



Make Sure Your Estate Plan Doesn't Put Your Special Needs Child at Risk

Most parents of children with special needs are well versed when it comes to the government benefits like Medicaid or Supplemental Security Income (SSI) that their child receives. Most know not to give the child any money outright and to establish a standalone supplemental needs trust to protect their child's assets, and they usually know all of the ins and outs of the SSI and Medicaid application processes. What many parents don't often think about is the effect that their own estate plan can have on their child's benefits.

The first thing for parents to keep in mind is that they must, without a doubt, *have an estate plan*. Parents who are often so good about getting their child's plan in order can balk at creating their own estate plan for a variety of reasons. But by failing to put together your own plan, you are placing your child's benefits at risk. If you pass away without a valid will (known as dying intestate), your assets will be distributed according to state law. These laws will often leave a sizable portion of your estate to your children. In the case of a child with special needs, receipt of these funds could eliminate benefits that the child relies on. Therefore, it is essential that you prepare an estate plan that will take into account your child's unique circumstances.

The next thing to remember when assembling your estate plan is that, except in very limited circumstances, you should not leave anything directly to your child with special needs. Instead, your estate should flow through your own will into a special needs trust for your child's benefit. A properly drafted special needs trust will protect your child's benefits and allow your estate to be utilized as you intended without interference from outside sources. You will also have the opportunity to choose a guardian for your child in your will, another important decision that you should not leave up to chance or state law.

Sometimes parents will leave their entire estate to their children without special needs in the hope that those children will take care of their sibling with special needs. You should avoid the temptation to do this. While your motives and trust in your children are well placed, this arrangement often leads to bitter family disputes and should be avoided if at all possible. Typically, the better option will be a separate trust that can hold your child with special needs' share of your estate and free up the shares for your other children to be spent as they see fit.

Another potential problem area is when parents name their children as beneficiaries of life insurance policies and retirement plans. These assets, which are not governed by the terms of your will, could easily pass to all of your children in equal shares if you are not careful about

naming plan beneficiaries (this is a very common problem when your child develops a special need later in life, after you have had these policies in place for years). As you did in your will, you can place your child's share of these important assets into a properly configured special needs trust. However, some complicated tax issues may have to be addressed first.

Finally, *your* estate plan may not be the only issue. Make sure to check with any relatives who may be leaving something for your children and make sure that they also speak with a qualified attorney before including your child with special needs in their estate plan.

If you don't have an estate plan at all, or are worried that your current plan is not appropriate, your next step should be to contact Attorney D'Onofrio.

For more information about special needs planning in general and special needs trusts in particular, contact Attorney John D'Onofrio today.

As a member of the Academy of Special Needs Planning, John is constantly reviewing new laws and amendments in this area of law as well as attending seminars and continuing education classes relevant to special needs planning and trusts.

Call today to schedule a free initial consultation. Call today, get peace of mind today.

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