

FINANCIAL PLANNING FOR FAMILIES WITH A MEMBER WITH SPECIAL NEEDS

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Most people when they hear the term 'financial planning' believe that financial planning is only for wealthy individuals. Families of low income and modest means need a financial plan as much as families with wealth. While a typical family needs a will and perhaps a living trust to protect their assets for the benefit of other family members, special needs families have an additional, very specific future planning need. At the very least, an estate plan for a special needs family must incorporate a Special Needs Trust. An SNT preserves eligibility for government benefits such as SSI and/or Medicaid as well as other sliding scale fee benefits. The Special Needs Trust enables the beneficiary to receive the benefit of his or her inheritance without the loss of critically needed benefits.

Many families with modest estates make the mistake of assuming they do not need a will. If a parent of a special needs child dies without a will, the state, under its intestacy laws, has a will for that parent. If there is a child dependent on SSI and Medicaid, s/he could lose his or her eligibility for needs based programs - at a time when they need those benefits the most. Families of limited means may find that they have more assets to leave their child at death than they realized. These include their home, auto, personal possessions, life insurance proceeds, an annuity, IRA, or other asset. Most state laws provide that if a person dies without a will, a portion of the deceased person's estate will be distributed outright to their spouse and children. If their child is a minor or disabled adult, this could trigger the need for a guardianship of the estate. It may also trigger a loss of government benefits if the disabled family member inherits a portion of the deceased parent's estate outright. Without a will and Special Needs Trust, an unexpected inheritance may leave the family member with a disability in a worse off position. If an inheritance results in a loss of government benefits, it is the government that benefits from the inheritance and not the disabled family member.

Some families question if disinheritance is the answer. The problem with disinheritance is that there is no guarantee that the other family members will share their increased share with their special needs brother or sister. This can cause disharmony in the family as one or two siblings may share and if others do not, this could be the source of family arguments. If a sibling receives a larger share and that sibling is serving as guardian, the court may appoint a guardian *ad litem* to challenge the will on behalf of the disabled heir who has been disinherited. For this reason, disinheritance is seldom recommended.

At a minimum, a family with a special needs child or family member requires the following documents:

- A will or living trust with a pour-over clause to a 3rd party SNT. The will can also designate a successor guardian if a guardian is needed.
- A 3rd party SNT which preserves the inheritance for the benefit of a family member with a disability.
- Powers of attorney for property and health care for each parent. The POA for property should include Medicaid planning in case the parent (and in some cases, grandparent) enters a nursing home. A parent or grandparent who needs long-term nursing home care can preserve his estate for the benefit of a special needs family member. This is a little-known exception to the transfer of asset rules when a person needs Medicaid to pay for his own care. Ordinarily a person has to spend down his estate to \$2,000 before Medicaid will pay for his nursing home care. If you have a disabled child or grandchild, you can transfer your assets to a qualified SNT, preserve your estate for your special needs child and qualify for Medicaid immediately. The 5-year look back period does not affect a transfer to a qualified SNT for the benefit of a special needs child or grandchild. If a parent is incompetent, the power to make this transfer will save time and court fees.
- A current letter of direction. I use my daughter's birthday as a reminder that it is time to update my letter of direction.

Once a SNT is in place, the parent must change all beneficiary designations so that insurance policies, IRAs, annuities and other assets that flow outside of one's will are left to the 3rd party SNT.