

AN OVERVIEW OF SPECIAL NEEDS PLANNING

What is special needs planning?

Special Needs Planning encompasses the following:

- ◆ Allowing personal autonomy with protections
- ◆ Maximizing government benefits
- ◆ Health insurance planning
- ◆ Job, social, and communal planning
- ◆ Minimizing taxes
- ◆ Planning for adulthood
- ◆ Planning for improvement or deterioration
- ◆ Planning for death
- ◆ Coordination with your overall estate plan



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When Do I Need to do Special Needs Planning?

While every person is different, there are a few “age markers” that require special attention in the context of special needs planning. The following ages are significant for a child or family member with special needs:

- ◆ Age 18: “deeming” for purposes of SSI ceases and any childhood benefits convert to SSDI, which starts the 25-month clock for Medicare coverage (not Medicaid)
- ◆ Age 19: the person is a legal adult. The Doctor stops asking the parent or guardian about the person, and looks to either the person or a legal surrogate
- ◆ Age 22: The Person can obtain Disabled Adult Child Social Security Benefits (up to 50-75% of worker’s social security benefit)

Government Benefits

Benefit	Benefits Description	Basic Eligibility
SSI	Cash (up to \$914 per month) and Medicaid health insurance	No more than \$2,000 in “available resources” and a more complex income limit
SSDI	Cash	Requires substantial work history based on age
Social Security Dependent & Survivor Benefits	Cash	Age 18 or over and disabled before age 22; working parent must be receiving social security retirement benefits
VA Benefits	Cash; healthcare	Varies
SNAP	Food stamps	If a disabled person lives alone and receives SSI, they are automatically eligible for SNAP

Too Many Assets for Government Benefits? What About Inheritances? Consider a Special Needs Trust.

Special Needs Trusts allow a beneficiary with special needs to use money in the trust to help them live the best life they possibly can. Anyone can create a Special Needs Trust (“SNT”) including the beneficiary themselves, a parent, grandparent, or other relative or friend. Special Needs Trusts are usually designed so that a beneficiary can receive the benefit of assets without having those assets be considered “available resources” for the purpose of receiving government benefits, allowing the beneficiary to get the “best of both worlds.”

While there are many different kinds of SNTs, every SNT is either a First Party SNT or a Third Party SNT. Below is a comparison between these 2 types of SNTs:

	First Party Special Needs Trusts	Third Party Special Needs Trusts
Who can create the trust?	The beneficiary themselves, a Court, a Parent, Grandparent, or Guardian/Conservator	Anyone other than the beneficiary themselves
Who can add money to the trust?	The beneficiary themselves	Anyone other than the beneficiary themselves
Who can be the beneficiary?	Any person declared “disabled” by the SSA and under the age of 65 (with some exceptions)	Anyone
Revocable or irrevocable?	Irrevocable	Can be either revocable or irrevocable
Medicaid payback provision required?	Yes	No
Who pays the taxes?	The beneficiary or the trust	Can be either the Trustmakers, the beneficiary, or the trust

What About Taxes?

Special Needs Trusts can allow for tax savings that many families do not know are possible. Some of these tools are listed below. Unique Tools for Significant Tax Savings for Special Needs Beneficiaries:

- ◆ “Qualified Disability Trust” status
- ◆ Trustee discretion to allocate income
- ◆ Provision in a SNT that allows the SNT to pay the beneficiary’s tax liability for them (which may allow less tax to be paid) while also maintaining eligibility for government benefits
- ◆ Ability to use the beneficiary’s life expectancy to save on taxes owed from qualified assets, such as IRAs and 401(k)s

Other Tools in the Special Needs Planning Toolbox: Powers of Attorney, Guardianships, Conservatorships, Supported Decision-Making, and ABLE Accounts

Powers of attorney allow a person to speak, sign and act for them if they cannot do so for themselves. A person must have the requisite legal capacity to sign a power of attorney, the discretion of which is in the purview of a special needs planning attorney. A guardianship or conservatorship is similar, except the person’s rights to speak for themselves are cut off in these proceedings. Additionally, guardianships and conservatorships are public legal proceedings, and they can be costly, time-consuming, and, in some unfortunate cases, publicly contested in court.

Supported decision-making is a very new development in special needs law that empowers individuals with special needs to make their own decision on matters they are capable of handling, while allowing other individuals (often called “supporters”) to help them make and communicate those decisions.

Power of Attorney vs. Supported Decision-Making vs. Guardianships and Conservatorships:

	Power of Attorney	Supported Decision Making	Guardianship / Conservatorship
Autonomy to individual	High	Maximally high	Low to zero
What areas can it cover?	Health care, finances, housing, and more	Health care, finances, housing, and more	Health care, finances, housing, and more
Capacity of the protected person needed	Relatively high	Relatively low	None
How widely accepted by banks, health providers, etc.?	High	Unknown; very new to Alabama	High
Financial cost	Low	Low	High

Power of Attorney vs. Supported Decision-Making vs. Guardianships and Conservatorships:

Pros	Cons
Power of Attorney	Medicaid Payback provision required
High	Maximally high
Health care, finances, housing, and more	Health care, finances, housing, and more
Relatively high	Relatively low
High	Unknown; very new to Alabama
Low	Low

This Guide is just the beginning! For a more in-depth discussion on Special Needs planning in Alabama, check out our free article, "Special Needs Planning in Alabama: A Deep Dive", available to you for free! Just call or email our office to get a free copy.