



OBRA '93 TRUSTS

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As many of you may know, part of my financial planning practice involves serving the families of individuals with special needs. I personally have two family members with developmental disabilities. Providing financial planning advice for individuals with special needs can be quite complicated, and any error in advice can have dire consequences.

Many times, parents or individuals with disabilities are unaware of an excellent, legal planning tool for situations where the person with a disability needs to receive government benefits, such as SSI (Supplemental Security Income from the Social Security Administration) or, more often, Medicaid, but they are excluded from Medicaid benefits because they own assets, such as an investment account. In these cases, Medicaid will require the individual to "spend down" that asset until it is no more than \$2000. Quite often, this leaves that person eligible for Medicaid to cover his or her medical bills, but without sufficient resources – even with SSI -- to provide for certain items of daily living such as clothing, a cell phone, or access to the internet. In these cases, the individual with a disability who has assets might be a perfect candidate for a trust known as an OBRA '93 trust. This special type of trust was created as part of the Omnibus Budget and Reconciliation Act of 1993. Many people refer to it as a "payback" trust.

The OBRA '93 trust is an irrevocable trust. Money that is owned by the person with a disability is transferred into the trust. Usually, the parents or other family members are the trustees and must use the funds in the trust for the benefit of the person with the disability. After transferring funds into the OBRA'93 trust, the individual with a disability is eligible for Medicaid without having to "spend down" assets. Medicaid will then begin covering the person's medical expenses. At the time of the individual's death, Medicaid will look to the assets of the OBRA '93 trust to get "paid

back” or reimbursed for any expenses that Medicaid incurred during that individual’s lifetime.

Please note that the trust is a non-recourse trust. If there are insufficient funds in the trust to meet the expenses incurred by Medicaid, then Medicaid will simply take the remaining assets in the trust and look no further.

Here is a recent example: A client’s son received a court award directly into his name. Over time, it became clear that the individual was going to live longer than projected and the funds from the settlement were going to be insufficient. The client went to a special needs attorney who drafted an OBRA ’93 trust. Remaining assets were transferred into the trust and the son with a disability became eligible for SSI and Medicaid. That was over 20 years ago. The parents have used the funds in the OBRA’93 trust to purchase clothing, pay for a cell phone, computer and internet access and hire a caregiver to accompany their son to a family event in another state. All of these improve his quality of life and would not be feasible without an OBRA’93 trust.

My role as a financial planner in these circumstances is to recognize when an OBRA’93 trust might be appropriate and, if so, refer the client to a special needs attorney. Then, after the trust is created, I invest and manage the assets inside the trust. If you know someone who has a family member with a disability that might be a good candidate for an OBRA’93 trust, let’s have a conversation.

This article is for informational purposes only and should not be construed as legal advice. Please contact an attorney regarding your personal situation.