

# New Jersey Law for Special Needs Children

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

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## The Magic Age

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There are certain ages in a child's life that are benchmarks for changes. For some children, turning age 17 is an important day, since that is when the child can obtain a driver's license and for some age 18 is an important age, when they become emancipated and legally adults. For children with special needs, there are also important ages when life changes occur.

Age 18 is a magic age in the life of a child with special needs. Prior to age 18, assets in a parent's name are relevant in determining whether the child is eligible to receive government assistance. As a result, limited if any government programs are available to most children with special needs before they turn age 18. Once a child turns age 18, their parents' assets are no longer relevant in determining whether they are eligible for many forms of government assistance. Specifically, Social Security Income ("SSI") and Medicaid are available to a child with special needs who meets the definition of disabled at age 18, depending upon the resources and income available to that child. Generally speaking, a child cannot have assets in excess of \$2,000 without compromising eligibility for government assistance.

It is important as your child approaches age 18 to ensure that there are no assets in the name of your child if government assistance would otherwise be available. Any resources in the child's name should be spent towards the child's care. If there are substantial resources beyond the amount needed to provide for that child, another option is to contribute assets to a pooled trust or a first party

special needs trust. In most cases, these contributions will not preclude the child from receiving government assistance although both a pooled trust and a first party special needs trust (discussed in more depth in prior blog articles) are fairly restrictive in their use and operation. Better yet would be to ensure that no assets are ever accumulated in the name of your child with special needs.

Another issue which must be addressed as a child approaches age 18 is whether the child has sufficient ability to provide for himself or herself and handle their own financial and medical decisions or whether a guardianship action is appropriate to permit parents to continue to handle financial and medical decisions as guardians. Guardianship proceedings takes three (3) to six (6) months to complete, and is handled through the Court. As such, if it makes sense to have a guardian assume financial and medical responsibility for a child at age 18, this process should begin in or around the middle of the child's 17th year. If a child can handle his or her own affairs and simply needs assistance by parents, the child should sign a power of attorney and health care proxy when the child turns age 18 to permit parents to assist them with financial and medical decisions. This does not remove autonomy from the child and ultimately the child's decision controls; however, it will allow parents to assist the child with the child's consent.

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