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What Seniors Need to Know About Planning for Adult Disabled Children

Planning for disability and death is important for everyone. Unfortunately, it is a process many people put off or avoid until it is too late and planning is no longer possible. This is especially true for seniors with adult disabled children. There are enough hurdles and red-tape to deal with in day-to-day life as a parent of a disabled child without adding more concerns. Consequently, planning for a child with a disability becomes a secondary priority to dealing with the child's daily needs. But, seniors who care for their adult disabled children need to know and understand that planning for their child is absolutely critical so they will continue to receive benefits and proper care even when the parent is no longer able to meet these needs.

For most seniors, the question is, "Where do I start?" Planning for a child with special needs is a process that takes time, not to mention money and energy. It is not something that can be accomplished overnight. Further, each plan will be different according to the individual family situation and what the family wants to accomplish. The quirks and personality of the adult child will also need to be considered when formulating and creating the plan. And, there are several critical issues seniors with adult disabled children should be aware of.

Traditional Guardianship and Guardian Advocacy

Depending on the nature and severity of the disability, an adult child's need for guardianship will vary. In some instances guardianship may have been established by the parent when the child attained the age of eighteen (18). In other cases, families may not have been aware of this need and no guardianship has ever been pursued. At this point you may even be asking yourself why a parent would even need guardianship over his or her own child. Guardianship is necessary because when an individual turns eighteen (18) the law presumes that person has the ability to make his or her own legal, financial, and medical decisions regardless of their actual competency level or nature of their disability. The reality is the individual with the disability may not be able to make his or her own decisions and needs someone (usually the parent) to be officially appointed by the Court to assume this authority. In Florida, this process is generally known as a guardianship or guardian advocacy, but could be different in other jurisdictions.

What is the difference between a guardianship and a guardian advocacy? Traditional guardianship is most commonly used when someone who once had capacity, typically an elderly person or someone who attained the age of majority but has become disabled as a result of illness or accident, is no longer able to make his or her own decisions. Here, the Court will evaluate the legal competency of the individual and upon a determination of

incapacity, will appoint a guardian to oversee the personal and financial decisions on behalf of the ward (the incapacitated person).

Guardian Advocacy is a summary form of guardianship specifically designed for an adult (someone over eighteen years old) with a developmental disability who lacks the capacity to do some of the tasks necessary to care for this or her person, property or estate. Florida law specifically defines a developmental disability as: mental retardation, cerebral palsy, Prader-Willi syndrome, autism or spina bifida. In order for someone to qualify for the guardian advocacy process the individual must be an adult (at least eighteen years old) and have been diagnosed with a developmental disability, as defined by Florida law, prior to his or her eighteenth birthday.

A guardian advocacy is the least restrictive and least costly form of guardianship. A guardian advocacy does not require a determination of incapacity or the appointment of an examining committee, both of which are required for the establishment of a traditional guardianship. Proof of disability in a guardian advocacy can be a letter from a treating physician outlining the individual's condition and prognosis. This letter takes the place of a formal determination of incapacity by an examining panel.

Some seniors may have provided care for their adult disabled child for his or her entire life without the need for a guardianship or guardian advocacy. But, it is important for senior parents to understand that without some type of guardianship the adult disabled child will have no legal, financial or healthcare advocate. If they are unable to make their own decisions, this situation can be devastating.

Powers of Attorney

In the case of very high functioning developmentally disabled adults, guardian advocacy might not be necessary. This assumes the individual has the ability to make his or her own legal, financial and healthcare decisions. Here, it is prudent the individual have a disability plan (including a general durable power of attorney, healthcare surrogate, living will, etc.) so someone has been delegated authority to make decisions if the need arises. In most cases the initial agent will be the child's parent or parents. Secondary choices may include siblings or other responsible family members. It is always important to ensure there are successor agents if the parent is not able to act when necessary.

Special Needs Trust

A special needs trust (SNT) is a core component of any special needs plan. There are various types of SNTs that serve various purposes but generally speaking, SNTs are a tool parents can use in order to be able to provide ongoing care and support for their adult disabled child. This is especially important to maintain government benefits that might be available and to ensure the proper investment, administration and distribution of financial assets. The SNT is the preferable way under current law to be able to leave assets to their child without jeopardizing these vital benefits.

A critical factor to establishing a SNT is determining who will be the trustee especially when the parents are no longer able to serve as trustee. The trustee of the SNT will be the person(s) or organization who will manage the trust assets and make sure the specific instructions put in place by the parents are carried out.

Evaluate Your Existing Financial Plan

Everyone can benefit from a sound financial plan. For a senior caring for adult disabled children it is import to evaluate what the adult child's financial landscape will look like without the parent's income and further, if a caregiver has to be paid to care for the adult child. Investments and insurance options should be evaluated to make sure the adult disabled child does not become the accidental recipient of funds intended for a Special Needs Trust.

Residential Options

Seniors caring for their adult disabled children need to do what sounds almost impossible - take a look into the future. There is no magic age where a decision has to be made, but eventually parents may have to make some residential decisions for their adult child, particularly if the child resides with the senior. There will inevitably come a time in the parent's life when the parent can no longer care for him or herself independently, let alone the adult child. Therefore it is important to discuss residential options for the adult child while the parent is able to do so.

Educate Family and Loved Ones

Throughout the planning process, it is important to educate your support network. This network can consist of other children, family, close friends, church and/or other professionals or organizations. But, in order for the plan to work it is crucial the individuals who are part of the plan are informed of their roles and of the overall goal(s) of the plan. Without the appropriate plan in place the family leaves too much of their child's future care to chance.

You should always work with a qualified attorney when preparing an estate plan for a family member with special needs.

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