



Chiodini Financial Group LLC

Michael Chiodini
LPL Financial Advisor
1610 Des Peres Rd.
STE 150
St. Louis, MO 63131
314-686-4620
mchiodini@chiodinifinancialgroup.com
www.cfgmo.com



CHIODINI
FINANCIAL GROUP LLC

Special Needs Planning Guide





Table of Contents

When Your Child Has Special Needs	3
Special Needs Trusts	5
Providing for Your Child with Special Needs After Your Death	8

When Your Child Has Special Needs



As the parent of a child with special needs, you face many of the same challenges that any parent faces. But you'll have to cope with some unique financial, medical, educational, and legal issues as well.

Where do you start?

Getting reliable information and support is important when you have a child with special needs. Start by talking to:

- Your obstetrician, pediatrician, and primary physician
- Social workers familiar with federal, state, and community resources
- Mental health professionals (e.g., psychologists and counselors)
- Parents of other children with special needs
- Members of a community or on-line support group
- Individuals within your local school systems (e.g., the superintendent, the principal, guidance counselors, and special education teachers)

You'll also want to find out what support programs and services are available in your community. Your state's Department of Social Services or Office for Children can help you locate state-sponsored programs such as child care, respite care, low-cost transportation, or other programs that can help you provide better care for your child.

Community volunteer agencies and parent groups can also counsel and educate you about the challenges of raising a child who has special needs. Your local United Way, as well as other nonprofit agencies, may have programs to help you care for your child. Sports events and recreational camps are often sponsored by both local and national organizations and can give your child a chance to interact with others while having fun.

Many national organizations exist for special needs information and advocacy. These groups often have local chapters you can join that may sponsor support groups. In addition, the Internet has become a leading source of information and support for parents of children with special needs. On-line sites offer both general and technical information and can connect you to informal and formal resources.

Finding and paying for medical care

Because of his or her special needs, your child may need expert medical care. Learning all you can about your child's condition and treatment options, finding ways to handle health-care costs, and organizing paperwork can cut down on the stress that

inevitably accompanies frequent visits to health care providers. Here are some tips:

- Choose a qualified physician who responds to your child's needs, is knowledgeable about your child's condition, and who explains treatment options thoroughly
- Read your health insurance policy and find out what it does and does not cover
- Apply for Medicaid if your child is eligible for it (in most states, your child will automatically qualify for Medicaid if he or she meets the Supplemental Security Income (SSI) requirements or lives in a residential care environment)
- Join support groups affiliated with a national organization focused on your child's disability or condition
- Subscribe to publications that can alert you to new treatments, prescription drugs, and research that may benefit your child
- Keep copies of treatment records, correspondence with your insurance company and supporting documentation
- Draft letters that you can keep on file with child-care centers, the school nurse, babysitters, or family members that describe your child's medical needs and what to do in case of emergency

Educational issues

Federal and state special education laws, as well as the Americans with Disabilities Act, require public schools to accept children with disabilities and take whatever steps are necessary to meet their special needs. For example, bathrooms, hallways, and other physical facilities must be designed to accommodate wheelchairs. In addition, a public school may have to create special programs, revise its policies and curriculum, and offer counseling and other services to students with disabilities.

All states must provide a "free and appropriate public education" to eligible children with disabilities. Have your child evaluated by your state and local school district to find out if he or she is eligible for special education services, including early intervention services starting in infancy or in preschool.

Ensuring your child's future

As the parent of a child with special needs, you'll want to find ways to protect your child's inheritance and ensure that he or she is taken care of when you die. If your child is a minor (under the age of majority, which in most states is 18) or an adult who is unable to make decisions related to his or her own long-term welfare, your first step should be to name a guardian (e.g., a friend, relative, or legal professional) in your will. After your death, this guardian will offer advice and make decisions for your child, manage his or her assets, and oversee his or her care after your death. Choose a guardian carefully. He or she should be someone who has your child's best interests at heart.

In order to be eligible for most government benefits (e.g., Supplemental Security Income (SSI) and Medicaid), your child must have minimal income and assets. If you plan on leaving your child significant assets, you could put his or her eligibility for these benefits at risk. However, you can leave money to your child without risking his or her eligibility for government benefits by establishing a special needs trust to hold funds that your child might otherwise inherit directly upon your death. Funds in a properly drafted special needs trust are not considered "countable" for SSI and Medicaid eligibility purposes. A special needs trust is a complex estate planning tool, so it's best to consult an experienced estate planning attorney.

Another way to save for future expenses is with an ABLE account. Money in an ABLE account generally does not count toward SSI and Medicaid asset limits.

An ABLE account may be opened by an individual whose disability began before age 26. As a parent, you may also be able to open and oversee an account on your child's behalf. Your child will be the account owner and the account beneficiary. Contributions to the account can be made by you, your child, and others who want to provide financial support. Earnings on contributions accumulate tax deferred at the federal (and sometimes state) level, and distributions will be tax-free if they are used to pay qualified expenses. These include housing costs, transportation, health care, personal assistance, education, and many other types of expenses related to living with a disability.

For more information and a list of states offering ABLE programs, visit the website of the ABLE National Resource Center at ablenrc.org.

Special Needs Trusts

What is a special needs trust?

If you have a child or other loved one with special needs you may want to establish a special needs trust. A special needs trust (or supplemental needs trust) is an estate planning tool that can help provide for the needs of an individual who is disabled without jeopardizing his or her eligibility for government benefits. A qualified attorney can help you establish and administer this type of trust.

Tip: The term "special needs" is used in this discussion to describe any trust that is established to fund the supplemental needs of an individual with disabilities while maintaining that individual's eligibility for government benefits. The term includes not only trusts funded with the individual's own funds (as governed by the Omnibus Budget Reconciliation Act of 1993 (OBRA '93)), but also trusts funded with assets from a third party (e.g., a parent or grandparent).

Why establish a special needs trust?

Unlike other types of trusts often used in estate planning, the primary goal of a special needs trust is to provide for the needs of an individual who is disabled throughout his or her life.

Federal and state benefits are generally available to qualifying children and adults who have special needs. If your child qualifies for government benefits, one of your goals may be to ensure that his or her eligibility continues into the future. A special needs trust can help you attain this goal. In addition, this type of trust can provide for supplementary care and services for your loved one.

Tip: Although this discussion focuses on using a special needs trust to benefit a child with disabilities, some types of special needs trusts may be established for a parent or other individual over age 65 who wants to preserve eligibility for nursing home benefits under Medicaid.

To preserve eligibility for Medicaid

Medicaid, a joint federal-state program, provides medical assistance to those who are disabled and can demonstrate financial need. Children and adults can qualify for Medicaid only if their monthly income and the value of their other assets fall below certain limits, which vary from state to state. (Most states set a \$2,000 asset limit.)

In determining eligibility for Medicaid, a state may count only the income and assets that are legally available to the applicant. A special needs trust restricts the beneficiary's own direct access to the assets in the trust to such an extent that the assets are not considered legally available to the beneficiary. Thus, a special needs trust can protect Medicaid eligibility because assets in the trust are uncountable.

To preserve eligibility for Supplemental Security Income (SSI)

Children and adults with special needs who have limited income and resources often receive monthly benefits from Supplemental Security Income (SSI). These cash benefits can be used for basic needs such as housing and food. But because SSI benefits are need-based, inheriting money can mean that a child with special needs will lose his or her eligibility for this benefit program. By naming a special needs trust as your beneficiary instead of your child, however, assets can be devoted to the care of your loved one. In addition, since SSI recipients are normally automatically eligible for Medicaid benefits, preserving your child's eligibility for SSI may preserve his or her eligibility for Medicaid as well.

To provide additional care and services

A special needs trust can be especially useful if you want to provide care and services necessary for your child's well-being, without supplanting Medicaid benefits. Although Medicaid pays for a number of medical costs, including hospital bills, physician services, and long-term care, it will not subsidize items and services considered nonessential. These may include health-related expenses such as eyeglasses, dental care, rehabilitation services, and home health aide services, as well as personal expenses such as transportation, computer equipment, and vacations.

Caution: To ensure that trust assets are unavailable to the beneficiary, the trustee must have sole discretion over the distribution

of trust income and principal. The beneficiary must have no control over the trust and no right to demand distributions from the trust. The trustee should purchase goods and services directly on the beneficiary's behalf, instead of giving the beneficiary money from the trust to purchase items needed.

What requirements must a special needs trust meet?

If the trust is intended to supplement, rather than replace, government benefits, it must be properly drafted. Although requirements vary according to state law and the type of special needs trust being established, here are some of the rules that apply to special needs trusts in general:

- Funds in the special needs trust may not be available to the beneficiary.
- The beneficiary cannot revoke the trust.
- The individual with special needs must be considered "permanently and totally disabled" under SSI criteria. Different rules apply to adults and children.
- Under the terms of the trust, the trustee may not be permitted to make payments or distributions that might interfere with government benefit eligibility (e.g., distributions cannot be made directly to the beneficiary).
- Special needs trusts may be established as part of a will (known as a testamentary trust) or during the creator's lifetime (known as a living or inter vivos trust).
- Special needs trusts can hold an unlimited amount of funds and can be added to at any time.

What types of special needs trusts are available?

Although there are many types of special needs trusts, they fall into two general categories: the third-party special needs trust (funded with assets belonging to someone other than the beneficiary) and the self-settled trust (funded with assets belonging to the beneficiary).

Third-party special needs trust

The third-party special needs trust is established with funds that belong to someone other than the beneficiary. For instance, a parent or grandparent may create such a trust under a will and fund it with a gift of cash, life insurance, or another asset. Upon the death of the beneficiary, any assets that remain in the trust can be distributed to whomever has been designated; if the third-party trust is properly drafted, the state will not have to be "paid back" for long-term care services when the beneficiary dies.

Self-settled trust

A self-settled special needs trust is established with funds owned by the person with disabilities. For instance, a self-settled trust might be established using a personal injury award or inheritance.

One type of self-settled trust is the qualified self-funded special needs trust. This kind of trust is created for the sole benefit of an individual who is disabled and who is under age 65 at the time the trust is established. Upon the beneficiary's death, Medicaid must be "paid back" from the trust assets for any long-term care provided. This type of trust is also known as a (d)(4)(A) trust.

Another common type of self-settled trust is the qualified pooled trust, also known as a (d)(4)(C) trust. This kind of trust is established and managed by a nonprofit organization. Separate accounts are maintained for each trust beneficiary, but funds are pooled for investment and management purposes. Upon the beneficiary's death, the nonprofit organization receives assets remaining in the trust, and will reimburse Medicaid for benefits paid to the beneficiary. In some cases, surviving family members may be entitled to receive some or all of the remaining funds.

Caution: *Self-settled trusts are complex and must comply with the requirements of OBRA '93 that govern them.*

Caution: *A parent can preserve his or her own eligibility for nursing home benefits under Medicaid by transferring his or her funds into a special needs trust established to benefit a child with disabilities, as long as the trust has a Medicaid payback provision.*

How is a special needs trust typically funded?

In many cases, a special needs trust is established, but not funded, while the parent or other creator is alive. Upon the parent's death, his or her will transfers the special child's portion of an inheritance to the special needs trust. The trust (instead of the child)

can also be designated as the beneficiary of various assets, such as employee benefits and life insurance policies.

Typically, a special needs trust is funded using:

- Life insurance
- Cash (including gifts from relatives)
- Investments (e.g., stocks, bonds)
- Retirement plan benefits (e.g., pension benefits, IRA funds, 401(k) assets)
- Personal and real property
- Proceeds from a personal injury settlement (applies to self-settled trusts)

Although life insurance is one of the most popular funding methods (in particular, lower-cost survivorship life insurance), each method has advantages and disadvantages. To ensure that the trust is adequately funded, you'll need to estimate how much income your child is likely to need over the course of his or her lifetime.

What else should you consider?

If you're thinking about setting up a special needs trust, there are a few other points you should consider.

Selecting a trustee

A trustee is a person or institution selected to administer a trust and manage its assets. The trustee's role is to adhere to the terms of the trust document and fulfill its objectives. You may wish to name yourself or another family member as trustee of the special needs trust, or you may wish to name an attorney, bank, or other professional trustee. There are advantages and disadvantages to each. Another option is to name a family member and a professional trustee as co-trustees.

Providing a letter of intent

If you set up a special needs trust through your will, you might also want to draft a letter of intent to describe how you want your child to be cared for after you're gone. Although it's not a legal document, it can provide important information to guardians, trustees, family members, and others involved in the care of your child. The letter may address such issues as your child's medical needs, daily routine, interests, likes and dislikes, religious practices, living arrangements, social activities, behavior management, and degree of self-sufficiency. Such a letter can prove invaluable to your child's care givers and can also make the transition to a new living situation as smooth as possible for your child.

Informing family members

Explain to siblings or other family members why you're setting up the special needs trust. Although siblings might expect to receive equal inheritances, more resources will probably need to be set aside for the benefit of your child with special needs. Explanations and clear directions now may help avoid family conflicts later.

Working with a qualified attorney or financial professional

Special needs planning is complex and technical, and the laws that govern special needs trusts differ from state to state. To properly plan for your child's future, work with a qualified attorney or financial professional who has experience with the planning needs of families of individuals with disabilities. This person should also have a thorough understanding of the income, gift, and estate tax consequences that must be considered when funding and administering a special needs trust.

Providing for Your Child with Special Needs After Your Death

Why is estate planning important when you have a child with special needs?

Preparing for the day when you won't be around to care for your family is a challenge that all parents face. But as a parent of a child with special needs, your estate planning needs are especially complex. Your will, and other estate planning documents you prepare, must address your unique concerns. These concerns may include:

- Providing for adequate lifetime care or assistance
- Appointing someone to manage your adult child's finances
- Maintaining your child's eligibility for government benefits
- Avoiding family conflicts

An attorney and other financial professionals experienced in planning for children with special needs can help you draft a comprehensive estate plan to ensure that your child is well provided for after your death. If you already have an estate plan in place, you should have all existing legal documents reviewed (and revised, if necessary) to make sure they address your family's needs.

Wills

A will is the cornerstone of any estate plan. It ensures that your money and property are distributed according to your wishes upon your death, and allows you to select a guardian for your child. Without a will, probate assets will pass according to the laws of intestacy, which generally assign a portion of the assets to the surviving spouse and a portion to the children. If your child requires more financial resources than other beneficiaries, it's especially important to prepare a will that reflects your wishes.

Trusts

A trust is a legal entity that enables you to leave assets to your child with special needs (and others) outside of your will. You can create a trust during your lifetime (a living trust) or in your will (a testamentary trust). As the creator of a trust, you can decide what assets will be transferred to the trust, who the beneficiaries will be, what the terms and conditions of the trust will be, and who will manage the trust. Trusts are typically used to:

- Avoid probate
- Manage assets
- Provide for minor children
- Avoid estate taxes
- Protect assets from creditors

One type of trust, called a special needs trust, can play an important role in your estate plan. Specifically designed for the benefit of individuals with special needs, a special needs trust can allow you to provide for your child without jeopardizing his or her eligibility for government benefits, an advantage not offered by traditional trusts.

Why use a special needs trust?

Government benefits, such as Medicaid and Supplemental Security Income (SSI), can be vital sources of support for your child with special needs, especially if he or she is unable to buy or afford private health insurance. But because these government programs are need-based, your child will become ineligible for benefits if his or her countable assets (e.g., cash and other liquid assets) exceed \$2,000, the limit that applies in most states. An inheritance, a gift from a relative, or a personal injury award may push your child's assets over the limit, resulting in the loss of government support.

Unfortunately, government benefits generally provide only basic support. The portion of assets your child is allowed to keep and the small allowance for personal care he or she receives under government benefit eligibility rules may not be enough to pay for necessary items and services, such as eyeglasses and dental care. It is almost certainly not enough to allow the child any

"luxuries" such as vacations or gifts for others.

If you want to provide funds that can be used for expenses not covered by government benefits while preserving your child's eligibility for those benefits, consider establishing a special needs trust. Because assets deposited into, and income generated by, a properly drafted special needs trust will not be considered "available" to your child, they won't jeopardize his or her eligibility for Medicaid and SSI.

In addition, establishing a special needs trust is often the best way to guarantee that funds you leave are used for your child's benefit. Although disinherit your child or leaving money to other family members on his or her behalf may initially preserve your child's eligibility for government benefits, your child may someday be left without adequate support if these benefits are reduced or eliminated. Another concern is that creditors may attach money left to a family member if, for instance, that family member is held liable for an auto accident or declares bankruptcy.

If you are interested in establishing a special needs trust, consult an attorney who is experienced in special needs issues (including Medicaid planning), and the laws governing special needs trusts in your state.

Note: *An additional planning tool you may want to consider is an ABLER account. Money in an ABLER account generally does not count toward SSI and Medicaid asset limits. An ABLER account may be opened by an individual whose disability began before age 26. As a parent, you may also be able to open and oversee an account on your child's behalf. Your child will be the account owner and the account beneficiary. Contributions to the account can be made by you, your child, and others who want to provide financial support. Earnings on contributions accumulate tax deferred at the federal (and sometimes state) level, and distributions will be tax-free if they are used to pay qualified expenses. These include housing costs, transportation, health care, personal assistance, education, and many other types of expenses related to living with a disability. ABLER accounts are intended to supplement, but not supplant, benefits from other sources, and may be used in addition to a special needs trust.*

Letter of intent

A letter of intent is a document that describes how you want your child to be cared for after you're gone. Although it's not a legal document, it can provide important information to guardians, trustees, family members, and others involved in the care of your child. The letter may address such issues as your child's medical needs, daily routine, interests, likes and dislikes, religious practices, living arrangements, social activities, behavior management, and degree of self-sufficiency. Such a letter can prove invaluable to your child's caregivers after you're gone, and can also make the transition to a new living situation as smooth as possible for your child.

Beneficiary designations

With certain assets (such as life insurance policies, retirement plans, and annuities), you must designate beneficiaries and/or contingent beneficiaries. You'll also name beneficiaries under your will. Although your first inclination might be to name your child with special needs outright as your beneficiary, such a designation could jeopardize his or her entitlement to government benefits. Instead, consider establishing a special needs trust for your child and designating the trust as your beneficiary.

Guardianship issues

Although you are the natural guardian of your child with special needs during your lifetime, who will care for your child after your death? Selecting a guardian who can act on your child's behalf after you die is one of the most important decisions you face. The person you choose must be able to handle the complex financial, legal, and personal needs your child may have.

Depending on your child's needs, you may also need to choose a person who is committed to serving as guardian even after your child reaches adulthood. The law doesn't assume that an adult with special needs is incapable of handling his or her affairs. After reaching the age of majority (generally age 18), your child is a legal adult. He or she will be judged capable of handling his or her own affairs unless declared incapable by a court. If such a determination is necessary, the guardian you choose now may need to serve as guardian throughout your child's life.

Guardian defined

A guardian is someone with the legal power to care for another person and manage that person's personal and/or financial affairs. A guardian can advise your child, manage assets, and oversee your child's care after your death. Generally, you'll nominate a guardian, along with several contingent guardians, in your will. The court has final approval, but it will usually approve whomever you nominate, unless there are compelling reasons not to do so.

Types of guardians

There are two basic types of guardians: a guardian of the person, and a guardian of the estate. A guardian of the person is someone authorized by a court to make only personal and medical decisions about your child. Any medical procedure performed on a child requires consent from the parent or guardian. A guardian of the person is empowered to give such consent for medical procedures and also decide where your child will live. Usually, the court clearly specifies the scope of the guardian's power. (The guardian will have to report to the court on a regular basis.)

A guardian of the estate (also called a conservator) protects and manages your child's money and other assets. The guardian has the following legal duties:

- To take possession of real and personal property and manage it for the benefit of his or her charge
- To spend the estate for the necessary care and support of his or her charge
- To productively invest estate assets

You can nominate different people as guardian of the person and guardian of the estate, or you can nominate one person to handle both functions.

Caution: *Each state has its own laws regarding guardianship. Consult an estate planning attorney before choosing a guardian.*

Full guardianship

A full guardianship is also called a plenary guardianship. In this case, the guardian has control over both the personal issues and the estate of your child. This is the most common type of guardianship. Typically, you will choose a full guardianship if your child's issues are so severe that he or she cannot make any informed decisions at all.

Limited guardianship

In a limited guardianship, the guardian has authority over his or her ward only in specifically defined matters. Otherwise, the child with special needs retains some control over his or her own life. The court has to pay careful attention to this type of arrangement to be sure it remains appropriate for the child.

Caution: *One problem with limited guardianships is that your child may encounter a legal situation you haven't considered. You have to anticipate the future when you set up a limited guardianship.*

Temporary guardianship

If the court appoints a temporary guardian, it specifies the limited problem or limited time of the guardian's power. Usually, a temporary guardian is appointed only in a situation caused by drugs or momentary illness or in a special medical case.

What to consider when choosing a guardian

You may want to select a relative, friend, or trusted legal professional as the guardian for your child. Here are some points to consider as you make your decision:

- Does the potential guardian live close to your child?
- Does he or she have enough time to devote to your child?
- Does he or she have the interpersonal skills necessary to be an effective advocate for your child?
- Is he or she willing to take on the responsibility?
- Do you trust him or her to keep your child's best interests in mind?
- Does he or she already have a relationship with your child?
- Is he or she willing to keep up with new programs and opportunities for your child?
- Will he or she adapt to your child's changing circumstances?
- Does he or she have the financial ability to manage your child's estate?

Caution: *Make sure to periodically review your choice of guardian. Your child's needs may change, or the person you initially chose may become unable or unwilling to serve as guardian.*

What if you die before nominating a guardian for your child?

If you fail to nominate a guardian in your will, or otherwise die before making arrangements for a caregiver, the court may appoint a guardian for your child. If a relative does not wish to serve or does not qualify, the court may appoint a professional guardian who is a stranger to your family. The guardianship process can be expensive, time consuming, emotionally draining, and open to public view. In some cases, though, there are advantages to having a guardian with professional expertise.

Public guardian

If a child with special needs has no individual guardian, the court will appoint a public guardian for the child. Usually, this guardian has many other clients as well, so he or she may not have time to watch your child's affairs as closely as you wish. A public guardian is paid out of public funds, but since the guardian often negotiates with public agencies, he or she may experience a conflict of interest. Public or nonprofit agencies may also be public guardians.

Caution: *A public guardian is usually considered a guardian of last resort.*

Corporate guardian

A corporate guardian is part of a company that sells guardianship services. A professional staff or a volunteer manages your child's care. This type of guardianship is usually funded by advance payment from parents, life insurance policies, or bequests. The United Way and other charities also support corporate guardians.

What if your child does not need a guardian?

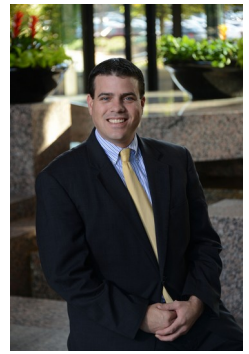
Even if your child does not need a guardian (if, for instance, he or she is already a legally competent adult), he or she may continue to need care, advice, and support throughout adulthood. You may want to ask a family member, friend, or other individual to act as a caregiver or mentor for your child. Make sure, though, that the caregiver you've chosen has the power to act on behalf of your child should he or she become incapacitated. This can be accomplished by having your child execute certain legal documents, including a durable power of attorney and advanced medical directives.

The opinions voiced in this material are for general information only and are not intended to provide specific advice or recommendations for any individual. To determine which investment(s) may be appropriate for you, consult your financial advisor prior to investing. All performance referenced is historical and is no guarantee of future results. All indices are unmanaged and cannot be invested into directly.

The information provided is not intended to be a substitute for specific individualized tax planning or legal advice. We suggest that you consult with a qualified tax or legal advisor.

LPL Financial Representatives offer access to Trust Services through The Private Trust Company N.A., an affiliate of LPL Financial.

Securities and advisory services offered through LPL Financial, a registered investment advisor. Member FINRA/SIPC.



Chiodini Financial Group LLC

Michael Chiodini

LPL Financial Advisor

1610 Des Peres Rd.

STE 150

St. Louis, MO 63131

314-686-4620

mchiodini@chiodinifinancialgroup.com

www.cfgmo.com

