

SPECIAL NEEDS KIDS REQUIRE SPECIALIZED ESTATE PLANNING

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While all estate planning is important, it takes on greater significance when you have a child with special needs. Some of the difficulty of estate planning for children with special needs is not knowing what type of care they will need, or what type of government benefits they will be eligible for when they turn 18. People often feel overwhelmed about special needs planning because they do not have a clear picture of what their children will need in the future.

If you have a child with special needs, it is important to review your planning options with your attorney and discuss your child's health, capabilities and prognosis. Then you can tailor a plan that is right for your child, allowing for as much flexibility as possible. Here are some considerations.

People with sufficient assets often prefer not to have their child receive government benefits at all. These individuals will set aside a sufficient amount to cover all the child's living expenses in trust. This will be a large sum of money or other assets. Because the parents are not concerned with government

benefits, the trust can be a discretionary trust that will distribute income and principal at the trustee's discretion for the benefit of the child throughout the child's life.

If there is a strong chance the child will receive government benefits, my clients often establish a "special needs trust." The goal of this trust is to supplement but not supplant the government benefits that the child will receive. The trust must be drafted so that the child does not become ineligible for the government benefits. The government benefits will provide for the child's basic needs such as a place to live, so the special needs trust will provide for the extras such as trips to the movies and amusement parks.

If the parents cannot predict whether a child will be eligible for government benefits, another option is for the parents to give their current trustees the ability to create a separate special needs trust at the time of the surviving parent's death. That way, if the child is receiving benefits, the trustee will have the ability to create the trust at that time with the goal of preserving the child's benefits.

Any of these trusts can be funded now, meaning that the parents establish the trust and then transfer cash or other assets to it, or the trust can be created now and left empty until a parent dies. At that point, money can flow into the trust from the parent's estate, another trust or from a life insurance policy.

Some parents choose not to create a trust for their child and to disinherit the child completely. The rationale is that the child can be supported by government benefits. This is a cold approach and not one that many of my clients embrace. I find the reverse happens when a person has a child with special needs. The parents often feel that they need to overcompensate by leaving as much money as they possibly can so that the child is taken care of in a matter that is satisfactory to the parents.

Some parents will adopt a hybrid approach, disinheriting the special needs child while leaving more assets to their other children with the understanding that the other children will care for the special needs child. This is not advised for a number of reasons. First, the sibling has no legal obligation to care for his or her special needs sibling, only a moral obligation. Second, if the child gets divorced, the assets are susceptible to division upon divorce. Third, the assets are susceptible to a creditor's claim if the child is sued by a creditor.

Estate planning for a child with special needs can be challenging. It is important to get a plan in place that allows for flexibility and will afford you peace of mind.