

ADDICTION

TOOLS FOR CLINICAL EXCELLENCE

PROFESSIONAL

An important family matter

Clinicians could assist in the conversation of family inheritances

According to the National Survey on Drug Use and Health, 18.3 million persons ages 12 or older were classified with alcohol dependence or abuse in 2010. This number represents 7.3 percent of the population, a percentage that has remained relatively stable since 2002. These numbers tell us that many families are affected. When faced with this, these families are challenged when it comes to estate planning involving beneficiaries with addictions.

Families often don't know what to do, and as a result do nothing. They are not comfortable excluding the addicted beneficiary, nor are they comfortable enabling him/her with large sums of money. Counselors can provide a valuable service by helping families move past inaction, by suggesting that proper planning will not enable addictive behavior and will protect family assets for other beneficiaries, as well as possible treatment for the addicted beneficiary. A qualified

estate planning attorney is recommended as well, but one familiar and experienced with addiction issues is ideal.

Possible scenario

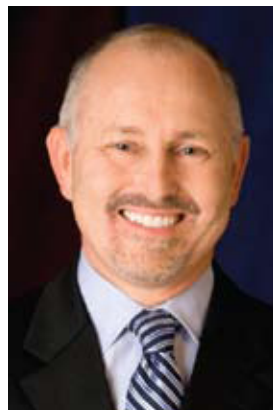
The following gives an example of an approach that might be used in a counseling context with an addicted client's family. The counselor might hear, "I don't want him or her to receive anything until [the beneficiary] is in recovery." If the question is raised by a client's family, it presents Health Insurance Portability and Accountability Act (HIPAA) and confidentiality issues. These can be addressed with a written client consent and/or a mediated family

meeting. Providing materials and recommendations regarding this issue to clients and families constitutes a valuable service.

It is important to point out that determining whether a person with an addiction is "recovered" is virtually impossible. No former addict is ever "recovered"—recovery is a day-to-day battle. Successfully covering this issue in an estate plan requires sensitivity to, and understanding of, the disease of addiction.

The first step is to point out to the client that this is a different situation from that of creating a Trust for young beneficiaries or beneficiaries with special needs. One solution is to

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create a separate Trust for the benefit of the addict, tailored to the specific issues involved in his/her addiction.

Naming a family member or professional Trustee is often not the best solution. How would a Trustee determine whether the beneficiary is “recovered”? Professional Trustees are not addiction therapists and are not equipped to administer drug tests. A family member most likely has already been manipulated by the addict, and being named as a Trustee would cause more family stress.

It is often said that the hardest person for an addict to manipulate is another person in recovery. Many of the best addiction therapists are themselves in recovery. Consider naming a person in recovery as Trustee of a Trust created for the benefit of the addicted beneficiary.

The next step is to find a qualified Trustee in recovery. A starting point is a bar association Lawyer Assistance Program, which provides assistance to attorneys, members of the judiciary, law students and law graduates with alcohol, drug, gambling and other personal problems that affect well-being and professional performance. Most state bar associations offer these programs. This assistance is provided by a volunteer attorney who may be in a recovery program him/herself and who also knows a qualified attorney, accountant or financial professional in a recovery program.

The same services are often offered through financial services and professional accounting organizations. Contacting the providers of these services will result in additional potential Trustees. Professionals in recovery will help the estate planning attorney create a pool of potential Trustees.

After creating an available list of potential Trustees with varying professional

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backgrounds who are in recovery, the next step is to personally interview each candidate. It is important to remember that any person in recovery has the chance of relapse, and a Trustee in recovery is not immune. This issue may be dealt with in several ways. Multiple successor Trustees named in the Trust may be given the power to remove and replace the initial Trustee in such an event. A corporate Co-Trustee can be named, granted removal power and be required to appoint a successor Co-Trustee named in the Trust. The client could be given the opportunity to meet with a number of potential Trustees who are in recovery, to determine a comfort level.

A Trustee with this background knows that even after treatment, the path to recovery is filled with obstacles. People, places and things could serve as triggers for relapse. Recovering addicts need a strong support system, which in most cases consists of groups of other recovering addicts such as Alcoholics Anonymous (AA), Narcotics Anonymous (NA), etc. A qualified Trustee will be in the best position to monitor and foster the support system while making best use of the Trust income and assets.

Drawing up terms

Once the Trustee determination has been made, the next issue involves creating the

terms of the Trust. These might include giving the Trustee broad discretion for using Trust assets and income for treatment and determining where and when the beneficiary will use these assets.

The Trustee obviously cannot require that the beneficiary enter a treatment center. However, the Trustee can determine if, how and when assets and income are used for or by the beneficiary. This allows the Trustee to monitor the beneficiary’s receptiveness to treatment, the appropriate level of treatment and the extent to which the beneficiary is in a position to receive assets or income.

The Trust may be structured as a basic broad discretionary Trust or to qualify as a Special Needs Trust. The discussion with the family requires sensitivity to the family’s hope for the beneficiary’s recovery. The Trustee also may be given discretion to terminate the Trust. The hope of the family is that the beneficiary be committed to recovery. A Trustee who has made a similar journey is in one of the best positions to make this determination.

This approach provides support and funding for recovery while protecting the beneficiary and family. It avoids family conflict by removing a family member from the affairs of a beneficiary suffering from an addiction. In addition to financial protection, the beneficiary has a Trustee who knows the struggles he/she is facing, and is potentially a vital part of the beneficiary’s recovery support network. ■

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