

Estate Planning

for parents of individuals with disabilities



Maryland Center for
Developmental Disabilities



Why should I consider estate planning?

Estate planning is essential for all parents, but it is especially important if you have a child with disabilities. Estate planning helps provide for the care of your loved one with a disability 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 a disability include:

- Will
- Special needs trust
- Advance directive
- General power of attorney
- 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 a disability, that person's parents no longer have the legal right to advocate or intervene on behalf of their child. That means parents cannot talk with 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 trusts, for parents of children with disabilities.

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 a disability 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 a disability 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 a disability, p happens to us?’ is just as important as p medical attention and therapy he needs cannot risk the chance of leaving things

How do I protect public benefits?

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. 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. ABLE accounts are another way to save money without jeopardizing public benefits.

How do I decide what is 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 with an attorney with a concentration in estate and special needs planning. It is the only way to gain the peace of mind that comes with knowing you have provided for your loved one's future.

Preparing for the big 'What if something providing our child with the appropriate s, as well as daily love and support. One s 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.

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

Address

7000 Tudsbury Road
Baltimore, MD 21244

Kennedy Krieger Institute recognizes and respects the rights of employees, trainees, and patients and students, and their families. At Kennedy Krieger, we ground our care, services, training and research in treating others with respect and civility. We respect the cultural identity of every person. Kennedy Krieger does not discriminate against people based on, but not limited to, perceived or actual race, color, culture, ethnicity, national origin, age, language spoken, accent, marital status, veteran or military status, immigration status, socioeconomic status (i.e., access to resources), physical or mental disability, religion, pregnancy status, sex, sexual orientation, or gender identity or expression. We strive for equitable care for all individuals for whom we provide services, training, education and research participation. We encourage employees, trainees, and patients and students, and their families, to become active partners in the services provided by asking questions, seeking resources and advocating for their needs. Our culture of care is extended to our patients, the patients' family members and other people served. Here, "family" refers to parents, other family members, guardians, surrogate decision-makers and healthcare agents. ©2024 Kennedy Krieger Institute 11/2024