

Just over 10 years ago, The Dayton Foundation established The Disability Foundation to serve the needs of persons with disabilities who face very similar issues as

James has. How does someone receiving capped benefits maintain those benefits if he or she receives a lump sum payment, such as injury settlements, prorated payments from Social Security or unplanned inheritances, just to name a few? The Disability

Foundation’s Pooled Special Needs Trusts can be a cost-effective tool to preserve eligibility for Supplemental Security Income (SSI) and/or Medicaid.

To appreciate the benefits of Pooled Special Needs Trusts, one needs to understand Special Needs Trusts. Special Needs Trusts basically are arrangements where funds can be invested for a recipient of SSI or Medicaid without losing eligibility. The Social Security Administration describes a valid Special Needs Trust as “a trust in which the trustee has full discretion as to the time, purpose and amount of all distributions.” If the beneficiary has no discretion over the distributions, the trust is not counted in determining SSI eligibility.

Two Types of Special Needs Trusts

Special Needs Trusts can be divided into two categories, Estate Planning Special Needs Trusts and Self Settled Special Needs Trusts. With an Estate Planning Special Needs Trust, typically parents create this with the parents’ assets for their disabled child.

I want to focus on the second category, which is Self Settled Special Needs Trusts. A Self Settled Special Needs Trust is a trust that contains the assets of an SSI or Medicaid recipient. Both of these trusts have in common the stipulation that upon the death of the beneficiary, the state Medicaid agency must be repaid for any Medicaid used by the benefits recipient before any amount can be paid to the beneficiary’s heirs.

The Self Settled Special Needs Trust (d)(4)(A) allows SSI or Med-

icaid recipients to place their own funds in a trust for their needs, but the trust must be created for an individual under age 65 and established by a parent, grandparent, legal guardian of the individual or a court. The Pooled Special Needs Trust (d)(4)(C) allows SSI or Medicaid recipients to place their own funds in a trust to help meet their needs, while meeting the following conditions.

- A nonprofit organization establishes and manages the trust.
- A separate account is maintained for each beneficiary of the trust, but the funds are pooled for investment purposes.
- Accounts in the trust are established solely for the benefit of the disabled individual by the parent, grandparent, the legal guardian of such an individual, by the individual or by a court.
- Upon the death of the beneficiary, to the extent that amounts remaining in the beneficiary’s account are not retained by the trust, the trust pays to the State from the remaining amounts in the account, an amount equal to the total amount of Medicaid assistance paid on behalf of the beneficiary under the state plan.

The two trusts administered by The Disability Foundation are Pooled Special Needs Trusts. One of the major differences between Self Settled Trusts and the Pooled Trusts is that Pooled Special Needs Trusts have no age limitation, in addition to being able to help the benefits recipient protect eligibility for SSI and Medicaid without their parents’ permission.

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KEVIN R. HAYDE

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How Your Clients Can Utilize These Trusts

To demonstrate how and why a client might utilize the trusts administered by The Disability Foundation, let me give two examples.

Example One. Alan (not his real name) is 46 years old and has multiple disabilities. Prior to acquiring several debilitating conditions, Alan worked for many years to save and invest money in IRAs and a money market fund. No longer having the ability to work and without the resources to purchase medical insurance, Alan had no choice but to apply to Medicaid for medical insurance coverage. In order to qualify, he had to reduce his assets to under \$1,500, but he wanted to be able to utilize the funds he had saved from his many years of hard work. Alan’s financial advisor recommended that he liquidate all of his assets and place them in an Ohio Community Pooled Annuity Trust (OCPAT), with The Disability Foundation guaranteeing him a lifetime of fixed, monthly annuity payments. By placing these assets in a protected trust, Alan’s advisor was able to help Alan gain approval to receive Medicaid assistance, while retaining the use of the earned assets to enhance his life.

Example Two. Mary (not her real name) is 68 years old, had become disabled due to a work-related injury and was receiving both SSI and Medicaid benefits. Mary learned that she was to receive a Workman’s Compensation award of \$80,000. A recipient of Medically Needy Medicaid, she felt it was unlikely that she was going to need to be in a nursing home, so long as she had dependable attendant care. Since she was over 65, she was not eligible for a Self Settled Special

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Needs Trust (d)(4)(A), but learned through an estate advisor that she was eligible for a Pooled Special Needs Trust with The Disability Foundation. By utilizing this option, she was able to retain her Workman’s Compensation and also continue living at home.

What Are the Benefits of Using The Disability Foundation?

In conclusion, The Disability Foundation can offer numerous benefits to appropriate clients who have loved ones with disabilities. Here are the most important benefits.

1. The Disability Foundation ensures that all trust distributions meet the State’s standards for “Supplemental Needs.”

Pooled Trust distributions may not be utilized for an individual’s basic necessities.

2. We do the work for you.

The Disability Foundation has the Pooled, Special Needs Master Trusts approved and in place. We have the Joinder, which establishes the primary donor’s consent to invest funds according to the master trust document agreement; the Fiduciary Trustee; a distribution procedure and approval process; and the record keeping for any applicable case audits.

3. We do the accounting. We maintain and monitor the spending

accounts for every individual trust recipient.

4. We ensure the management of the assets. The Fiduciary Trustees, who manage the assets, must adhere to the Investment Policy of The Dayton Foundation.

5. We handle communications with Social Security and Job & Family Services (Medicaid).

6. We handle tax filing and ensure that the accounts receive third-party auditing.

In summary, if you have an appropriate client whom you think may benefit from the services offered by The Disability Foundation, we always are available to discuss the situation and how we may be able to help. 🌟

Note: Solutions will differ from case to case. The above does not constitute professional financial or tax advice.

For more than 20 years, Kevin R. Hayde has advocated for the rights and appropriate support services for individuals with disabilities. He has served in a wide range of positions in this area of work, from managing a supported living agency, to securing appropriate housing for individuals with disabilities and serving on numerous state- and county-level advisory and advocacy committees to aid people with disabilities.

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