



Navigating Special Needs Planning in the Post-SECURE Act Landscape

This issue of The Voice® is written by SNA member [Shannon Laymon-Pecoraro, CELA of Parks Zeigler, PLLC](#) in Virginia Beach, VA. Her firm's services clients in the areas of family law, elder law, special needs planning, and will, trusts, and estates.

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The Setting Every Community Up for Retirement Enhancement (SECURE) Act, signed into law in December 2019, brought significant changes to retirement planning. For special needs attorneys, these changes have profound implications on how we structure and manage trusts for beneficiaries with disabilities.

Key Changes Introduced by the SECURE Act

Prior to the SECURE Act, beneficiaries of inherited IRAs could stretch distributions over their life expectancy. This strategy allowed for extended tax-deferred growth and potentially lower tax brackets for distributions. The SECURE Act eliminated this option for most non-spouse beneficiaries, including many special needs trusts.

The Act introduced a new 10-year distribution rule for most non-spouse beneficiaries. Under this rule, the entire balance of an inherited IRA must be distributed by the end of the tenth calendar year following the year of the account owner's death. This compressed timeframe can lead to larger distributions and potentially higher tax burdens.

Importantly, exceptions to the 10-year rule apply to eligible designated beneficiaries (EDBs). These EDBs include:

- Surviving spouses
- Disabled or chronically ill individuals
- Individuals not more than 10 years younger than the deceased account owner
- Minor children of the account owner (until they reach the age of majority).

These exceptions allow for distributions based on life expectancy, similar to the old rules. To be eligible for the life-expectancy-based distribution schedule under the disabled or chronically ill exception, an individual must satisfy one of the definitions set by the SECURE Act.



The good news is that the SECURE Act adopted the Social Security definition of disability, and, as a result, an individual receiving Social Security Disability, Supplemental Security Income, or Childhood Disability Benefits will automatically satisfy the definition. An individual with a chronic illness must meet either of the following criteria: (1) the individual is unable to perform (without substantial assistance from another individual) at least two activities of daily living for an indefinite period due to a loss of functional capacity; or (2) the individual requires substantial supervision to protect them from threats to health and safety due to severe cognitive impairment. Such disability or chronic illness must be documented by October 31st of the year following the account owner's death.

What Are the Benefits of Leaving an IRA to a Person with a Disability Post-SECURE Act?

While the SECURE Act has complicated retirement planning for many, it has preserved and potentially enhanced certain advantages for beneficiaries with disabilities. Unlike most beneficiaries subject to the 10-year rule, a disabled individual can still stretch distributions over their life expectancy. This allows for continued tax-deferred growth and potentially lower annual tax burden. The potential reduction in tax liability is two-fold: lower annual withdrawals are less likely to push the beneficiary into higher tax brackets, and beneficiaries with disabilities often have lower overall income, potentially placing them in lower tax brackets than non-disabled beneficiaries. Additionally, with a properly structured special needs trust for a disabled beneficiary, an IRA can be left to the trust, to protect the beneficiary's eligibility for government benefits.

Impact on Special Needs Trusts

Initial interpretations of the SECURE Act raised significant concerns among special needs planners regarding the viability of accumulation trusts for EDBs. Many feared that only conduit trusts would qualify for the life expectancy payout method, potentially forcing distributions that could jeopardize means-tested benefits for beneficiaries with special needs. However, the regulations finalized in 2024 provided a welcome clarification. These rules allow the life expectancy payout for any EDB of an accumulation trust, not limiting this favorable treatment to conduit trusts alone.

This interpretation represents significant relief for special needs planning, allowing for more flexible trust structures that can both protect government benefits and take advantage of extended distribution periods. The ability to use accumulation trusts in this manner provides trustees with greater discretion in managing distributions, potentially



leading to more effective long-term financial management for beneficiaries with disabilities or chronic illnesses.

Furthermore, subsequent related legislation, SECURE 2.0, addressed a significant concern arising from the original SECURE Act by providing clarity on the treatment of special needs trusts established for beneficiaries with disabilities, confirming that such trusts may designate a charitable organization as the remainder beneficiary without triggering the accelerated 10-year distribution rule. It's crucial to note that this provision does not apply universally to all charitable entities. Grantors must exercise caution to avoid naming a disqualified charity, such as a private foundation, as a remainder beneficiary. This development opens up new planning strategies for individuals who wish to provide a lifetime benefit for a loved one with special needs with a remainder to important charitable causes, particularly charities that may have provided support and assistance to the disabled individual during their lifetime.

Conclusion

The SECURE Act has undeniably altered the landscape of special needs planning, presenting challenges and opportunities for attorneys and their clients. The elimination of the “stretch” IRA and the introduction of the 10-year distribution rule have necessitated reevaluating traditional planning strategies. However, by understanding these changes and adapting our approaches, we continue to provide effective, comprehensive planning for individuals with special needs.

As we navigate the new terrain of SECURE Act and regulations, it's crucial to remember that the fundamental goals of special needs planning remain unchanged: to provide financial security, maintain eligibility for government benefits, and enhance the quality of life for individuals with disabilities. The SECURE Act has not altered these objectives but changed the tools and strategies we use to achieve them.

In this evolving legal and financial landscape, adaptability is key. Special needs attorneys must remain proactive, continuously educate themselves and their clients, and be willing to embrace new planning techniques. By doing so, we can ensure that we continue to serve our clients effectively, helping them secure a stable and fulfilling future for their loved ones with special needs.