

Providing for Children with Special Needs in Your Estate Plan

Many years ago, children with special needs – those with some physical, mental or severe development disability – might be institutionalized at a young age. Now, these children are much more likely to be living at home with their parents well into adulthood. In the best situations, the adult child with special needs may live on his own but still depend heavily on his parents for regular assistance. And the special needs child is living longer in the 21st century.

There, obviously, will come a time when the parents are unable to provide the necessary assistance because of physical disability, illness or death. Proper estate planning by the parents can ease this life transition however.

The logistical details of your special needs child's life in your absence should be considered and planned for. Discuss his needs with other current caregivers and even potential future caregivers. Put your backup plan into a written statement to help other family members and helpers through the process.

You as the parent should also establish a trust to hold all of the funds you intend to leave for the benefit of the special needs child. These are generally referred to as supplemental or special needs trusts.

The funds should not pass to the child via a probated will or through a direct distribution via a trust because of the child's inability to handle the money and because of the possibility that the child will lose public assistance, like Supplemental Security Income (SSI) and Medicaid benefits.

Special needs trusts will allow the beneficiary to receive funds but not lose any government assistance. These trusts are set up to pay for "supplemental needs" which would not be paid for by the government funds. These supplemental needs could include things like education, recreational activities, non-Medicaid-covered medical treatment or therapies and other "luxuries" beyond the basic food, clothing and shelter.

The SSI and Medicaid regulations have *very* strict rules for eligibility in the face of a special needs trust. The trust must be drafted and administered very carefully so that the person with needs does not get unintentionally disqualified from the benefits programs. You may want to designate a professional as trustee or, at least, hire a trust advisor to make sure that these regs are not violated.

A special needs trust is really imperative estate planning if you have a child of any age with special needs. It is the best – and really only – way to ensure that the child is adequately provided for when you are unable to be there for him. It is also a huge favor to the rest of your family, including your other children, who would otherwise be put in the position to provide for your special needs child after you are gone.