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GUARDIANSHIP AND ESTATE PLANNING WHEN A FAMILY MEMBER HAS DISABILITIES

I. SOCIAL SECURITY PROGRAMS

Is person gainfully employable? (= can earn over \$980 per month, after adjustments)

A. SUPPLEMENTAL SECURITY INCOME (SSI) AND MEDICAID

In 2009 pays \$674 month; must have low income and less than \$2000 in assets
Must either be 18 years old OR entire family is poor OR qualify for DDD waiver
Lose one dollar of SSI for every two dollars of wages. Medicaid until >\$24,000/yr
Adults can get Medicaid Personal Care, job coaches, and residential supports.

B. SOCIAL SECURITY DISABILITY (SSDI) AND MEDICARE

(1) The Childhood Disability Benefits Program (formerly DAC) provides benefits for your adult child when you are deceased, retired or disabled. Amount depends on parent's earnings. Family maximum is 150-180% of worker's own retirement benefits
(2) Disabled individual who works may also gain SSDI after enough quarters of work.

II. ESTATE PLANNING FOR YOUR SPECIAL SITUATION

A. PRELIMINARY NOTE: IF YOU DIE WITHOUT A WILL

All community property to spouse; separate property split with children.
Ordinarily, using living trusts to avoid probate is bad idea in Washington

B. THE STANDARD PLAN: WILL WITH A SPECIAL NEEDS TRUST

Creates a trust in your will (a "testamentary trust") to meet special needs of child

C. LIFE INSURANCE AND PENSION PLANS AS THREATS TO YOUR PLAN

Check those primary and contingent beneficiaries! Consider post-mortem IRS issues.

D. WHEN AN INTERVIVOS SPECIAL NEEDS TRUST MAY BE HELPFUL

A trust may help multiple family members or divorced parents who wish to contribute
Consider advising family members against gifts to child with disabilities, but to trust.

III. GUARDIANSHIP and "less restrictive" alternatives

A. POWERS OF ATTORNEY AND ANNUITIES

POA appoints agent. Doesn't take any power away from a person; does not protect.
An annuity is ordinarily a bad idea for a person who is eligible for SSI or Medicaid.

B. GUARDIANSHIPS

Types: (1) of the estate, the person, or both. (2) full vs limited (tailored like an IEP)
Process takes 60 days. A temporary "guardian ad litem" investigates for the court.
Cost: attorney \$1,075-3,000; guardian ad litem free and filing fee waived if ward owns less than \$3000

Usually reviewed every 3 years. Can be terminated when no longer needed.

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“OBRA 1993” or “d4A” or “payback” Trusts (42 U.S.C. 1396p(d)(4)(A))
A financial planning device for persons with disabilities

I. Summary of program criteria. Some government disability programs have financial eligibility criteria. SSI, Medicaid/medical coupons, and "CAP waiver services" have limits of \$2000 in assets and limits on income. 401-Ks, IRAs, and other retirement funds *do* count toward the \$2000 limit, to the extent that they can be withdrawn by the disabled person. (This is true even if a penalty must be paid; however, many programs will not penalize a withdrawal on account of disability.)

II. The problem in the past was that if, through wages, an insurance recovery, inheritance, back Social Security, or other assets, a person was at or over the \$2,000 limit, the excess funds had to be spent, even if in an unwise fashion, or the person would be dropped from benefits. So in the past, a person with disabilities could not accumulate funds for a down-payment on a house, an emergency, a vacation, etc.

III. The solution was OBRA 1993, a federal Medicaid law that allows a person to be eligible if he or she places excess funds in a proper trust.

Trust requirements

1. person is disabled by SSA standards
2. person is under 65
3. trust is established by guardian, parent, grandparent, or court
4. trust is established for the benefit of that person
5. repay State at death

Funds can be added to the trust at any time before the person's 65th birthday. The trustee can spend trust principal or interest on anything for the person. Ordinarily, it will be a special needs trust and so may forbid payments for basic food and shelter. That language will assist the trustee in retaining SSI. The remainder can go to any person or organization, if the disabled person can make a will.

V. What is a trust. Like a corporation, an irrevocable trust is a fictitious legal person and taxpayer. It registers with the IRS and pays taxes on earnings. Rates are higher than personal rates. The trust gets a deduction for payments made for on behalf of the beneficiary, but the beneficiary pays taxes on those payments.

VI. Happy result With a trust, persons with disabilities can now accumulate funds for emergencies, vacations, home purchases, retirement, etc., while staying eligible for SSI and Medicaid benefits.

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DIVISION OF DEVELOPMENTAL DISABILITIES (DDD) SERVICES

(Call 206 568 5700 to apply.)

Eligibility for most DDD services, and all expensive services, requires Medicaid eligibility. It also requires severe cerebral palsy, uncontrolled epilepsy, autism (not Asperger's), an IQ under 70, or a related neurological condition that is severely disabling.

1. Medicaid services that are part of the **State Plan** (not a Waiver; *not wait-listed*)
 - Medical coupons to pay for hospitals, medications, and deductibles
 - Medicaid Personal Care, using the **CARE** assessment tool: you get paid.
Hints on the CARE assessment are at www.arcofkingcounty.org/kepc
 - Adult Family Homes
 - Nursing homes and Institutions (Intermediate Care Facilities for the Mentally Retarded - Fircrest, Frances Haddon Morgan, Rainier, Lakeland Village)

2. Washington DDD Home and Community Based Services **Waivers** (*wait-listed*)

In the past there was only one waiver, the CAP waiver; it was abolished.
Four types:

 - Basic** (aimed at children living with parents)
 - Basic Plus**
 - Core** (the one adults want to be on)
 - Includes Supported Living - what you want for a DDD client who does not live with you (formerly called Tenant Support or Intensive Tenant Support)
 - Includes Supported Employment with a job coach assisting as needed
 - Community Protection** (when someone is a threat to others; avoid when possible)

The waivers are wait-listed and are being reduced in size! The supply of adult services is falling further and further behind growing population. **You need to get active and ask your legislators for increased appropriations, or you will have to quit your job when your son or daughter becomes an adult who stays home all day.** Go to www.arcwa.org and click on the link to receive The Arc of Washington State Action Alerts and Olympia Insider information updates. Or call The Arc in Olympia at 1-888-754-8798 if you do not do the internet.