PLANNING FOR THE DISABLED CHILD
BY USE OF SELF SUFFICIENCY TRUSTS

A Presentation to the Western Montana Estate Planning Council
October 10, 2000

by

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I. The Problem

1. Parents of child with disability. How to provide for the child upon death of the parents without disqualifying the child for means-tested governmental benefits, such as Medicaid.

2. For Medicaid, single person must have no more than $2,000 of resources and very limited income.

3. Disinheriting the child in the Will may create hard feelings and does not protect the assets.
   (1) Other children may get divorced, sued, etc.
   (2) Other children may not carry out wishes.

II. Self Sufficiency Trusts

A. Legal Authority

1. Permitted under 42 USC §1396p(d)(4)(C)
2. Authorized in Montana by 53-18-101 through 53-18-105 M.C.A. and 37.2.501 through 37.2.513 A.R.M.

B. Definition of "Self Sufficiency Trust" - 53-18-101, M.C.A.

1. A trust created by a nonprofit corporation that is a 501(c)(3) organization; and
2. that was organized under the Montana Nonprofit Corporation Act;
3. for the purpose of providing for the care and treatment of one or more persons
   a. who are residents of this state and
   b. are persons with developmental disabilities, mental illness, or physical disabilities or are otherwise eligible for department services, as defined by the department.

C. Governmental Benefits

1. Receipt by a beneficiary of supplemental services as a result of the self-sufficiency trust account or of care and treatment provided by the trust may not

in any way reduce, impair, or diminish the benefits to which the beneficiary is otherwise entitled by law. 53-18-104, M.C.A.

2. But, the trust cannot be used to provide food, shelter, clothing or medical needs of persons who are receiving SSI and Medicaid benefits. Funds can be used to provide for costs of residential services above and beyond room and board.

3. Examples of Supplemental Services:

    a. Spending money
    b. Additional or specialized food
    c. Clothing
    d. Birthday and holiday presents
    e. Health services not otherwise provided
    f. Radios
    g. Record players
    h. TV sets and VCR's
    i. Camping and vacations
    j. Sports equipment
    k. Movies
    l. Other medical, health, leisure or safety needs

D. Repayment of Government Benefits

1. The trust has to reimburse the state for the cost of Medicaid services provided to the beneficiary before anything passes to the charitable trust or other beneficiaries. 37.2.505(1)(e), A.R.M.

2. This is a major drawback to use of self sufficiency trusts.

E. Administration of trust account - 53-18-103, M.C.A.

1. DPHHS accepts money from a self-sufficiency trust for deposit in the self-sufficiency trust account established by DPHHS with the state treasury.

2. The money is accepted pursuant to an agreement with the self-sufficiency trust.

3. The agreement must name one or more beneficiaries who are residents of this state and are persons with developmental disabilities, mental illness, or physical disabilities or are otherwise eligible for department services, as defined by the department.

4. The agreement must specify the care or treatment to be provided for each named beneficiary. These are referred to as Lifecare Plans.

5. Money in the trust account must be accounted for separately for each named beneficiary.

6. The department of public health and human services shall administer the trust account for beneficiaries who are mentally ill.

F. The Players

1. Developmental Disabilities Planning and Advisory Council

    a. Oversees operations of Montana's Self Sufficiency Trust
    b. Members appointed by the Governor and represent individuals with disabilities and their families, service providers, legislators, and interested citizens
    c. Board reviews Lifecare Plans to ensure they can be implemented as written

2. P.L.U.K.

   a. Parents, Let's Unite for Kids, 516 N. 32nd St., Billings, Montana 59101, Ph. 1-800-222-7585

   b. This is a 501(c)(3) organization of the type specified in 53-18-101 M.C.A.

   c. A lifecare planning agency. It is a nonprofit corporation which provides counseling services to assist donors who request assistance in writing a lifecare plan.

   d. They put out the MSST Handbook

      (1) Describes steps to be taken to establish a self sufficiency trust

      (2) Provides forms

      (3) Beware

         (a) The handbook says, "When the beneficiary dies, Montana state law allows donors to MSST accounts to designate heirs to receive the principal of the account on the death of the beneficiary, less 10% of the market value of the account which must be donated to the Charitable Trust. The Department of Public Health and Human Services may impose a lien upon the assets of a self-sufficiency trust, if the department is required by federal law to recover or collect from the trust or its assets."

         (b) In fact, the trust has to reimburse the state for the cost of Medicaid services provided to the beneficiary before anything passes to the charitable trust or other beneficiaries. 37.2.505(1)(e), A.R.M.

   e. Charges $50 to handle the cost of processing forms and assisting clients. It charges no fee to develop the lifecare plan, except travel.

3. Davidson Trust Co.

   a. Administers the funds

   b. $100 account fee

   c. 1% annual fee

III. Discretionary Trusts

A. Private

1. No statutory authorization
2. No statutory guarantee that they won't someday cause disqualification

B. Very similar in many respects to self sufficiency trusts

1. Cannot be used to provide support for the beneficiary, only extras
2. As long as testamentary, should not risk being counted as resource for Medicaid eligibility. 42 USC §1396p(d)

C. Features

1. No requirement that the remainder pass to the state upon death of the beneficiary

2. Make sure the trustee has discretion over income and principal and is required not to use the trust to provide support, maintenance or care for the child or for other items provided by governmental programs.

3. Trustee should be directed to explore other sources of support and to qualify the beneficiary for these sources, if at all possible.