

## **When you have clients with disabled children, finance is only one of the issues.**

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By Janet Aschkenasy

Max was like many parents of disabled kids. His daughter, now 14, is severely autistic—unable to communicate with others and in need of lifelong supervision. Yet as of four years ago, his personal investments were arranged haphazardly—comprised exclusively of individual, handpicked stocks—and he had no long-term-care plan in place for his then 10-year-old daughter.

Then Max met Sheri Billings, a South Florida-based Merrill Lynch financial advisor whose own teenage daughter has cerebral palsy and will require care as long as she lives.

Billings helped Max establish a special needs trust for his daughter. He has also taken out a term life insurance policy designed to last until she reaches adulthood. If Max dies while the insurance is in effect, the trust will receive a payout sufficient to cover all of Alexandra's expenses, including a paid supervisor. And because the trust is not part of Max's estate, it is not subject to estate taxes.

This means he can direct more of his assets toward 529 plans for his three other children's college expenses. Billings also helped Max create a diversified asset allocation program for his personal portfolio, which now includes large- and small-cap equities as well as domestic and foreign stocks. But Max's relationship with his advisor has yielded something far more meaningful than increased confidence in his stock portfolio; it has given him peace of mind about his daughter's future.

Stories like this are surprisingly common. Yet given the critical need for solid financial planning for disabled individuals—people who may need relatives or caregivers to supervise financial matters like bill paying and shopping, as well as everyday activities like cooking and house cleaning—qualified special needs professionals are oddly few and far between. "I know people who are dealing with this every day and don't know where to turn," explains CFP Joel Larsen of the Larsen Financial Strategies Group in Davis, Calif. And the situation exists despite the fact that about two in every seven families included in the 2000 U.S. Census reported having at least one family member with a disability, according to information compiled by METDESK—MetLife's Division of Estate Planning for Special Kids. .

Financial service giants Merrill, MetLife and Mass Mutual do, in fact, offer special-needs planning spaces, where trained specialists sell products exclusively through their own dedicated teams of advisors. Merrill's special needs financial services group alone employs and trains well over 1,000 so-called Certified Special Needs Advisors (CSNAs)—all of them full-time Merrill employees. These experts focus on planning solutions for any disability that requires lifetime care, according to Chris Sullivan, vice president of the firm's Special Needs Financial Services Group.

This specialty is complex, and it is highly dependent on astute legal advice. Independent wealth managers who want to compete in this rarefied space and serve as effective quarterbacks coordinating services for special-needs families will need the proper tools and resources—including attorneys who really know the field—at their fingertips. Keep in mind too, that clients are often too overwhelmed to focus narrowly on their own retirement planning and investments 10 or 20 years hence when they're also being counseled to look ahead several decades toward trusts that will take care of their dependent children. The wrong contract language can be devastating for special-needs beneficiaries and other family members slated to receive anything that remains in the trust.

### Different strokes

Clients in need of this kind of special financial planning include families of children with

autism and other developmental disabilities, as well as parents and relatives of individuals suffering from broadly defined mental illnesses like schizophrenia. Still other planning solutions will be needed should the special-needs individual suffer debilitating injuries leading to court-awarded damages that require tax protection or other changes to make the funds accessible when families need them most. Here again, the right advisor can make all the difference.

In one such case, parents believed that their child had sustained irreversible brain injuries at the time of his birth, and the hospital provided a lump-sum payment as part of a larger settlement with the family. Initially, the lump sum was placed in a revocable trust for the child's adulthood. To promote additional growth, these funds were invested almost entirely in equities. But the monthly payments the child received weren't enough to cover his care, and the family could not access the trust to help defray the costs. Not only that, but due to the high-flying markets of the late 1990s, capital gains taxes on the trust fund were steep. As a result, "Our three year old was paying \$20,000 in taxes," his father recalls. It took a skilled special-needs advisor, partnering with an attorney, to petition the courts to reclassify the trust as special needs, allowing the invested funds to grow tax-deferred until the child becomes an adult. The attorney also petitioned to have the parents named trustees, allowing them access to the money for their son's care. And the new advisor set a new asset allocation for the trust—one with less exposure to stock volatility.

"We need to talk!"

Another challenge: Special-needs families will often resist your efforts to direct them toward planning solutions.

"Estate planning is the hardest thing to get a client to do because they are addressing their own mortality," Larsen observes. The families of special needs individuals have social stigmas to face down as well. "Normal' people can't relate," he adds. "You build these barriers, and when someone knocks on the door it's like 'Thanks but no thanks.'" Much of the time, planners enter the field because they have a child or relative of their own with some type of disability.

Then again, sometimes it is all too clear that a client is in need of your help. Larsen faced such a challenge back in 2003 when he met a retiree whose adopted granddaughter was 19 years of age, but was expected to have the mental capability of a four-year old. The retiree and his wife had ended their relationship with the little girl's mother due to her drug dependency, but they decided to take in her child. "I said, 'We need to talk,'" Larsen recalls. "[The retiree] was in his 60s and not in great health. What if something should happen to him?"

Larsen had to work fast. "The first thing I needed to do was find an attorney specializing in this area. In the CFP Code of Ethics it's very specific if you're not qualified to work in a certain area—don't." (Advisors looking for an attorney with stellar credentials would be well advised to look to resources like the Special Needs Alliance, an "invitation-only" organization representing some 100 attorneys nationwide.)

Surprisingly, money is seldom the biggest problem when it comes to special needs planning. In part, this is because special needs individuals whose trusts have been structured and worded correctly usually qualify for government aid to cover medical costs as well as baseline living expenses. So it was with Larsen's client.

"This guy has probably \$1 million in his IRA, a couple of nice pensions and vacation property he won't need much longer. And so long as no money is held in her name or given to her as a gift, SSI (the federally funded Supplemental Security Income program) and Medicaid should be available to pay his granddaughter's key living expenses.

"We know his money will last throughout her lifetime," says Larsen, and a trust has been set up to supplement her expenses after her grandparents' death. Unfortunately, the client will not discuss what will happen if his son is not able to take care of his special-needs

[daughter] for some reason.

“Some special-needs kids only need standby assistance,” notes Larsen. “Some of them have jobs and apartments of their own.” This client’s granddaughter, however, “will always need someone to help her get through the day.” In a case like this, “You need to have a backstop,” Larsen says. Against his advice, however, the client did not appoint anyone to alternate with his son. Larsen understands: “All you can do is let [your clients] know you’re there for them when they’re ready.”

## Do’s and Don’ts

The following list of directives for wealth managers wanting to provide special needs planning for their clients is drawn primarily from advisors’ experiences with badly worded contracts and basic misunderstandings. It is also important for wealth managers to keep in mind that you may need to bring in other experts if you find you are over your head: “If you can’t do this yourself, you can bring in other planners as consultants,” observes fee-only advisor Kristi Sweeney, a CFP who heads Sweeney & Associates in Greenwood Village, Colo.

### 1. DON’T let your client leave money in the disabled person’s name.

“The primary advantage a special needs trust offers over a direct gift or inheritance is that, if arranged properly, the assets in the trust do not actually belong to the beneficiary,” says attorney Bernard A. Krooks, founding partner with New York City law firm Littman Krooks LLP and a member of the Special Needs Alliance. Where the individual is in need of any product or service whatsoever—be it physical therapy or a trip to the Bahamas—no payment or distribution should go to the beneficiary directly. Instead, the trustee should write a check directly to the provider. “In this way, the trust can provide benefits to the disabled individual, but not cause [them] to be disqualified from government programs,” such as SSI and Medicaid, Krooks observes.

“The parents can be Bill and Melinda Gates,” observes CFP Ron Pearson, who heads up Beach Financial Advisory Service in Virginia Beach, Va. “If that child has Downs Syndrome, he or she would still be eligible for welfare benefits at age 18,” assuming the child has no significant assets.

Most states allow Medicaid and SSI beneficiaries to hold no more than \$2,000 to \$4,000 in assets in their name, with income no more than \$700 a month, says Krooks.

Clients may think they are wealthy enough to forgo public aid, but families are often shocked to learn that taking care of an autistic child for their entire life can easily run into the millions of dollars.

### 2. DO review special-needs contract wording carefully—even when an attorney “specializing” in special needs has prepared the document. “You want to make sure it states that the trust is to supplement but not supplant government benefits,” says Sweeney. Krooks agrees that this is good language.

But you may want to be still more specific, observes Evelyn M. Leathers, an attorney with Bezaire & Leathers in Irvine, Calif. “Some trusts will say, ‘This can be used for entertainment, continuing education and medical needs the state is not providing. That’s always good to put in there,’” she says.

### 3. DON’T allow your trust agreement to contain standard Crummey Powers. A Crummey Power is a technique often used to enable a person to receive a gift that is not eligible for a gift-tax exclusion, and change it into one that is eligible. The beneficiary of a Crummey Power must be notified of each contribution and has a set period of time—often 30 days—to withdraw the money contributed. If there is no such withdrawal, a gift-tax exclusion may

be available. Yet for Medicaid or SSI purposes, the gift can also be deemed as income. While Crummey Powers tend to have crummy outcomes for special-needs trusts and beneficiaries, Pearson says that “Probably 40 percent of the trusts I read have this provision in them.”

4. DO partner with the right attorney. The one thing all the advisors interviewed agree on is that they cannot do without a lawyer who knows special-needs planning inside and out. “If there is no attorney like that in your town, go out of town,” says Larsen.

5. DO help clients to choose carefully between lifetime trusts and testamentary trusts that will become part of their will. “If you have sufficient resources to fund something while you are alive, that is probably a good thing,” says Pearson, who is the father of two mentally retarded sons. “Why wait until you’re gone?” he asks. “I’d rather improve their quality of life now.” Moreover, family members can still “test drive” a special needs trust created within their lifetime and if necessary, create a new one. If it is a lifetime trust, another relative can leave money to it even if they don’t pre-decease you. You can also direct high net worth toward separate irrevocable life insurance trusts that will help them shelter life insurance proceeds from estate taxes.

6. DO appoint a corporate trustee. You probably don’t want to ask your relatives how many times they have read their state’s trust law, says Krooks. Although, “We give [non-professional] trustees a guidebook telling them what they can or cannot do,” many of Krooks’ clients wisely end up settling on a professional trustee to manage investment, tax and regulatory issues and appoint family members to look after more personal matters.

## SIDEBAR

### Special Needs Resources

These organizations may be useful in your search for special needs professionals and more information:

The Special Needs Alliance—a network of leading disability and public benefits lawyers. ([www.specialneedsalliance.com](http://www.specialneedsalliance.com))

The ARC—a grassroots organization of and for people with intellectual and developmental disabilities. ([www.thearc.org](http://www.thearc.org))

The National Academy of Elder Law Attorneys—an association that provides legal advocacy, guidance and services to enhance the lives of people with special needs and others as they age. ([www.naela.com](http://www.naela.com))

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