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Planning for Those with Disabilities or Special Needs

In the past, families would disinherit disabled family members and leave assets to someone else who agreed to "take care" of them. If assets are left to a disabled beneficiary, it could disqualify them from the state or federal programs they are receiving. In 1993, Congress enacted new laws that entitled disabled individuals to derive the same estate planning benefits as non-disabled individuals without affecting their eligibility for state or federal benefits. The law created Supplemental Needs Trusts, which enable you to leave any amount of money to a loved one who has special needs without affecting their eligibility for the state or federal benefits they receive.

The law further provides the trust proceeds must be used to provide luxuries for the disabled individual he or she would not otherwise receive under the state and federal programs. Luxuries can include trips, computers, power wheel chairs, prosthetics, or other comforts not generally provided by the government.

A Supplemental Needs Trusts can be created by an individual with their own funds or be created by someone other than a disabled individual, typically a parent or relative.

There are different rights and restrictions to each of these trusts, but both ensure immediate qualification for federal and state benefits (i.e., Medicaid) and provide luxuries to the disabled beneficiary they would not likely otherwise be able to afford.

When Do I Need Guardianship for My Special Needs Child?

As a parent of a special needs child, you are the child's "natural guardian" and can make all decisions regarding the child. However, your rights as guardian do not allow you to have access or control of your child's assets (i.e., proceeds from a lawsuit or gifts from a family member). In addition, when your child turns 18, you lose your rights as natural guardian to make health care and other life decisions for them. To maintain these rights, you must commence a guardianship proceeding in Surrogate's Court or the State will assume legal authority over your disabled loved one. To avoid losing your authority, you should contact a qualified attorney to begin guardianship proceedings at least six months prior to your child's 18th birthday.