

SPECIAL NEEDS REQUIRES SPECIAL SKILLS

Each day thousands of children are born with some form of a disability or special need. Whether the disability is severe or mild, the degree of care these children will require for the remainder of their life can differ greatly. Some will be able to obtain employment and reside in a community setting while others will require constant assistance to handle each aspect of daily living.

For those disabled children who will never be employed, the Federal government will provide monthly benefits in the form of Supplemental Security Income and Medicare. However, these benefits are only provided to such persons who have no other means of supporting themselves, who own no other property, and who receive no other support or gifts from family members.

Parents of children who receive these governmental benefits are faced with a problem when creating an estate plan: how to allow the child to enjoy his or her inheritance while continuing to qualify for and receive governmental benefits. It is important that the parent's Wills be drafted such that the child's inheritance is distributed to and administered in a trust called a "Special Needs Trust" (also referred to as a "Supplemental Needs Trust").

A Special Needs Trust is drafted such that the disabled child will never have any control or power over the trust property. The disabled child can never act as or remove and replace the trustee of the trust, cannot force a distribution from the trust, and cannot appoint the trust property to be distributed elsewhere. It is essential that access to and control over the trust property by the disabled child be restricted or else the government will view and count the trust property as a resource of the disabled child and all governmental benefits will be discontinued.

Furthermore, distributions from the Special Needs Trust may only be used to supplement the needs of the special needs child. These needs may include

medical or dental options, travel expenses to visit family members, and to pay for certain types of entertainment.

Not every attorney is experienced and versed in the drafting of these uniquely designed trusts. You owe it to your special child to visit with a skilled attorney to discuss Special Needs Trusts and other related issues.

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