

New Jersey Law for Special Needs Children

NEWS & UPDATES ON ESTATE PLANNING FOR NEW JERSEY FAMILIES WITH SPECIAL NEEDS CHILDREN

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Legal Settlements and Special Needs Trusts

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Individuals who become disabled as a result of an accident may receive a monetary award as part of a legal settlement of the case. If this happens, it is important that the individual, prior to finalizing the settlement, speak with a special needs attorney to determine the best way for the settlement to be paid.

The two most common types of pay-outs are the structured settlement and the lump-sum payment. The structured settlement often consists of an income stream (in the form of an annuity) as well as lump-sum payments that may be made at certain times, such as certain birthdates. The payments are usually based on the beneficiary's life expectancy.

Whether an individual elects a structured settlement or a lump sum, these assets are considered assets of the individual. If, as a result of the disability, the individual would qualify to receive government benefits such as Medicaid but for the monetary award, the individual should consider having the award distributed to a trust for his or her benefit. An individual cannot have assets in excess of \$2,000 in his or her name in order to qualify for Medicaid and SSI. If the award is paid to the individual, this eligibility test is not met. If instead, these payments are made to a First Party Special Needs Trust, the individual's eligibility for governmental benefits is preserved. At the individual's death, the remaining trust assets will be used to reimburse Medicaid for any money it has expended. Any money left in the trust can pass to successor beneficiaries named in the trust.

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