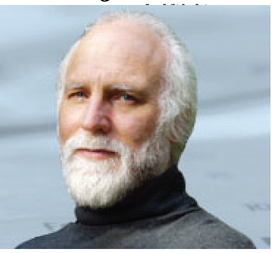
VOLUME 26, NUMBER 6 JUNE 2016

inside information



Edited/Published exclusively for leading financial professionals - www.bobveres.com

Special Needs, Special Planning

Synopsis: ***One in ten client families need special-needs planning. Here's how to provide it.***

Takeaways: ***Create a special needs trust, make sure the child's account never exceeds $2,000, qualify for Social Security and Medicaid benefits, and monitor a lot of difficult trade-offs in the family.***

Mike Walther, of Oak Wealth Advisors in Deerfield, IL, is one of the few financial planners in the country who offers special needs planning services to his clients. For those of you who are unfamiliar with the term, that means he helps families who have developmentally-disabled children who either can't care for themselves in adulthood, or who require (often expensive) assistance of various kinds.

"These are what we consider to be cognitive disabilities," he explains. "The needs we're dealing with are specifically those for the cognitively-impaired. It could be autism, Down Syndrome or Cerebral Palsy. It could also be mental illness. The diagnosis could come at any age: birth, post-accident, or old age, where you get more of the cognitive decline and Alzheimer's and dementia that kick in for some of our elderly folks."

This is an area of specialty but not a niche; you might be surprised to learn that various surveys have found that one American family in ten is dealing with a special needs situation. It's possible that ten percent of your clients are facing these issues, even though most planners never hear about them.

> ***Qualifying for government benefits is the only ticket to a variety of other services.***

Recently, Walther returned from the annual meeting of The Academy of Special Needs Planners in Tucson, AZ. "There were 80-100 people in attendance," he says. "To the best of my knowledge, there are at most five of us in the Academy who are financial planners; the rest are attorneys. It's always eye-opening to be exposed to the minutia of how Social Security benefits work, how family members can participate in the caregiving, the challenges of guardianship, all the stuff that you're never going to find in a textbook," he adds. "Hearing these guys talk about the practical side of doing the planning, it was incredibly helpful."

Quality of life

Walther is going to give what may be the most detailed, technical presentation offered at our Insider's Forum conference in September, including how to spot those 10% of your clients who are coping with a special needs situation, and what to do once you've identified them. At a very high level, he says that advisors should recognize that you need to get the special needs child qualified for Social Security benefits and Medicaid, because that's in many cases the only ticket to eligibility for a lot of state and locally supported charitable programs that provide care, enrichment and other opportunities to enhance the child's quality of life.

"The list includes job training and having a job coach who would actually go with you to the site of your employment to assist you with your job, to supervised activities like arts and crafts, to educational programs and even housing arrangements," Walter explains. "For folks who are more disabled, maybe there is 24/7 live-in care. For those who have Asperger's Syndrome or some other higher-functioning disability," he adds, "it may give you access to somebody who will be checking in once a day to make sure there's food in the fridge and everybody is okay and they're taking their medications if they need them.

"I have a client right now who is applying for her adult daughter to qualify for Medicaid medical benefits," Walther says. "Once she becomes eligible, she can get into a jobs training program and qualify for the services that are only available to those who are Medicaid eligible. The primary reason for the application is not so much for the financial benefits. It's the only way to get access to those programs."

Once qualified, the family lives in danger of falling into a strange Catch-22. Social Security and Medicaid benefits are only available to special needs children who have less than $2,000 in financial assets.

"$2,000 is a hard number," Walther explains. "If their bank account accidentally goes up to $2,001, that month you would not receive your Social Security benefit check." The problem is that not every family member understands the limitation, and so they may give, say, a $14,000 check under the annual gift tax exemption, or leave an inheritance directly to the special needs child. Oops!

The traditional solution, which Walther recommends for his clients, is a special needs trust. The money coming in from family members can be routed directly into the special needs trust rather than the child's personal account, and the trust can pay for various kinds of quality-of-life expenses like baseball game tickets, school or camp tuition, telephone and internet services, plus things like private counseling and case management, job coaching, plus any medical equipment not covered by Medicaid.

The new 529 ABLE state accounts will allow tax-deferral and come with more flexible distribution rules than a traditional special-needs trust.

ABLE option

Walther is looking forward to a new kind of account that will become available to special needs families this summer. "Something called the 529 ABLE account was set up as a law in December of 2014, in the same code section as the College 529 plan," he says. "The new account grows tax-deferred, and it can be used in those situations when an inheritance comes in that wasn't properly structured, where the money can be moved from the child's account to the ABLE, where it won't count against that $2,000 limit."

If the child is employed, he or she can set aside up to $14,000 a year in the ABLE account. "No matter who the contributors are, whether it is grandparents, parents, siblings or the person him/herself, the maximum you can put in during the year is $14,000," Walther explains. "So I would expect some families to be using the annual gift exclusion for funding on an annual basis."

At the top end, the 529 ABLE account can't accumulate more than $100,000. "If it goes over $100,000 in total value at some point in the future, the assets over $100,000 start to count against what you have as your countable assets for Social Security benefits," says Walther. But this is something that he can monitor, and meanwhile the opportunity to grow some of these assets tax-deferred is enhanced further by more flexible distribution rules than you find in special needs trusts.

There is more procedural flexibility too. Let's say the child and parents want to make a large purchase. Walther believes that the family should be able to move the purchase dollars out of the trust into the ABLE account, and then buy at their leisure. "If it went from the trust directly to the individual," he says, "then it would have to be spent that month."

No state has opened up its ABLE yet, but Walther says that Ohio and Florida should be among the first. Since you can have your ABLE account managed any state (just like the education 529s) this could attract a lot of assets from people around the country.

Action steps

Of course, there are so many nuances to special needs planning that many planners would prefer to delegate to somebody with specialist knowledge. Walther provides counseling to financial planners who run into special needs situations for a bargain price of $1,000.

"For that fee, they would get a comprehensive review with our recommendations," Walther explains. "We'd go through the family's information and give them a written writeup as to what the next steps should be and how to do them. The family could either implement them on their own or with a financial advisor to implement our recommendations on the special needs aspects."

What would those next steps look like?

"Depending on their situation, it could include getting supplemental needs trusts drafted, or if they have been drafted, getting them redrafted as standalone documents, so they're not embedded in Mom and Dad's estate plan," says Walther, explaining that the trust needs to be in existence (rather than planned to come into existence upon the deaths of parents) in order to soak up any money that is inadvertently transferred to the child.

In addition, he would recommend that the family retitle all beneficiary designations.

"That is a place where we see a lot of mistakes," Walther says. "Whether it's life insurance or retirement plans, we see cases where the individual is either named outright—which causes eligibility problems—or is entirely disinherited because they don't know how to transfer those assets. If you name a supplemental needs trust as the beneficiary it solves a lot of those problems."

For a $1,000 fee, Walther will provide a written action plan for the special needs family, including a checklist for retitling assets and who to name as trustee.

Walther would also give special needs clients some guidance about which assets should be transferred to whom in the estate. "There are much better assets to give to a special-needs individual than a retirement account," he says. "I'd recommend they give the retirement account to another sibling who has a long life expectancy and can take it out over their lifetime, and have the life insurance proceeds go in the special needs trust."

Anything else? "The report can also include things such as connecting with agencies that can provide care in the future," says Walther. "Suppose you have a 24-year-old son, you're 60 years old, and in 10-15 years, providing that care that you've been giving 24/7 is going to be difficult for you to do personally. Here's two or three agencies that can do that."

Meanwhile, the family should think about: who are the trustees and guardians going to be if you need those in your estate plan?

"If you name a sibling, that's great," Walther explains. "But after we talk about what's required of that person, what the laws and the regulations require them to do and the reporting needed, and the amount of support and guidance they have to give on an ongoing basis to stay current on the laws, maybe a family member is not the best choice. Maybe the family member as a co-trustee or as a trust advisor makes more sense, and have a professional step in and play those roles.

"But that comes with an additional cost," he adds. "So outlining to them, if you go this route, expect to have to save more to provide those services, but here are the benefits of that. Here are some individual trustees or corporate trustees who can serve that fiduciary role for you. Those kind of things all get wrapped into the report," Walther concludes, "depending on what we see as far as needs."

Difficult trade-offs

Walther has a lot to say about insurance agents who masquerade as special needs planners (and often sell the wrong kind of insurance).

He routinely sees families make dysfunctional trade-offs between their own welfare and funding their retirement, and taking care of their special-needs children. He tells the story of a family that had $8 million worth of life insurance coverage for their child, with a net worth considerably under $1 million.

But he says the key to his kind of planning, on a fee basis, is looking out for the interests of the family, which means you first have to understand what the family wants to accomplish. Only then can you help the family develop realistic expectations that may involve difficult trade-offs.

The key is to help the family develop realistic expectations that may involve difficult trade-offs.

"They tell you, *I want my son to do this and this*," Walther says. "*We think his schooling is going to cost us X, because we can't get what we need from the system. And we think his care is going to cost far more than other kids*. He has to live at home, but maybe that means one of the parents has to quit work," he adds. If that person had the job with the great benefits, suddenly they no longer have health insurance and their retirement situation is in danger. It becomes a really complicated situation."

At the Insider's Forum conference, Walther plans to share a number of tools, including his pre-formatted care guide and letter of intent.

"Many of our clients tell us that they value that more than their estate documents," he says. "The care guide basically lists out, okay, Mom and Dad get hit by the bus together, and Aunt Suzie has to come in and take care of young little Johnnie who is autistic. If he doesn't turn off his own bedroom light every night, he will throw a fit, he is not going to sleep, and you're going to have problems. If Aunt Suzie doesn't know that little quirk about night time routine, about turning off the bedroom light," Walther adds, "she is going to have a nightmarish time trying to get that kid to get rest and to take care of him."

The care guide documents the routines, medications and contact information for the child's doctors. "It also includes: who are the good play dates?" Walther adds. "Who are the people to avoid? More broadly, what are the goals and dreams of the family? What are the goals and dreams of the individual? It really is all the information that someone would need who had to step into the parents' shoes in an emergency to give the best possible care."

He'll also take a little deeper dive into the knowledge base, and show the audience how to recognize their own client situations which may have been invisible before. "I talked with a planning firm," Walther says, "and after I brought up the questions they should ask, they immediately found four clients who needed special needs planning."

And finally, Walther plans to talk about the personal satisfaction that you get from helping people in this area.

"Most articles attack the subject from: *What a great way to create a profit center because you are the only one who knows how to do it*," he says. "I come at it from the joy side, which is: if you're doing what you love doing, it doesn't matter how much you get paid, because you really enjoy going to work every day. I've told friends this," he continues: "When I go into my office, five or six days a week, I don't feel like I'm going to work. I'm going there to help my friends and people who are willing to pay me something for what I do." ■

Reprinted with permission from Inside Information.