

TOP 30 BEST PRACTICES WHEN ADVISING FAMILIES WITH SPECIAL NEEDS BENEFICIARIES

- ◆ Do not disinherit the person with a disability (“PWD”).
- ◆ Procure a Life Care Plan for the PWD to facilitate proper planning.
- ◆ Have a go-to life care planner to prepare or update a Life Care Plan for the PWD.
- ◆ Insist on seeing the PWD’s SSA benefits award letters to confirm existing federal benefits.
- ◆ Understand that SSI eligibility for the PWD is the gateway to accessing many beneficial programs and services that are not available to the PWD on a private pay basis.
- ◆ Have a go-to government benefits consultant to apply for and maximize the current funding of the PWD’s government benefits.
- ◆ Understand the difference between “first-party” and “third-party” Special Needs Trusts (“SNTs”) for the PWD.
- ◆ Understand the “network” of SNTs for the benefit of the PWD.
- ◆ Review existing funded trusts for the benefit of the PWD; identify problematic “support” and “maintenance” distribution standards for the benefit of the PWD.
- ◆ Include a limited power to amend the SNT agreement (vested in the Trustee).
- ◆ Have a go-to medical coding professional to facilitate the proper administration of SNTs, including calculating the correct Medicaid “payback” amount for first-party SNTs.
- ◆ Verify every state in which the PWD has ever lived and received Medicaid benefits.
- ◆ Never include a Medicaid “payback” obligation in a properly drafted third-party SNT.
- ◆ Verify the source of the assets which were used to fund an existing trust (of any kind) for the PWD to determine the correct “first-party” or “third-party” status of the trust.
- ◆ Know the “pooled” SNTs that operate in the state where the PWD resides.
- ◆ Use a funded Revocable Living Trust-based estate plan (instead of a Will-based estate plan) for clients that have an heir or other beneficiary who is a PWD.
- ◆ Create an inter vivos third-party SNT for the PWD as a convenient receptacle for post mortem benefits and transfers.
- ◆ Create an inter vivos third-party SNT for the PWD to receive annual exclusion gifts.
- ◆ Create a SECURE Act-compliant inter vivos third-party SNT for the PWD to receive required minimum distributions from inherited retirement accounts.
- ◆ Create an inter vivos first-party SNT for the PWD to hold assets that slip through the network of third-party SNTs.

TOP 30 BEST PRACTICES WHEN ADVISING FAMILIES WITH SPECIAL NEEDS BENEFICIARIES

Continued

- ◆ Know how to fix existing, funded trusts for the benefit of the PWD that are incompatible with Special Needs Planning.
- ◆ Know how to use an ABLE account for the PWD to supplement (not replace) the network of SNTs for the PWD.
- ◆ Update financial Powers of Attorney to authorize the establishment and funding of SNTs and ABLE accounts for the PWD, the principal and others.
- ◆ Use professional Trustees to administer SNTs for the PWD.
- ◆ Have a go-to accounting professional who understands the taxation of SNTs.
- ◆ Have a go-to investment advisor who understands the risk tolerance of the PWD and the impact of his disability on an investment portfolio.
- ◆ Understand the legal Guardian of the PWD as the “quarterback” of the team of allied professionals assembled to implement a Special Needs estate plan.
- ◆ Do not place too much responsibility on the relatives or friends of the PWD.
- ◆ Consider the PWD’s own personal estate and disability planning, including life insurance coverage on the PWD if his disability does not adversely impact his insurability.
- ◆ Learn, appreciate and use person-first language (instead of disability-first language), e.g. “person with a disability” rather than “disabled person.”



Kristen M. Lewis

Partner | Atlanta | klewis@harrisonllp.com

Kristen Lewis is nationally recognized for her proficiency in Special Needs Trust planning for persons challenged by disabilities, and is a frequent speaker and author on this topic. She is a Fellow of the American College of Trust and Estate Counsel (ACTEC), and an active member of the Special Needs Alliance, where she has served as Co-Editor of that organization’s monthly e-newsletter, The Voice. She is also a member of the American Bar Association, the New York Bar Association Elder Law Section, and the State Bar of Georgia Fiduciary Law Section.