TEN COMMON MISTAKES IN SPECIAL NEEDS PLANNING

1.Failure to Start with a Life Care Plan.

A life care plan can be designed by a professional, a parent, or another family member with the assistance of professionals. The life care plan should begin by identifying the future needs of the child with a disability and establishing a standard of living that the parent wants for the child with a disability. The cost of the standard of living should then be established. This would include a discussion of immediate cash needs such as a home, a vehicle, repayment of debt, clothing and shoes, a computer, a cell phone, etc. A monthly budget should then be established, including shelter, transportation, and personal needs. How will all of these needs be met financially? The child with a disability may be receiving some benefits that can pay some expenses, and some can be paid for by accessing the trust. Assuming the trust can pay 3.3% per year for annual maintenance of the child with a disability, how much will be required to fund the trust? Does the parent have sufficient assets? If not, will whole life insurance be required?

2. Leaving Assets Directly to Your Child with a Disability.

Many parents have a will leaving assets outright to their children, including their child with a disability. This mistake renders the child with a disability ineligible for means-tested public benefits, including Supplemental Security Income (SSI) and Medicaid. Best practice dictates that the parents leave the assets to the child with a disability in a special needs trust to maintain the child's public benefits.

3. Dividing Assets Equally Among All Children.

The instinct of parents is to divide their assets equally among their children on death. Parents love their children equally and want to treat them fairly. The problem is that if there is a child with a disability who is unable to work and support themself, that child will have greater needs. Best practice dictates determining what the child with a disability may need and carving that out first, then dividing any remaining assets among the healthy children who can support themselves. This often requires the purchase of whole life insurance.

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4. Failure to Access Public Benefits.

Many parents who have a child with a disability apply for SSI for their child with a disability before the child attains age 18 and are rejected because their household income and assets are too high. The parents do not realize that after age 18 the income and assets of the parents are no longer deemed to the child with a disability, and another application should be made to qualify the child for SSI. In some states, an individual receiving SSI automatically receives Medicaid. Supplemental Nutrition Assistance Program (SNAP, formerly Food Stamps), Federally Assisted Housing, and many other state programs may also be available.

5. Failure to Maximize Public Benefits.

Parents often fail to maximize public benefits available to a child with a disability. Parents commonly provide food and shelter for their child with a disability, which will cause the child to receive a one-third reduction in their SSI payment. By executing a lease with the child with a disability and receiving payment from the child's SSI payment for food and shelter, the SSI payment can be maximized. Parents often overlook other public benefits that may be available, including those set forth previously in the paragraph titled Public Benefits. These should be explored, and eligibility for these public benefits should be considered.

6. Failure to Obtain a Living Will and Power of Attorney for a Child with a Disability.

Often a guardianship in the future can be avoided, assuming the child with a disability has capacity, by having the child execute a medical power of attorney and financial power of attorney appointing parents or other family members as health care representative for purposes of making medical decisions or as agent under a power of attorney to make financial decisions.

7. Obtaining Guardianship When Guardianship is Not Necessary.

In many instances, once a child with a disability is age 18 and has limited ability to make decisions, the child may be able to make decisions with the support of a person such as a parent, family member, friend, or organization. An alternative to an unnecessary guardianship would be a supported decision-making agreement.

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8. Failure to Obtain Guardianship.

Many parents fail to obtain guardianship for their child with a disability upon the child attaining age 18 when that child is incapacitated and unable to make decisions. Without a guardianship or authority under a medical or financial power of attorney, the parent has no legal authority to make medical or financial decisions on behalf of the child. Parents could be appointed guardians of the person or guardians of the property.

9. Relying on Other Family Members to Take Care of the Child with a Disability.

Other family members, particularly siblings, are often ready, willing, and able to assist with providing care for a person with a disability. However, when the time comes to provide that assistance, problems often arise. Frequently, there is an understanding that the child with a disability will live with a sibling. Sometimes this works; often, it does not. Occasionally, the sibling's spouse strenuously objects, and sometimes the sibling realizes this undertaking would be enormous. Often, a sibling is willing to offer limited assistance, such as working with a disability organization or trustee, to ensure that the life care plan developed for the child with a disability is implemented correctly. In most cases, this is a realistic target.

10. Waiting. Many clients wait too long to plan.

The longer a client waits to plan, the less likely it will be that sufficient assets will be set aside to provide the necessary standard of living for the child with a disability.

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