

## Frequently Asked Questions

**What does Enhanced Life Options do?** We develop and help carry out enhanced life option plans for people with disabilities. We provide information, education and consulting services for the disabilities community, and we provide evaluations and trust services. Our clients determine the scope of our services and participate in the decision making process to the maximum extent possible. We want to enhance people's options without duplicating what others do. We are a non-profit organization established in 1993 and the members of our group have worked with individuals with disabilities for many years.

**What information and education services does Enhanced Life Options provide?** We arrange for in-depth studies of important disabilities topics, including special education, guardianship and disabilities trusts.

Effective special education advocacy for families is very difficult, so we have been working to develop alternative advocacy methodologies. We arrange individual independent special education evaluations, because we think evaluations can provide a good road map for future services. We have also helped educators to encourage students to be more accepting of the disabilities of other students, by providing assistance to a program where students write stories in class about people they have met who have shown courage.

Guardianship is another difficult disabilities topic. We think that people can get easily confused and sometimes make a wrong decision about guardianship, and what the scope of a guardianship should be. We make available an assessment, which has helped many people look at this issue objectively before guardianship is applied for.

Future planning with trusts is another difficult topic for the disabilities community. Disabilities trusts are a key part of planning for a family with a disabled family member, along with various other companion documents and strategies for the disabled person. Some examples would be powers of attorney or guardianship, and representative payee arrangements, individual service plans and the various estate planning documents for parents which take into account the disabled child's disability and also consider potential future disability or death of the parents of the person with disabilities.

The trust can often benefit a disabled beneficiary, because the trust can provide a flexible structure for lifetime protection taking into account the beneficiary's special needs, public benefits, taxation and/or advocacy needs.

There is no cure-all in planning for all eventualities, but a trust can prevent an economic free-fall for a disabled child after the death of the parents, and a trust can help an inheritance or a personal injuries settlement have a positive effect and fundamentally enhance a disabled person's life over many years.

We can make available trust management services for this type of trust and offer other individual services for people with disabilities.

We consult on a variety of challenging issues for the disabilities community. This web site has been designed as an information and education resource, and we hope that it is helpful to you. We also provide speakers on challenging disabilities topics, including special education, guardianship and future planning.

**What personal planning services does Enhanced Life Options provide?** We develop personal service plans for people with disabilities, considering the individual needs of each client, to arrange services and items such as:

- Medical and dental treatment not otherwise covered
- Transportation, including vehicle ownership and drivers
- Residence options, including home ownership, condominiums and supervised settings
- Furniture, furnishings and household goods and equipment
- Electronics, including computers, telephones and radios
- Education, books and tutoring
- Social activities
- Supported employment opportunities
- Personal assistants and aides
- Evaluations and studies to support eligibility for services

**Does Enhanced Life Options arrange for individual disabilities evaluations?** Yes. Our organization was initially funded with contributions from the family and friends of a young man who died after a very challenging illness, and who inspired others to be strong in the face of difficult challenges. We feel that providing the best possible disabilities evaluation which can be arranged, can help to develop a road map for future services where no such evaluation already exists to point the way. Contact us to obtain further information.

**Does Enhanced Life Options make available guardianship assessments?** Yes. Our assessment tool was developed as a volunteer effort based on many years of guardianship work, and is designed to help determine, in advance whether guardianship is appropriate compared to less restrictive alternatives such as powers of attorney. Contact us to obtain further information.

**What individual financial trust management services does Enhanced Life Options provide?** Our non-profit organization develops and helps carry out a broad range of enhanced life option plans for people with disabilities. For clients with disabilities requiring management of resources, usual financial services arranged include:

- Work with the client and others involved including financial advisors to establish appropriate objectives
- Follow up meetings with the client and others involved, to determine whether objectives are still appropriate

- Disbursements
- Maintenance of tax records (original costs and acquisition dates)

At times we may be requested to provide additional personal services for our clients, such as the purchase or sale of a home, bill payment and processing of medical insurance claims. Our services have no minimum or maximum asset requirements. We think that knowledge of disabilities enhances the work of a trustee regardless of the size of the trust. We provide information, education and consulting services for people with disabilities and their advisors whether or not we provide trustee services for a disabilities trust.

**What is a Disabilities Trust?** A disabilities trust is a trust that holds title to property for the benefit of a person who has a disability. The disabilities trust can be used to provide for the needs of a disabled person to supplement benefits received from various governmental assistance programs including Medicaid and SSI. A trust can hold cash, personal property or real estate, or can be the beneficiary of life insurance proceeds.

Disabilities trusts can make the same purchases family members can make with their own funds for the person with disabilities and can continue to do so after the family member's death (if the terms of the trust allow), including medical expenses not covered by public benefits, dental expenses, eye exams, as well as transportation including vehicle ownership, home ownership, furniture, furnishings, household goods, pets and programs of training and education. Disabilities trusts may also purchase computers, telephones, radios and other items.

**Does the Social Security program allow Disabilities Trusts? Yes.** Since 1975 the Social Security Administration has had established rules allowing assets to be held in trust for a recipient of SSI if the disabled beneficiary cannot control the amount or the frequency of trust distributions and cannot revoke the trust. In 1999 Congress confirmed by statute the use of special needs trusts in the Social Security context.

**Does the Medicaid program allow Disabilities Trusts? Yes.** Disabilities trusts have been used for many years in the Medicaid context, and in 1993 Congress confirmed the use of special needs trusts with respect to Medicaid. In 1996, 2004 and 2007, the New Hampshire Legislature confirmed the use of disabilities trusts by State law.

**Should I consider a Disabilities Trust if SSI and Medicaid are not involved? Yes.** A disability trust individually tailored to the needs of a person with disabilities can make a big difference for a person who is not receiving public benefits. Disabilities trusts provide a protective management service and certain liability protections and can provide supplemental help in the event public benefits are needed in the future.

**Who can establish a Disabilities Trust?** Parents, other family members, friends and people with disabilities can establish a disabilities trust as part of their estate plan. Parents for example, can "pour-over" a disabled child's share of their estate into this trust where the inheritance might otherwise disqualify the child from public benefits. Also, a disabled person who expects to receive money directly may establish a disabilities trust under certain circumstances, as may a parent, grandparent, guardian or Court.

**Can a Disabilities Trust be used for gifts, inheritances, personal injury settlements, lump sum social security checks and money raised in the community for a person with disabilities?** Yes. The Trust protects the gift, inheritance, settlement, funds raised or lump sum, for the special needs of a person with disabilities. Note that there are special rules of establishment of such trusts; see POMS SI 01120.203. Also, lump sum checks for children may have to be deposited into a dedicated account; see SI 01120.601.

**Who manages the trust assets?** The manager of a trust is called a “trustee”. The trustee invests the trust funds and spends the funds to benefit the person with disabilities.

**Who may serve as trustee?** When a disabilities trust is established by parents for the benefit of a disabled child, those parents may serve as the trustee until they die or become incapacitated. When that occurs a successor, selected in advance by the parents, continues to serve according to instructions contained in the trust. Parents may also name another trustee at the start and have property go into the trust after their deaths. The trustee can be an individual (over eighteen years of age), a bank, or other fiduciary and can also involve a non-profit organization.

**Are non-profit trusts given a special status under federal law as trust managers of disability trusts?** Yes. When Congress confirmed the use of disabilities trusts in 1993, the law stated that non-profit organizations may manage special needs trusts, and that non-profit trusts could retain funds in trust even after the death of the first beneficiary. Congress reconfirmed this in 1999.

**Can someone be named to oversee the trustee?** Yes. A family member such as a sibling or another person or organization named by the parents or whoever the establishes the trust, can be given veto power over the trustee and still have the trustee be responsible for day-to-day operation of the trust. This type of provision is called a special power of appointment or trust protector.

**Can the person with disabilities serve as trustee?** No. The premise of a disabilities trust is that the disabled beneficiary does not have signature authority over the trust funds. The assets of the trust are for the benefit of the disabled person, but the disabled person while living can have no power or authority to direct the payment of funds and still receive Medicaid or SSI. If the person with disabilities is the trustee, then the trust funds are considered available resources that must be spent down before Medicaid and SSI can be provided.

**What is placed in the Trust to establish it?** Virtually any kind of asset may be held by the trust. Holding title in the trust results from transferring the title into the trust’s name. Many times a trust has no assets put into it (other than a nominal sum such as \$10.00) until the death of the parent or other person who establishes the trust. The disabilities trust in that case is an empty shell waiting for a future event. At times it may be preferable to put assets into the trust and begin using the trust immediately, but it is not required.

**Can additional property be put into the trust?** Yes. Additional property may be added to the Trust at any time, by the person who established it or other people including relatives and friends. Additions may be made by gifts during life, by will or living trust, by life insurance

policies, employee plan benefits, or retirement plan benefits.

**Are Disabilities Trusts Confidential? Yes.** With special exceptions that the person establishing it desires, the Trust can be held confidential. However, it may need to be presented to a Court or governmental authority for their review under tax and public benefit rules.

**Is there a choice about what state the trust is located in? Yes.** A disabilities trust can be located in and governed by the law of a jurisdiction where the trustee is located even if the beneficiary is living in a different state. There is some variation among states as to how trusts are administered within the requirements of the federal law. It is important to become acquainted with the federal and state requirements.

**Does New Hampshire have a specific law requiring the State to follow federal law about what disabilities trusts can purchase for people with disabilities? Yes.** RSA 167:4(V) requires the State to follow Federal law when administrating the medical assistance program. This law is called “Emily’s Law” named after a young women with disabilities whose case led to the law.

**Does New Hampshire protect Disability Trusts from claims? Yes.** New Hampshire passed a law in 1996 that specifically protects special needs trusts against people claiming to be creditors. Sometimes people try to take advantage of a person with disabilities. This New Hampshire law protects special needs trust assets so they can be used to benefit the person with disabilities and not taken from them, even if the trust was established with funds belonging to the person with disabilities. New Hampshire is the leading State nationwide concerning this protection for people with disabilities.

**What is the difference between having a disabilities trust and just having a bank or brokerage account designated to be used for a family member with disabilities?**

A disabilities trust is able to maintain public benefits eligibility, protect against people trying to take advantage, and provide rules for management of the funds. Trusts have provisions to help resolve issues that might come up, after a parent’s death. Trusts look over the horizon based on experiences others have had after family members pass on.

**What is the difference between a disabilities trust and spending down assets upon receipt?**

If a spend-down is the selected choice, then simple final arrangements, an automobile and household goods and repairs are common spend-down purchases. The disabilities trust approach allows the funds to be held over time rather than spent down rapidly without planning for the future. Disabilities trusts work in partnership with public benefits to help people with disabilities have a better quality of life in the future.

**Is Enhanced Life Options a charitable organization? Yes.** Enhanced Life Options has been determined to be a tax-exempt public charity under IRC 501(c)(3).

**Is Enhanced Life Options a member of any state and national disabilities organizations?**

Yes. Enhanced Life Options is a member of the NH Brain Injury Association, the National PLAN Alliance and the National Guardianship Association. Our executive director also serves

on the Board of Directors of the National PLAN Alliance, which is the largest association of groups around the country like Enhanced Life Options.

**Does Enhanced Life Options restrict its services to only one type of disability?** No. We have clients with various disabilities and develop individual enhanced life options for each individual we serve.