

The Importance of Beneficiary Designations for Families of Children with Special Needs

By Lauren E. Miller, Esq.

Beneficiary designations are a crucial—and often overlooked—part of estate planning. For parents who have children with special needs, updating your beneficiary designations is of particular importance. A beneficiary designation is a way for you to designate how an asset will be distributed upon your death. Two common types of assets that allow you to designate beneficiaries are life insurance and retirement accounts, such as an IRA or a 401(k).

Special needs planning necessarily includes one or more special needs trusts, and failure to update your beneficiary designations to reflect these trusts can have severe consequences, such as jeopardizing your child's eligibility for public benefits. When a child with special needs inherits assets outright while receiving means-tested public benefits, often the only way to reestablish benefit eligibility is by moving the assets to a first-party (OBRA '93) trust. This is carried out through a time-consuming and expensive court process known as a single transaction conservatorship. In addition, an OBRA '93 trust by definition includes a Medicaid payback provision, so after the death of the child, the state is reimbursed from the trust up to the amount of benefits paid during that child's lifetime. If there is anything left in the trust after Medicaid is reimbursed, only then will the contingent beneficiaries named in the trust be entitled to any distributions. Contrast this with a third-party special needs trust, which is created and funded by someone other than the beneficiary with special needs (such as through a beneficiary designation) and does not require a Medicaid payback clause.

You may have completed a beneficiary designation form at the time you purchased a life insurance policy or opened a retirement account. To ensure that your assets are distributed pursuant to your current wishes and in accordance with your current special needs plan, you should review your beneficiary designations every three to five years or when you experience any major life event.

For families of children with special needs, updating your beneficiary designations is just as important as executing special needs planning documents. Follow this checklist to assess the state of your current beneficiary designations.

SPECIAL NEEDS BENEFICIARY DESIGNATION CHECKLIST

- Identify your accounts that allow for or require beneficiary designations.
- If you do not already have copies of the current beneficiary designations for each account, contact the financial institution to obtain a copy.
- Review the beneficiary designations with your attorney to confirm that your child's special needs trust is named in the proper position; if you have more than one type of special needs trust (e.g., first-party trust vs. third-party trust), confirm with your attorney that the correct trust is listed on each beneficiary designation.
- Once you have updated all beneficiary designations, forward a copy to your attorney, and keep a copy with your other important paperwork.

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