

# COMMON MYTHS OF SPECIAL NEEDS PLANNING

## 1. YOU DO NOT NEED A SPECIAL NEEDS TRUST NOW

If there is the possibility that someone such as a grandparent or other family member would like to leave an inheritance to your disabled child, you probably need a special needs trust (SNT) that exists now. This way anyone wishing to leave a gift for your child can name the SNT in their Will so that your child does not lose his or her government benefits.

## 2. ANY REMAINING ASSETS IN THE SPECIAL NEEDS TRUST WILL GO TO MEDICAID UPON THE DEATH OF YOUR DISABLED CHILD

There is some confusion between a “Payback” Special Needs Trust (SNT) and a Third-Party SNT. In New York State, a Payback SNT requires a Medicaid lien clause which entitles Medicaid to reimbursement from any assets remaining in the Trust after the death of the beneficiary (disabled individual). It is most often used when there is a litigation settlement or when a disabled individual receives a gift or inheritance directly which adversely affects her government benefits.

When the SNT is funded with assets from a third party (parents, grandparents, other family member or friend), it is considered to be a Third-Party Supplemental Needs Trust (SNT) and will not be subject to a Medicaid lien. The person creating the SNT will be able to name the ultimate beneficiaries—those person(s) or organizations who will receive the assets remaining in the Trust upon the death of the beneficiary. There are a couple of exceptions, but they rarely pertain to Third-Party Supplemental Needs Trusts.

As a general rule, if you are planning to leave assets to your special needs child, you would create a Supplemental Needs Trust which would allow you to name the people or entities who would receive the remaining assets upon the death of your disabled child. Medicaid, under current law, would not have access to those assets.

## 3. IF YOUR CHILD RECEIVES SUPPLEMENTAL SECURITY INCOME, HE OR SHE CANNOT RECEIVE SOCIAL SECURITY DISABILITY INCOME

It is possible for your special needs child to receive both Supplemental Security Income (SSI) and Social Security Disability Income (SSDI). If your child is already receiving SSI and you or your spouse retires, becomes disabled or dies, your child is eligible for benefits based on the parent’s work history. The SSDI amount is deducted dollar for dollar from the SSI income after allowing for the \$20 general exclusion.

#### **4. AS LONG AS YOUR DISABLED CHILD LIVES WITH YOU, YOU ARE STILL HIS GUARDIAN**

When your child reached the age of 18 in the state of New York, he or she has reached the age of majority. You, as the parent, do not automatically remain your child's natural guardian. *This is the case no matter how developmentally disabled or intellectually challenged your child is.* In order to continue to be legally entitled to make medical decisions and be involved in doctor-patient discussions pertaining to medical care, you will need to petition for guardianship. The 17-A Guardianship process often takes 4 months or longer and can be initiated prior to age 18.

#### **5. IF MY CAREGIVER SPOUSE IS NOT WORKING, SHE NEEDS LITTLE OR NO LIFE INSURANCE**

Your caregiver spouse is often providing numerous and varied services for your child. In addition to direct care, he or she is often providing transportation, meeting with doctors, engaged with and developing relationships with agencies and schools to provide better opportunities for your special needs child, etc. How much would it cost to pay someone to provide the same services? Would you, the employed spouse, be able to continue to work full time if your caregiver spouse was no longer able to care for your disabled child? What would happen to your financial future? As a result, your caregiver spouse usually requires more insurance than the normal rule of thumb might indicate.

#### **6. EQUAL SHARES OF YOUR ESTATE IS EQUITABLE**

While many parents want to leave their estate in equal shares to their children, it is often the case that your special needs child will require a larger portion due to his inability to support himself. Parents must consider both the current and future needs of their disabled child with the knowledge that they are planning for two generations. Once you have calculated the funds necessary to provide financial security for your special needs child, you will be better able to decide how much of the estate assets will be available for each of your children.

#### **7. ONCE YOU HAVE YOUR LEGAL DOCUMENTS COMPLETED, YOUR PLANNING IS COMPLETE**

Your legal documents—a Will, Special Needs Trust, Health Care Proxy, etc.—are only one part of your overall Special Needs Plan. If we were to use as an analogy the preparation of a gourmet dinner, the pot on the stove might represent your legal documents. You still require the ingredients that are to go into that pot, as well as a recipe to guide you in the preparation of the meal. You must coordinate your legal documents with your financial assets so that your Special Needs “pot” is funded properly for your disabled child. You must also make certain that you provide directions to the caregiver following in your footsteps so that the end result is truly the vision you have for your child.