

# New Jersey Law for Special Needs Children

NEWS & UPDATES ON ESTATE PLANNING FOR NEW JERSEY FAMILIES WITH SPECIAL NEEDS CHILDREN

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## 5 Tips to Smart Estate Planning When You Have a Special Needs Child

*By Lori Wolf, Esq. & Mary W. Browning, Esq.*

Families who do their best to protect their children with special needs often make several critical mistakes in developing their family plan. The most important is the failure to have a will that incorporates a special needs trust within the will, or failure to leave assets to a special needs child in a stand-alone special needs trust. Even if parents already have these documents in place, the following five mistakes lead to unintended consequences that could jeopardize your child's ability to receive government benefits when you die.

### **1. 529 Plan.**

Often there's a 529 Plan in the name of a special needs child. The 529 Plan is considered an available asset in determining a child's eligibility for benefits following the death of the person who established the plan for him. But the existence of this account in the child's name can affect that eligibility. The best solution would be to change the designated beneficiary under the 529 Plan to name another child, if that's an option.

### **2. Custodial accounts.**

The presence of custodial accounts in a child's name will also affect the child's eligibility for government assistance. Custodial accounts are often established long before a child's special needs are recognized. In most states, these funds are available to the child

when she turns 21. Yet, a child may become eligible for government benefits at age 18 only to be disqualified at age 21 because of these accounts. Parents must deplete any such accounts for the care of their child if the account has assets in excess of \$2,000 to qualify for Medicaid assistance, or allocate the assets to a pooled trust or first party special needs trust. Going forward, if there's a goal to allocate assets to or for the benefit of the special needs child, parents or other relatives can establish a special needs trust. Gifts can be made directly to this trust account.

### **3. Retirement plan and insurance policy beneficiaries.**

Parents often may develop a special needs trust to which their estate plan is tied; however, they may forget one critical issue. Life insurance policies and retirement plan accounts pay to designated beneficiaries and don't pass under an individual's will. It's vital that parents tie these assets with the special needs trust. If a life insurance policy or retirement plan account is paid directly to a special-needs child, the receipt of the assets will affect the child's ability to receive government assistance. Therefore, any portion of retirement plan accounts or life insurance policies passing to a child with special needs should name the child's special needs trust as the beneficiary, not the child directly.

### **4. Discussions with extended family.**

A discussion with extended family members who may want to benefit a special needs child is a difficult and awkward conversation for parents to have, but such a discussion is critical. Well-meaning grandparents may allocate a portion of their estate to a special needs grandchild, for example, but the receipt of these monies could affect the grandchild's ability to receive government benefits. Instead, a grandparent's will could leave assets to his own son or daughter, and if that child dies before the grandparents, assets could be left to the deceased child's issue (which could include a special needs grandchild).

A bequest by grandparents to a special needs grandchild should be made to a special needs trust. If the parents of a special needs child feel there are relatives who might make gifts or bequests to that child, the parents should discuss this point so family members understand that assets should instead be left to the trust created for that child's benefit.

## **5. Use a specialist.**

It's important that parents use an attorney who specializes in special needs planning instead of a general practitioner, since there are specific issues that must be incorporated in a special needs plan. A will or special needs trust may not protect a child with special needs if these documents are not drafted properly.

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