

SPECIAL NEEDS

Planning for your special needs child's future

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What will happen to my children when I am not here? This is question parents of children with special needs often ask. Many parents know that their resources will be inadequate to provide quality care for life for their child with special needs without the assistance of public benefit programs such as Medicaid and Supplemental Security Income ("SSI").

Parents have a legal obligation to support their children who are younger than 18 years old. Assets and income of the parents generally are deemed to children who are minors when an SSI application is submitted on their behalf. Once a child reaches the age of 18, however, the assets and income of the parents are no longer deemed to the child, who may be able to receive monthly SSI checks if the child qualifies medically and financially. SSI recipients in New Jersey automatically receive Medicaid benefits.

Recipients of means-tested benefits such as SSI and Medicaid will lose those benefits if they inherit assets outright. The creation of a special needs trust can accomplish the dual goal of preserving the child's eligibility for such

programs while providing a vehicle to hold funds contributed by a parent or other family member to supplement those government benefits.

As children with special needs approach the age of 18, their parents also need to consider whether they should be appointed legal guardian or whether their child will be capable and willing to sign a general durable power of attorney and advance directive for healthcare. Many parents are surprised to learn that their child is presumed competent to handle their own financial, legal and medical affairs when the child turns 18 regardless of the child's cognitive abilities. Parents who are legal guardians of their adult children can designate successor guardians in their last wills and testaments.

It is also important that parents have an estate plan that will allow their child to benefit without disqualification from means-tested government benefits. Attorneys who concentrate in special needs planning can help families navigate these complex issues.

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Pre K-12+

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