

Special Needs Planning: Legal Planning

In planning for a child with special needs, there are four primary legal issues that should be addressed:

1. **Wills:** The primary purpose of a will is to state how you want your assets distributed at your death.
2. **Guardian:** If your child's condition warrants it, careful thought must be given to a future guardian or conservator for your child, after both parents are gone. Guardian of the person may be different from the trustee of financial assets
3. **Letter of Intent:** A letter of intent serves as a blueprint of what you want your child's life to be when you can no longer care for your child.
4. **Special Needs Trust:** A type of trust that can receive and manage assets for the benefit of your child with special needs, without disqualifying the child from receiving government benefits. Boilerplate wording from an attorney not experienced in this field will not suffice. Special Needs Trusts should be specific and include exact wording, so as not to disqualify the individual from receiving government support.

As your child reaches adulthood, you may lose authority to make decisions for him or her. Items 5 and 6 below provide you with an opportunity to continue assisting your adult child in making appropriate decisions throughout his or her lifetime. Both documents should refer specifically to the Health Insurance Portability and Accountability Act of 1996 (HIPAA). This allows disclosure of medical and hospital records and information to the "agent" and are not subject to federal regulation of privacy rules. Don't forget to identify "alternate agents" to carry on for you after you are no longer able to do so.

5. **Power of Attorney:** A Power of Attorney is a legal instrument that is used to delegate legal authority to another person, giving that person the authority to make property, financial and other legal decisions for the person who executes the Power of Attorney.
6. **Medical Directives:** In addition to recording the treatments an individual wishes to have or not have should he or she become unable to make those decisions, a medical directive also appoints a proxy...someone to make medical decisions for a person who cannot make medical decisions on his or her own.