



Estate Planning Considerations for Soldiers and Their Families: *What About Planning for Families With Children With Disabilities?*

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What About Planning for Families With Children With Disabilities?

Special needs planning is often impacted by both state and federal law. Most states have implemented their own rules and regulations, particularly with regard to qualification for Medicaid benefits. When military families relocate from installation to installation, from one state to another, or relocate to a foreign assignment, issues can arise. It is important to address these issues in ways that will minimize the impact on the military family.

1. Some of the issues such families encounter include the following:
 - Inability to continue with ongoing programs that may have been available in one location, but not in the next
 - The stress on the child with disabilities who must move from one environment to another and try to fit in with the new people with whom the child interacts
 - The stress on the parents who must move from one support group to another or worse, find that no such support groups exist
 - Reintegrating into the new special needs communities – and determining what, if any, resources are available. Are similar programs available at all potential future assignments?

For many such families, this has been a determinant in selection for future assignments and may limit the soldier in terms of both physical and upward mobility

- For overseas assignments, are appropriate government programs and benefits available? Will it be better to leave the child with a temporary guardian so the child can continue to receive the help needed?
- It becomes even more important for families to identify potential guardians for their minor and special needs children
- The need for the parents to obtain a formal adult guardianship over their child when or immediately prior to the child attaining age of majority.
- NOTE: We had one case in which the parents waited until the child turned 18 to contact us for guardianship. While we were awaiting the formal appointment, the child suffered a medical emergency. What issues could that have caused?
 - Who can consent to medical care?
 - Who can manage financial resources and authorize expenditures?

2. One solution is to establish a special needs trust (SNT) for the child with a disability. This can take one of several directions:

- a. Testamentary Trust – this is created by will and is effective upon the parent's death when it will be established by the court. The benefit is that nothing has to be done in advance and there isn't any issue of jurisdiction as the court of the state in which the parent died will be entering the order and creating the trust
- b. Third-Party Special Needs Trust – this is exactly what it sounds like, the parent creates the trust during lifetime with the parents', and not the child's, assets. This means the trust cannot be reached by the government, the assets do not count for SSI or Medicaid qualification purposes, but the attorney needs to beware of the SSI rules, if applicable, which says the trust cannot pay for food or lodging or the beneficiary will be penalized.
- c. First Party Special Needs Trust – this is created with the child's own funds, normally from an inheritance or as the results of a court award. It is commonly referred to as a d4(a) trust. The assets do not count against the beneficiary for government programs, but it is a "pay-back" trust, which means whatever remains in the trust at the death of the beneficiary is subject to repayment of the government benefits received.

How Do SNTs Compare with ABLE account?

ABLE accounts are established by state law, so it is important to check the provisions of the applicable state. A major difference between SNTs and ABLE accounts is that funds in the ABLE account may be used to pay for food and lodging without incurring an SSI penalty.



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