

Estate Planning Notice to Persons with Special Needs Children

1. Special needs children may be eligible now or in the future for important government benefits, such as Medicaid and Supplemental Social Security Income (SSI). A person is eligible if (a) the claimant is “disabled” and (b) the claimant does not have assets or income that exceed a fairly low threshold.
2. Generally, the *minor* children of service members are not eligible for these benefits because the income of the service member is imputed to the child. However, when the child attains the age of majority, the parent’s income will no longer be counted as the child’s. It is often at this point when the special needs child becomes eligible for Medicaid / SSI. While the child is still a minor, parents should consider filing an adult guardianship petition to maintain control of the child’s assets, to make decisions on behalf of the child, and to maintain access to medical, school, financial, and other records. Adult guardianship can be filed up to six months before the child’s eighteenth birthday. The legal assistance office at Camp Lejeune can assist with North Carolina adult guardianships. POC: Vickie O’Brien Vickie.Obrien@usmc.mil
3. Parents can inadvertently disqualify a special needs child for Medicaid/SSI by naming the child a beneficiary of the will. When the child receives the testamentary gift, his/her income may then be too great to maintain eligibility. A special needs trust (SNT) can help to avoid this problem. The SNT names a trustee to manage property for the benefit of the special needs beneficiary. Property given to the SNT is not counted when adding up the child’s assets to determine benefits eligibility. In this manner, substantial gifts can be made to a special needs recipient without disqualification for government benefits.
4. Furthermore, depending on the nature of the disability, the child may not be capable of managing his / her assets, another important reason one might wish to create a SNT. For example, an intellectually disabled child or one with profound autism may not be capable of handling cash or valuable assets.
5. Additionally, clients should consider insurance beneficiaries when preparing an estate plan. Naming an insurance beneficiary who is a minor, or who is otherwise incapable of handling funds, is not a good option. A better option may be to name a trust as a life insurance beneficiary, especially if there is a special needs child involved.
6. North Carolina and some other states have established an ABLE (Achieving a Better Life Experience) account program. Assets placed in such accounts, up to program limits, do not count against special needs beneficiaries when determining Medicaid / SSI eligibility. Information (and points of contact) concerning NC ABLE accounts can be found at: <https://savewithable.com/nc/home.html>
7. **The Camp Lejeune legal assistance office can prepare the SNT, but only for persons who will be residing in North Carolina for the foreseeable future. Those North Carolinians expected to remain here for the foreseeable future, and who have a special needs child, are encouraged to contact the Regional Legal Assistance Director, Michael Archer for estate planning assistance (michael.archer@usmc.mil).**
8. SNT requirements can vary from state to state. **If you are from another state, the legal assistance office can still prepare your will, but it will do so without regard to government benefit eligibility of a special needs child. Out of state clients who wish to have a SNT drafted will need assistance that the legal assistance office cannot provide.** Such expertise and assistance may be obtained through civilian attorneys that have expertise in this field. Many state bars recognize a field of specialization in estate planning. Additionally, a nationwide network of attorneys, the Special Needs Alliance, <https://www.specialneedsalliance.org/> is one source of expertise available to address these issues. The Alliance is not a pro bono service.

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