

LEGAL AND FINANCIAL PLANNING

Legal and financial planning are complex areas, particularly as they relate to eligibility for public benefits. We have tried to make this volume as clear and concise as possible while still giving you the important and detailed information that you need.

Different professionals are available and may help you put your legal and financial plan together. You may hire an attorney, a financial planner, or an insurance broker to assist you. Whenever you hire a professional, hire someone who understands disability issues and public benefit programs.

Government benefits, laws, and regulations are always changing. It is important to understand that many of the programs described here are subject to change. Please protect yourself by checking on the most recent changes before and while making plans for a person with a disability.

INTRODUCTION TO LEGAL AND FINANCIAL PLANNING

WHAT IS LEGAL AND FINANCIAL PLANNING?

Legal and financial planning is a process through which a person builds a legal and financial foundation to support lifetime needs. Many of us undertake legal and financial planning when we make plans for retirement and our elder years. We take jobs with pension plans and 401-Ks. We invest funds in money market accounts and individual retirement accounts (IRAs). We purchase long-term care insurance and disability insurance. We establish powers of attorney for health care and financial matters to ensure that the people close to us will make decisions for us if we become incapacitated. We sell our lifetime homes for retirement homes and reap capital gains benefits. We draw up wills to ensure that after our deaths our cherished items and other assets will go to the people we choose.

When you have a family member with a disability or support a person with a disability, you will likely assist him or her in planning for the future. Just as it is important in your life, it is important to structure a legal and financial framework to support his or her needs, life plans, and goals. Planning may include exploring and applying for resources available to the person with a disability. He or she may be eligible for Medicare, Social Security benefits, or private benefits through an employer. If there is limited self-support, he or she may apply for public assistance such as Food Stamps, Financial Assistance or Medicaid to support food, clothing, shelter, and medical care needs. If you currently provide support or supplement his or her frugal public benefits, you may establish a trust to provide the same type of support that you provide today, even after your death. The person with a disability may also need to consider a will and mechanisms for assistance such as powers of attorney or guardianship.

WHY UNDERTAKE LEGAL AND FINANCIAL PLANNING?

The most important reason to do legal and financial planning is that it will better enable you and the person with a disability to get what you both want and need out of life. You know better than anyone what your needs and goals are. You and the person with a disability are the best people to make this plan. If you do not create a legal and financial plan, a stranger may make many life-altering decisions for you and the person with a disability.

A legal and financial plan should help to:

- Ensure that basic needs are always met;
- Support the achievement of goals;
- Minimize disruption from life changes;
- Keep the supports in place that you worked hard to put in place; and
- Give you peace of mind.

Planning is important whether you are rich or poor. Legal and financial planning is important for everyone.

Meeting basic needs -- The basic needs of a person with a disability are more than food, clothing, shelter and health care. There is another level of basic needs critical to quality of life that may include communication devices, personal care attendants, or special transportation. Personal assets and public benefits may not cover all of these needs and a plan is important to make sure that these needs are met.

Supporting goals -- The person with a disability has goals. Goals may include recreation, employment, education, and more. Goals may also include learning to ride the bus alone or to cook basic meals. Some goals may be fairly easy to fulfill and others will be challenging. A plan should help to develop and support all goals.

Minimizing disruption from life changes -- We know that life changes will occur, but often we do not know when. It is especially important to plan for the life changes that we cannot time, such as sudden illness, incapacity, or death. It is much easier to plan ahead than to plan in the midst of a crisis. Dealing with your death will be difficult enough for the person with a disability without also having to deal with a complete disruption of his or her life.

Mary is 76 years old and has always been very healthy. She has a 55-year-old son, Alan, who has a developmental disability. He has lived with Mary all of his life. Alan has never worked and is dependent on Mary for his needs. Mary has made no plans for the future. She has always been able to care for Alan and preferred to provide his care. Mary had a stroke last week. She cannot walk, write or talk and will go to a nursing home. What happens to Alan?

Keeping supports in place that you worked hard to put in place -- Many people have worked hard to support the person with a disability. Many make sure that the best supports are in place and continue to watch for new supports and resources that may help make his or her life even better. Without a plan for the future, the person with a disability may lose the supports that many worked hard to put in place.

Sarah is 23 years old and has a severe disability. Sarah is expected to live well into her seventies. Sarah does not work, lives in a supported apartment and is very happy. Before they died, Sarah's parents worked very hard to help Sarah attain as much independence as possible.

Sarah's parents were a middle-class couple who loved their daughter very much but were not able to meet the high costs of her care. Sarah therefore depends upon public benefits—SSI and Medicaid. Public benefits leave little extra spending money. Fortunately, Sarah's parents were able to provide the extras. For example, Sarah's parents purchased a new motorized attachment for Sarah's wheelchair that Medicaid would not cover. They were able to purchase special clothing for people in wheelchairs that made Sarah feel better about herself.

In their will Sarah's parents left her \$20,000 so that Sarah could continue to get the extras that they always provided. The money went directly to Sarah. Sarah now has too much money to qualify for public assistance. Her public assistance has stopped and will not start again until she has only \$1,500 left. \$1,500 will not buy many extras over the next 50 years. If Sarah's parents had put the \$20,000 into a special needs trust, Sarah would have continued to qualify for public assistance and her parents would have continued to give her extras for a long time.

Getting peace of mind -- A legal and financial plan will remove much of the emotional and economic strain of caring for a person with a disability. It is empowering and comforting to have such a plan in place.

HOW DO YOU DO LEGAL AND FINANCIAL PLANNING?

The key steps in legal and financial planning are:

1. Identify current and future needs;
2. Identify goals;
3. Identify current and future costs for needs and goals;
4. Identify resources;
5. Identify ways to maximize resources;
6. Identify people that will help; and
7. Create a plan.

Different professionals are available and may help you to put the plan together. You may hire an attorney, a financial planner, or an insurance broker to assist you. Whenever you hire a professional, hire one who understands disability issues, including public benefit eligibility.

WHEN DO YOU DO LEGAL AND FINANCIAL PLANNING?

While this manual is about planning for an adult with a disability, it is never too early to do legal and financial planning. It is as important for a child as it is for an adult. Once established, the plan should be revisited and revised to meet life changes, changes in the law and changes in support programs.

WHAT SHOULD A LEGAL AND FINANCIAL PLAN LOOK LIKE?

A legal and financial plan should have three parts:

- A personal plan;
- A financial plan; and
- An estate plan.

The personal plan should address assistance in decision-making, assistance that may include a power of attorney or a guardian. The financial plan should be a plan for how to meet the costs of the future and may include an investment or savings plan. The estate plan should be a plan for what will happen to assets and responsibilities after death.

A legal and financial plan is unique to each situation. There is no cookie-cutter model. Look at your goals and your needs, as well as the goals and needs of the person with a disability. Take a thorough accounting of income and resources, as well as expenses. Figure out how to meet the goals and needs of the future and create a plan. Decide what you want to happen after death. Seek knowledgeable professional advice and assistance in planning when necessary. Address your unique situation, stay flexible, and stay in control.

WHAT DO YOU NEED TO KNOW?

There are important planning tools and facts that can help you create a plan for yourself and for the person with a disability. This volume provides information on:

- *Wills*: what a will is; how to create a will; the effect of leaving property to someone; how a will works for you; what property goes through probate; what happens if you die without a will; advantages and drawbacks of a will; and what provisions you should expect to see in your will.
- *Cash Assistance*: the cash assistance options available to the person with a disability for the purchase of basic needs (food, clothing and shelter). The options discussed include New Hampshire Financial Assistance, Supplemental Security Income, Food Stamps, and Social Security Federal Old-Age, Survivors and Disability Insurance. There is also a brief discussion of other options such as life insurance, pensions/retirement benefits, trusts, and burial funds.
- *Health Care Coverage*: the different types of medical care coverage available, including Medicaid, Medicare, and private health insurance.
- *Public Benefit Considerations*: the reimbursement requirements and asset transfer rules for public benefit programs.
- *The Special Needs Trust*: what a trust is; the reasons to create a trust; what a special needs trust is; and the differences between a special needs trust created with the assets of a person with a disability and a special needs trust created with your assets or another person's assets. There is also information on the selection of a trustee and what property to put into a trust.
- *Assistance in Personal and Financial Decision-Making*: what alternatives for decision-making assistance are available for the person with a disability. The discussion ranges from the least restrictive assistance alternative, an advisor, to the most restrictive alternative, guardianship. This section also includes information on other methods of assistance, such as, the durable power of attorney for health care, the living will, and more.

WILLS

What is a will? How do you create one? What happens if you don't have one? What are the advantages and drawbacks of a will? What should you see in your will?