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SOMEONE TO WATCH OVER MY CHILD: WHAT TO CONSIDER WHEN PLANNING FOR CHILDREN WITH SPECIAL NEEDS

To parents, children are always children, no matter their age. We take care of them when they are young and we want to ensure that they will be safe, comfortable and well provided for when we age, perhaps need care ourselves, or are no longer here. For this reason, estate planning is an important tool to assist us in making sure that our wishes are fulfilled.

Planning is especially important for families with children who have special needs as a result of mental, emotional or physical disability. Disabled children may need to be physically cared for, may not be capable of handling their financial affairs, may have modest means and, as such, may be entitled to, or the recipients of, governmental benefits such as Medicaid or Supplemental Security Income (SSI). Trusts are often utilized to protect assets for the benefit of a disabled child but they usually contain certain restrictions on the access to the funds so that the child will continue to be eligible for governmental benefits.

Certainly, no two families are alike and estate plans should reflect this uniqueness. Yet, there are certain common things that parents should consider when planning for the continued care and support of their disabled children:

- Does the child qualify for, or is he receiving, public assistance? Are all of his needs adequately met? If so, you may still wish to leave funds for the benefit of your disabled child, to meet his “special needs.” “Special needs” are typically items or services which the state or governmental agency will not provide. For instance, funds may be used to take a child on vacation, a dream trip to Disney World, or to buy an I-Pod or computer, or to pay for a birthday celebration or a meal out. Governmental benefits include only day-to-day medical and custodial expenses, no “luxuries.”
- What percentage of your estate should be set aside for the disabled child? Sometimes this depends on the extent of the child’s disability. So, for instance, if a child is severely disabled and resides in a facility on governmental benefits he may not have significant “special needs.” If a child is principally independent but has an illness that is or will become disabling, he may require a great deal of support later in life. Certainly this should be taken into consideration when ascertaining how to divide the estate.
- Can he take care of himself physically? If not, who will care for him and/or supervise his care in the future? You want your child to receive the same level of care you are providing. Apart from a caregiver, he will need an advocate, someone to protect his rights. Other children may not be able to take on this responsibility for various reasons: they have their own families, they live in another state, etc.
- What impact will being treated differently from your other children have on your child? If your child is able to handle his own financial affairs consider how the restrictions of a “special needs” trust will impact him.

No doubt, awareness of various social, cultural, emotional and financial factors may increase our ability to ensure the security of our disabled children and to enhance the quality of their lives.