

# Estate Planning

for parents of individuals with special needs



Maryland Center for Developmental Disabilities  
at Kennedy Krieger Institute

*Building Partnerships. Changing Lives.*



## Why should I consider estate planning?

Estate planning is essential for all parents, but it's especially important if you have a son or daughter with special needs. Estate planning helps provide for the care of your loved one with special needs during your lifetime, and ensures that your assets continue to provide for your child when you are no longer there.

## What kind of estate planning do I need?

Every situation is different, which makes it vital to consult an attorney with experience in both estate planning and special needs planning. Estate-planning documents that should be considered by families of a child or adult with special needs include:

- A will
- A special needs trust
- An advance directive
- A general power of attorney
- The Maryland Statutory Form Personal Financial Power of Attorney



## What happens when my child turns 18?

Under Maryland law, all children become legal adults with sole responsibility for making their own decisions at the age of 18. Even when a person has special needs, that person's parents no longer have the legal right to advocate or intervene on behalf of their child. That means parents can't talk to their adult child's doctor, discuss medication concerns with a pharmacist, access certain records, protect their adult child's finances, or consent to a procedure their adult child needs but refuses out of fear or lack of understanding. However, Maryland law provides legal options, such as a guardianship or special needs trust, for parents of children with special needs.

## What is guardianship?

When adult children are not capable of making decisions, family members can retain the legal right to help them by becoming their guardian. For many families, this is a simple decision. For others, difficult questions about their adult child's abilities must be explored. An attorney with experience in guardianship issues can provide invaluable guidance through this process.

Maryland law defines two types of guardians, and family members may consider one or both:

- **Guardian of the person** is appointed by the court if an adult with special needs is incapable of making decisions about personal needs, such as where to live, or healthcare and safety matters.
- **Guardian of the property** may be appointed if an adult has a disability that interferes with their ability to make decisions about finances.

## What is a healthcare surrogate?

A less restrictive option is to become a healthcare surrogate, which involves a less formal process to ensure that the medical needs of an adult with special needs are met. Consult an attorney about becoming a healthcare surrogate, because specific rules must be followed under Maryland law.

*“As parents to a child with special needs, preparing just as important as providing our child with the as well as daily love and support. One cannot risk t*

## What are the benefits of a special needs trust?

If your child currently receives Supplemental Security Income, Medical Assistance (Medicaid), Section 8 Housing or other government benefits—or may be entitled to receive benefits in the future—a special needs trust is an important estate-planning tool. To remain eligible for these government benefits, your adult child's income and assets must stay under a certain limit. Unfortunately, inherited assets often push individuals over this limit. A carefully prepared special needs trust could allow you to dedicate money or other assets to care for your adult child, while protecting their ability to receive government benefits.

## How do I decide what's best for my loved one?

Parents face many estate-planning choices, and each solution must be carefully designed to consider their adult child's individual needs, while complying with legal requirements. Talk to an attorney with a concentration in estate- and special needs-planning. It's the only way to gain the peace of mind that comes with knowing you've provided for your loved one's future.

*for the big 'What if something happens to us?' is appropriate medical attention and therapy he needs, the chance of leaving things to the unknown."*

– Jeff and Lisa Krivak



## Contact Information

### **Maryland Center for Developmental Disabilities**

For more information, please call **443-923-9555**, or call toll-free at **888-554-2080**. TTY users, please contact us at **443-923-2645**, or dial **711** to make a Maryland Relay call.

**[MCDD.KennedyKrieger.org](https://www.MCDD.KennedyKrieger.org)**

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