



NASET's Educating Children with Severe Disabilities Series

Legal Issues in the Transaction Phase

Here you will find expert help in understanding estate planning, trusts, wills, and any other legal concern you will need to be aware of to protect your student as they transition into adulthood.

Introduction

This section will focus on one very important and often complicated issue that parents confront when they have a son or daughter with any type of disability--how to plan their estate to best provide for the child's future security. Parents often may ask themselves:

- What will our son or daughter do when we are no longer here to provide help when it's needed?
- Where and how will our child live?
- Will he or she have enough income to sustain a decent quality of life?

Other questions parents may ask themselves focus on the estate planning process itself:

- How do I know that my estate plan is going to work?
- Do I have enough money to hire a lawyer and write a will?
- Do I even have anything to leave my children?

These are very difficult questions for parents to consider and difficult ones to answer. When a child has a disability--whether it is mild, moderate, or severe--parents have concerns about that child's future. The information provided in this chapter is relevant both to a family whose child is already independent or is expected to be so, and to one whose child will need moderate or extensive support or supervision throughout life.

Parents may have a tentative plan in the back of their mind that one day, in the near or distant future, they will write a will that leaves their son or daughter with a disability sufficient resources to make his or her life secure. Many of them may have already written such a will, yet there are many things to know and consider when planning an estate.

For example, bequeathing a person with a disability any assets worth more than \$2,000 may cause the person to become ineligible for government benefits such as SSI and Medicaid. For many individuals with disabilities, the loss of these benefits would be a devastating blow. In addition to the cash benefits and medical coverage that would be lost, the person would also lose any number of other government benefits that may be available to eligible persons with disabilities, such as supported employment and vocational rehabilitation services, group housing, job coaches, personal attendant care, and transportation assistance.

Therefore, it is our hope that you, as a special educator, will read and thoroughly consider the information presented in this chapter. The future security of many parents' sons or daughters with a disability may well depend upon the actions you take to help them establish an estate plan appropriate to their child's needs. After reading this section you should understand the following:

- How the Type of Disability Affects Estate Planning
- Physical Disabilities or Health Impairments
- Cognitive Disabilities or Mental Illness
- How to Start Planning an Estate
- What to Consider When Planning an Estate
- Guardianship
- Conservatorship (Limited Guardianship)
- Types of Guardianship and Conservatorship
- Who Can Best Serve As Guardian /Conservator?
- Alternatives to Guardianship and Conservatorship
- Appointment of a Representative Payee
- Power of Attorney
- Special Needs Trust
- Joint Bank Account
- Informal Advocacy
- Consequences of Not Filing for Guardianship or Conservatorship
- Letter of Intent
- What Happens Once the Letter of Intent Is Written?
- How to Involve the Student in Writing the Letter of Intent
- What to Include in the Letter of Intent
- Writing a Will
- Establishing a Will: Four Possible Approaches
- Worksheet for Costing Out Expenses of the Person With the Disability

How the Type of Disability Affects Estate Planning

Disabilities, of course, can take many forms and have varying degrees of severity. The nature and severity of a child's disability will affect the nature of the estate plan that parents develop. According to Hill, Glowacki, Jaeger & Hughes, LLP (2001) a disabled individual often can't manage assets and income without assistance. In some cases, the disabled individual requires the protection of guardianship. Individuals with disability or diminished capacity sometimes qualify for and receive government benefits, such as SSI, SSDI, Medicare, Medicaid ("MA", also known as Medical Assistance or Title 19), COP, CIP and/or other similar benefits. Some but not all of these benefits programs are unavailable to individuals with assets over \$2,000 plus certain exempt assets. There also are income limitations for the benefits programs with asset limitations.

If an individual receiving SSI and MA receives income or a gift or inheritance, s/he may lose those government benefits. With proper planning, there are legal ways to avoid this problem. Thus, parents, grandparents, siblings and other relatives or friends desiring to provide for their disabled family member or friend should see an attorney experienced in estate planning for disabled persons, who stays current with the constantly changing federal and state laws, regulations and policies concerning qualification for these benefits programs. Even if a disabled individual does not receive SSI or MA, acquiring income, a gift or an inheritance may create problems due to the recipient's inability to manage the increased financial resources. Appropriate estate planning can avoid these potential problems, too.

Physical Disabilities or Health Impairments

Many individuals have physical disabilities or health impairments that do not affect their ability to manage financial or other affairs. If a student with a disability has such a condition, how to leave an estate depends on a number of factors. The primary factor will be whether he or she receives (or may one day need to depend on) government benefits such as Supplemental Security Insurance (SSI), subsidized housing, personal attendant care or Medicaid. If a child does receive (or may one day need to depend on)

government benefits, then it is most important for parents to create a special estate plan that does not negate his or her eligibility for those benefits. How to do this is discussed in some detail in this section.

If a child with a physical disability or health impairment is not eligible for, or is not receiving, government benefits, parents may be able to dispense with elaborate planning devices and merely leave their child money outright, as they would to any other individual. If they believe that the disability may reduce their son's or daughters financial earning capability, they may want to take special care to leave a greater portion of their estate to this child. There are some exceptions to this simplified approach; for example, if parents are concerned that a son or daughter with a disability may not responsibly handle an inheritance, then they can utilize a trust, just as they would for any other heir.

Another exception is if a child's disability or health impairment involves the possibility of deteriorating health and more involved health care needs in the future. While the child may be capable of earning money and managing an inheritance at present or in the immediate future, in 20 or 30 years' time, deteriorating health may make it difficult for him or her to maintain employment or pay for health care. Government benefits might then become critical to the child's security. Remember, benefits include much more than money; the child may also be eligible for valuable services such as health care, vocational rehabilitation, supported employment, subsidized housing, and personal attendant care. If, however, a child acquires too many assets through inheriting all or part of an estate, he or she may be ineligible for these benefits. Therefore, in order to protect a child's eligibility for government benefits at some point in the future and to provide for his or her long-range needs, you should inform parents that they may have to consider establishing a special estate plan.

Cognitive Disabilities or Mental Illness

If a child's disability affects his or her mental capability, the need to create a special estate plan is clearer. Mental illness and cognitive disabilities often impair a person's ability to manage his or her own financial affairs while simultaneously increasing financial need. As a result, parents must take care to ensure that there are assets available after their death to help their son or daughter, while also providing that the assets are protected from his or her inability to manage them. More information will be given later in this section.

How to Start Planning an Estate

Parents who have a son or daughter with a disability should give careful consideration to developing an estate plan that provides for that person's future best interests. Here are some suggestions that you, as a special educator, can give parents to help them approach planning their estate:

1. Realistically assess your son's or daughter's disability and the prognosis for future development. If necessary, obtain a professional evaluation of your child's prospects, and capability to earn a living and to manage financial assets. If your son or daughter is already an adult, you should have a fairly clear understanding of his or her capabilities, but if your child is younger, it may be more difficult to predict the future. In such cases, you should take a conservative view. It is better to anticipate all possibilities, good and bad, in such a way that you do not limit your loved one's potential or set him or her up for unrealistic expectations. Remember, too, that you can change your estate plan as more information about your child becomes available.
2. Carefully inventory your financial affairs. Estimate the size of your estate (what you own) if you should die within the next year or the next ten years. Keep in mind that the will you write governs your affairs at the time of your death, and so it must be flexible enough to meet a variety of situations. Of course, you can always write a new will, but you may never actually write it because of a hectic schedule, procrastination, or oversight.
3. Consider the living arrangements of your son or daughter with a disability. Your child's living arrangements after your death are of paramount importance. Every parent of an individual with a disability should give thought to the questions, "If (my spouse and) I should die tomorrow, where would our child live? What are the possibilities available to him or her?" The prospective living arrangements of your son or daughter will have a tremendous impact on how your estate should be distributed. Involved in answering the question of living arrangements is whether or not your child will need a guardian or conservator to make decisions for him or her after your death. If you conclude

that a guardian or conservator is necessary, you should be prepared to recommend a potential guardian or conservator in your will.

4. Analyze the earning potential of your son or daughter; it is important to determine how much your child can be expected to earn as a result of employment. If he or she is currently employed, does this employment meet all of his or her living expenses, or only some? If your child is currently too young to be employed, you will have to project into the future. In many cases, even if your son or daughter is employed or expected to be employed at some point in the future, he or she will require additional financial assistance.
5. Consider which government benefits your son or daughter needs and is eligible to receive. Support for a person with a disability will usually come from state and federal benefits. These might be actual case grants, such as social security or supplemental security income, or they might be in-kind support programs, such as subsidized housing or sheltered workshop employment.

Financial Concerns/government benefits can be divided into the following three categories.

1. Those categories that are unaffected by the financial resources of the beneficiary. For example, social security disability insurance (SSDI) beneficiaries receive their benefits without regard to financial need. Regardless of what a parent leaves to a son or daughter with a disability, the social security payments will still be forthcoming once the person has qualified for them.
2. Some government benefits, such as supplemental security income (SSI) and Medicaid, have financial eligibility requirements. If a person with a disability has too many assets or too much income, he or she is not eligible to receive some or all of these benefits. Someone who is eligible due to a lack of financial resources can become ineligible upon inheriting money, property, or other assets, leading to a reduction or termination of the SSI benefits for that person. Therefore, if your son or daughter is receiving government benefits that have financial eligibility requirements, it is important to arrange your estate in a manner that will minimize his or her loss of benefits, especially SSI or Medicaid.
3. Government programs are available to individuals with disabilities where payment for services is determined according to the person's ability to pay. Many states will charge the individual with a disability for programmatic benefits if he or she has sufficient assets or income. The most striking is the charge that can be levied against residents of state mental institutions. For example, if a resident of a state hospital inherits a substantial sum of money, the state will begin charging the resident for the cost of residency in the state hospital and will continue to charge until all the money is exhausted, yet the services provided will be no different from the ones that he or she was previously receiving.

Guardianship

Parents are the natural guardians of their children until the age of 18, when the power to make decisions on their behalf ends. A court must authorize any future guardianship powers once a person legally becomes an adult. In the past, most individuals with disabilities had public guardians or conservators. Although the Commissioner of Human Services was the technical guardian, the acting guardian or conservator was usually a staff member from the county social service department. In recent years, an effort has been made to recruit family members and other concerned individuals to assume the role of guardian or conservator.

Guardianship is the result of a court hearing that establishes the need to appoint an individual (guardian) to assume substitute decision-making powers for another person (ward) who is not capable of exercising his or her rights due to incapacity or incompetence. The standard for determining incapacity generally requires that a person is functionally unable to care for self or property and cannot communicate decisions regarding care for self or property. This incapacity must be the result of a disorder or disability.

Guardianship is the most restrictive limitation on personal decision-making authority that a court can impose on a person. The ward automatically loses the right to vote, the right to choose where to live, the right to approve medical procedures, the right to enter contracts, and other essential decisions. The role of the guardian is to act in the best interests of the ward in making decisions regarding financial matters or

personal needs that have been authorized by the court. The duties of a guardian are defined by law. Only a court can establish guardianship.

Conservatorship (Limited Guardianship)

Conservatorship is a less restrictive form of substitute decision making by a person (conservator), for another person (conservatee) that may include some, but not all, of the duties of guardianship. The conservatee does not automatically lose the right to vote because he or she is not considered incapacitated in all areas. Conservatorships can be tailored to include assistance with certain activities only. If the conservatee is capable of making some essential decisions, conservatorship is preferable to guardianship. A conservator's duties are established by the court based on law, and a formal hearing similar to a guardianship proceeding is required.

Types of Guardianship and Conservatorship

An individual can be appointed a guardian or conservator of the person, the estate, or both:

- Guardian of the Person and Estate: Has the full scope of powers and duties concerning every major aspect of the ward's life.
- Conservator of the Person and Estate: Has only some of the powers of the guardian.
- Guardian of the Person: Makes decisions concerning the ward's place of living, care, comfort, maintenance, employment, training, personal effects, medical procedures, entering into contracts, and social/recreational needs.
- Conservator of the Person: Has some of the powers of the guardian depending upon the person's needs.
- Guardian of the Estate: Assumes responsibilities for taking control of the ward's property, preparing a written inventory, keeping adequate records, determining and collecting all income, paying debts from the ward's assets, paying taxes, and filing an annual written report to the court about the assets, receipts, and disbursements of the estate.
- Conservator of the Estate: Assists the conservatee with those specific financial matters that the court has authorized.

Unless the person has substantial assets, it may not be necessary to seek guardianship or conservatorship of the estate since there are detailed accounting procedures required. If your family member does not have significant assets, consult the clerk of your local county probate court to see if the court will allow you to avoid seeking guardianship or conservatorship of the estate.

Choosing a Guardian /Conservator

A close relative or friend over the age of 18 is usually the best choice to be a guardian or conservator, as long as that person is willing and able to meet all the responsibilities. If a close relative or friend is not available, a concerned professional or representative from an organization offering guardianship or conservatorship services may be appropriate.

It is important to note that although parents may state in their will that they want a particular individual to serve as guardian or conservator after their death, this is not legally binding. That individual must still go to court and go through the same proceedings that the original guardian or conservator went through to obtain guardianship or conservatorship. Therefore, it is advisable to consider adding another family member or friend in the original petition to the court.

Alternatives to Guardianship and Conservatorship

Based on an assessment of the functional and decisional skill level of a family member, parents may decide that one of the several alternatives to guardianship or conservatorship may be more appropriate. The alternatives that follow are considered "less restrictive" because they do not restrict an individual's rights as severely as guardianship or conservatorship.

Appointment of a Representative Payee

Individuals receiving Supplemental Security Income (SSI) or Social Security Disability Income (SSDI) may receive the benefit checks directly, or the checks can be sent to a representative payee who will assist the beneficiary with financial management and payment of obligations. A representative payee is appointed by the Social Security Administration, and is typically a parent or social worker. Court action is not needed to establish a representative payee, but regular reports must be submitted to the Social Security Administration detailing how the money was spent. A separate bank account must also be maintained for the beneficiary's money. Contact the Social Security Administration for further information on the appointment of a representative payee.

Power of Attorney

If the person is a competent adult, he or she may authorize, in a private written agreement, another individual to assume power of attorney. A power-of-attorney agreement authorizes a person to enter into legal agreements and manage financial affairs in the name of another person. The person given power of attorney does not have to be a lawyer; any competent person can play this role. A power-of-attorney agreement terminates upon the death of the principal, or if the principal is determined to be incompetent. Parents should consult with a lawyer before setting up a power-of-attorney agreement.

Special Needs Trust

The only reliable method of making sure that the inheritance actually reaches a person with a disability when he or she needs it is through the legal device known as a special needs trust (SNT). The SNT is developed to manage resources while maintaining the individual's eligibility for public assistance benefits.

This trust agreement for the benefit of a person with a disability allows for a fund to be created that will pay for items and services not covered by Medicaid and other governmental benefits. The trust should be set up by an attorney, and parents may want to consult a financial planner for additional assistance. A trustee will be authorized to spend money on behalf of the individual with disabilities for supplemental purposes such as recreational opportunities, vacations, personal items, Christmas and birthday gifts, and so forth. It is essential that parents consult with an attorney so that all of the implications of any changes in the interpretation of the law are clearly understood and communicated to you. The Social Security Administration has publications, entitled Understanding SSI, that discuss special needs trusts and should be carefully reviewed by parents.

Joint Bank Account

An account set up by a bank allowing joint access to the account may allow parents to supervise or assist their family member with finances. This type of informal assistance may be sufficient to monitor finances when minimal supervision is required.

Informal Advocacy

For families who choose not to go the route of guardianship, the other alternative is to seek out an informal advocate who will carry out the conditions as stated in a letter of intent. Be aware that parents can appoint more than one advocate--each responsible for a different area of concern, i.e., financial or legal needs, or a public agency to oversee their child's well-being. Relatives usually make the best advocates because of their special knowledge of the needs of the family member. A friend or professional may be able to assist on an occasional basis. You can inform parents not to overlook the assistance that can be provided by natural support systems such as other family members, church communities, neighbors, social clubs, and so on. This informal advocate can assist their family member in meetings with case managers, social service providers, and individuals in the community, as well as in financial, social, employment, residence, or recreational issues that may be faced by their child.

Consequences of Not Filing for Guardianship or Conservatorship

Because the natural guardianship powers of parents ends when a son or daughter turns 18, parents may lose the right to access records and to make decisions unless authorization is obtained from the court. If guardianship or conservatorship is appropriate for an individual with a disability, failure to seek these powers may result in a loss of power to consent to ordinary or necessary medical care; loss of access to medical records; loss of authority to challenge school or residential facility programs; and other rights previously held. He or she may also have trouble having an Individual Service Plan (ISP) developed. For an exact explanation of rights under this section, you should tell parents to contact a lawyer who specializes in the rights of those with disabilities.

Letter of Intent

A letter of intent is a document written by the parents or guardians or other family members that describe their son's or daughter's history, his or her current status, and what they hope for their child in the future. Parents would be wise to write this letter today and add to it as the years go by, updating it when information about their son or daughter changes. To the maximum extent possible, it is also a good idea to involve their child in the writing of this letter, so that the letter truly represents him or her. The letter is then ready at any moment to be used by all the individuals who will be involved in caring for their son or daughter should the parents become ill or disabled themselves, or when the parents die. Even though the letter of intent is not a legal document, the courts and others can rely upon the letter for guidance in understanding their son or daughter, and following their wishes. In this way, parents can continue to "speak out" on behalf of their son or daughter, providing insight and knowledge about his or her own best possible care.

What Happens Once the Letter of Intent Is Written?

Once parents have written the letter of intent about their son or daughter, the first, most important thing to do is to let people know that there is a letter of intent available to be consulted. This might mean telling their other children (or relatives, neighbors, friends, workshop director, pastor, or case manager) why they have written the letter, what type of information it contains, and where the letter can be found. Tell parents to put the letter in an easily accessible place, and make it clearly identifiable. Many parents also make copies of the letter and give it to their other children (or other concerned individuals).

Second, parents should update the letter on a regular basis. They should select one day out of each year (such as the last day of school or perhaps your son's or daughter's birthday) where they will review what they have written and add any new information of importance. They should talk with their child each time and incorporate his or her ideas. After each addition, sign and date the letter. Should something change in their child's life, such as his or her caseworker or the medication he or she is taking, update the letter immediately. In conclusion--will the letter of intent overcome all of the obstacles to their son's or daughter's transition into someone else's care? No, of course not. The letter is of immediate usefulness, however, in coping with their son's or daughter's changed situation and, in the long term, will certainly help care providers understand and care for their child.

How to Involve an Individual with a Disability in Writing the Letter of Intent

How much a parent involves their son or daughter in writing the letter of intent will depend in large part upon his or her age and the nature and severity of the disability. It is only fitting that young adults and adult children be involved in planning their own lives to the maximum extent possible. Many individuals have disabilities that do not prevent their full or partial participation in the letter-writing process.

Before involving a child, however, parents might want to talk first between themselves about the content of the letter and their ideas regarding their child's future. When they've agreed upon the basic information they feel should go in the letter, discuss each area with their son or daughter. Ask for their child's input about his or her favorite things to do, what type of education has been enjoyable and what might be pursued in the future, what type of employment he or she enjoys or envisions. Equally crucial to discuss are their child's future living arrangements: How does their child feel about the options they are considering listing in the letter of intent?

It's important for a child to realize that the letter is not a binding, legal document; it is written to give guidance, not edicts, to all those involved in care giving in the future. If you or the parents fear that the child will be upset by talking about a future that does not involve parents, then you may wish to make the discussion simply about the future--what will happen when the child leaves high school or a postsecondary training program, what the child wants to be or do in the next ten years, where he or she wants to live. You, and especially parents, may be surprised to find that discussing the future actually relieves a child. He or she may very well be worrying about what will happen when his or her parents are no longer there to provide whatever assistance is needed.

Involving a child in discussing and making decisions about the future may be more difficult if the individual has a disability that severely limits his or her ability to communicate or to judge between a variety of options. You, as a special educator, and the parents, are probably the best judges of how much--and how--you can involve a child with a severe cognitive disability. For these children, the letter is especially critical; it will serve to communicate the vital information about themselves that they cannot.

What to Include in the Letter of Intent

While a letter of intent is not a legal document, it gives the future caregiver a very thorough specific description of the child, his or her need, and the parents' wishes on their child's care in case they are no longer able. Keep in mind that the letters may vary in their content and scope; however, there are several general areas that should be addressed. These include:

- **Behavior Management:** What consistent approach has worked best in the parents' absence?
- **Daily Living Skills:** Average daily schedule, activities.
- **Day Program or Work:** Present, past, and future.
- **Education:** The parents have a lifelong perspective of your son's or daughter's educational history and goals.
- **Employment:** What has the child enjoyed? Consider his or her goals, aspirations, and limitations.
- **Financial Issues:** Benefits, services, financial holdings, assets.
- **General Information on the Parents:** Vital statistics on the parents, that is, names, addresses, phone, social security numbers, blood type.
- **Leisure and Recreation:** Structured and unstructured activities, vacations, fitness programs.
- **Marital Status of the Individual with Disabilities:** If the student with disabilities is married, wife's or husband's name, address, phone.
- **Number of Dependents:** List the names, birthdates of dependent children.
- **Medical Care:** What has and has not worked with the child?
- **Medical History and Care:** Diagnosis, function, facilities, blood type, insurance, doctors' and dentists' names and addresses, mental status, other therapies, allergies, diseases, procedures, operations.
- **Other Relationships:** Friends, relatives with whom the individual has close relationships.
- **Religion:** Is there a special church, synagogue, or person your son or daughter relates to in the religious community? Faith, name of clergy, and participation.
- **Residence:** If something should happen to the parents tomorrow, where will their son or daughter live? What would be the best living arrangement? Does their child need adaptive devices?
- **Siblings Information:** Names, phone numbers, addresses, nature of relationship.
- **Social:** What activities make life meaningful for the child?

Additional Considerations for the Letter of Intent

Advocate/Guardian

Who will look after, fight for, and be a friend to the child? (Parents should list three to four people.)

Trustee(s)

Whom do the parents trust to manage their son's or daughter's supplementary funds? (List three to four people.)

For each applicable area mentioned in the letter of intent, consider the child's future. Parents should list three to four options to guide future caregivers in decision making and interaction with their child. They should draw upon what they know about their son or daughter, through observation and through discussion with their child, and share what they've learned!

Writing a Will

All parents, but particularly parents of individuals with disabilities, should have a will. The object of the will is to ensure that all of the assets of the deceased parent are distributed according to his or her wishes. If at death parents have no will, their property will be dispersed according to the law of the state in which they live at the time of their death. This law is called the state's law of intestacy. Although laws of intestacy vary from state to state, in general they provide that some percent of assets of the decedent passes to the surviving spouse and the rest is distributed to the children in equal shares. Writing a will is highly recommended, since the laws of intestacy are rarely the most desirable way to pass property to one's heirs.

Although it is theoretically possible for any individual to write a will on his or her own, it is unwise to do so. Because of the technical nature of wills, it is highly advisable to have a lawyer prepare one. Parents of individuals with disabilities particularly need legal advice, because they often have special planning concerns. If parents do not have a lawyer, they can call the local bar association, which will provide them with the name of an attorney in their vicinity, but it is preferable to contact a local disabilities group, which may be able to put you in contact with an attorney familiar with estate planning for parents of persons with disabilities. Not all lawyers are familiar with the special needs associated with caring and providing for individuals with disabilities, and it is best to find one who has prepared estates for other parents who have sons or daughters with disabilities.

The cost of an attorney varies according to the attorney's standard fee and the complexities of the estate. The attorney can quote the parents a fee based upon an estimation of the work. If the fee quoted is beyond their immediate means, it may be possible to negotiate a lower fee or devise a payment plan with the attorney.

Remember, a will goes into effect only upon the death of the person who created it. Until death, the creator of the will can freely revoke, alter or replace it.

Establishing a Will: Four Possible Approaches

The following is a very brief summary of four options in establishing a will. A more thorough explanation of these options should be discussed with a lawyer who specializes in disability law. Having decided what the parents' son or daughter needs, and what they own, the parents can now consider how best to assist him or her. There are four possible ways to do so:

First, parents can disinherit their son or daughter with the disability. No state requires parents to leave money to their children, with or without a disability. If the parents' assets are relatively modest and their son's or daughter's needs relatively great, the best advice may be to disinherit their child by name and have him or her rely upon federal and state supports after their death. This may be the most prudent decision, particularly if they wish to help their other children.

Second, parents can leave their son or daughter with a disability an outright gift. If their child with a disability is not receiving (and is not expected in the future to need) government benefits, this may prove to be a desirable course of action. Their son or daughter, if mentally competent, can hire whatever assistance he or she needs to help with managing the gift. If their child has a mental illness or cognitive disability, an outright gift is rarely a good idea, because he or she may not be able to handle the financial responsibilities.

Third, parents can leave a morally obligated gift to another of their children. Morally obligated gifts are not a complete solution, since they may not be legally protected. They can be useful, however, for parents who have a modest amount of money and do not expect a lifetime of care for a son or daughter with a disability. If they merely want their other sons or daughters to use some of the inherited money to assist their sibling with special needs, this may be the best approach for them.

Fourth, parents can establish a trust for their son or daughter with a disability. The point of a trust is to keep assets in a form that will be available to their son or daughter but that will not disqualify him or her for government benefits, if he or she might otherwise be eligible for them.

Worksheet for Costing Out Expenses of the Person With the Disability

Before contacting a lawyer, parents should do some preliminary estimates on the expenses and monetary needs that their child may require. As a special educator, you can discuss these estimates with the parents and then have them consult with an attorney or financial planner to establish what needs to be done.

Income

Government Benefits _____
Employment _____
Other _____
Total Monthly Income _____

Expenses

Housing:
Rental _____
Utilities _____
Maintenance _____
Cleaning items _____
Laundry costs _____
Other _____

Care Assistance:

Live-in _____
Respite _____
Custodial _____
Other _____

Personal Needs:

Haircuts, beauty shop _____
Telephone (basic, TT) _____
Books, magazines, etc. _____
Allowance _____
Clothing _____
Other _____

Employment:

Transportation _____
Workshop fees _____
Attendant _____
Training _____
Other _____

Education:

Transportation _____
Fees _____
Books, materials _____
Other _____

Special Equipment:

Environment control _____
Elevator _____
Repair of equipment _____
Computer _____
Audio books _____
Ramp _____
Guide dog _____
Technical instruction _____
Hearing aids/batteries _____
Wheelchair _____
Other _____

Medical/Dental Care:

Medical/dental visits _____
Therapy _____
Nursing services _____
Meals of attendants _____
Drugs, medicine, etc. _____
Transportation _____
Other _____

Food:

Meals, snacks--home _____
Outside of home _____
Special foods _____
Other _____

Social/Recreational:

Sports _____
Special Olympics _____
Spectator sports _____
Vacation _____
TV/VCR or rental _____
Camps _____
Transportation _____
Other _____

Automobile/Van:

Payments _____
Gas/oil/maintenance _____
Other _____
Insurance:
Medical/Dental _____
Burial _____
Automobile/van _____
Housing/rental _____
Other _____

Miscellaneous:

Total Expenses _____
(Subtract)
Monthly Income
+ Government _____

Benefits
(Equals)
Supplementary
Needs _____

Conclusion

This section was intended to provide updated and accurate information. It is not intended however, to render any legal, tax, accounting, or other professional advice or services. Use this section as a general guide only. Keep in mind that the laws do change with some frequency. As a parent of a child with a disability, you should always discuss estate planning with a qualified attorney; don't rely solely on the information that you find here or in any other book.