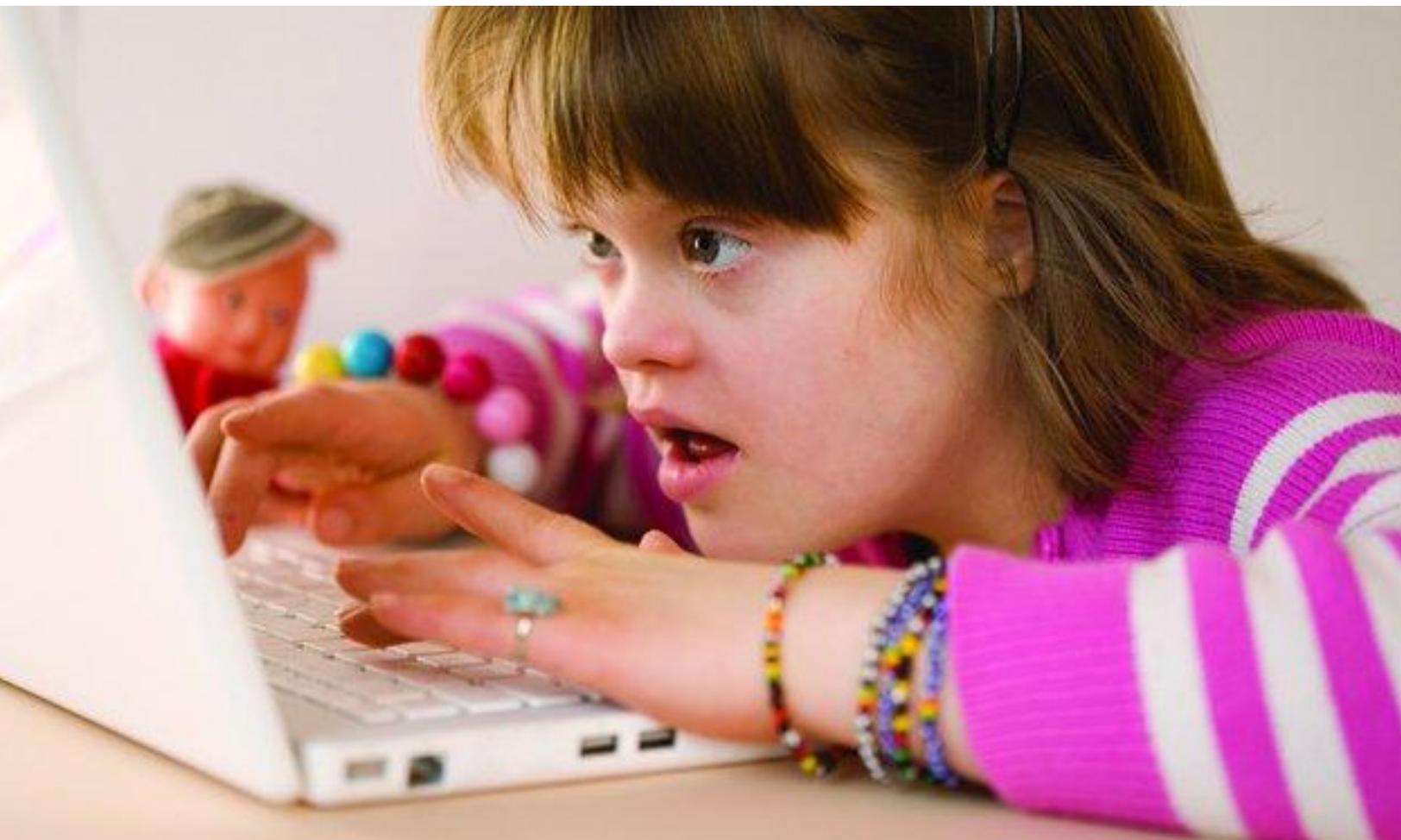


TEXAS ESTATE PLANNING AND SPECIAL NEEDS TRUST

*A Look At As the Parent of A Special Needs
Child Should Create Your Estate Plan
to Avoid A Number of Unintended
Consequences After Your Death*



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Despite the fact that most people understand how important it is to create a comprehensive estate plan studies show that over half of all Americans have yet to create one. If you are the parent of a special needs child estate planning takes on a heightened importance. Failing to create an estate plan that incorporates special needs planning into the overall plan could result in a number of unintended negative consequences upon your death.

THE FINANCIAL COST OF CARING FOR A SPECIAL NEEDS CHILD



As the parent of a special needs child you are undoubtedly aware of the financial costs associated with caring for a special needs individual. Although no one likes to dwell in the financial impact of caring for a special needs child the real reality is that it costs much more to raise a special

needs child than it does to raise a child without special needs. Moreover, a special needs child will continue to be dependent to some extent for the rest of his or her life. Although many special needs children now grow up to live relatively independent lives some level of care will continue to be necessary for the child's lifetime. Because of this, you likely want to provide funds in your estate plan to assist with the cost of your child's care. This can be accomplished; however, simply gifting assets to your special needs child when you die will often create more problems than it solves.

BENEFIT PROGRAMS FOR SPECIAL NEEDS CHILDREN AND ADULTS

Fortunately, there are a number of state and federal assistance programs that are aimed at defraying the costs associated with raising a special needs child and/or supporting a special needs adult. Some of these programs are entitlement programs while others are means test programs. An entitlement program provides benefits without regard to the recipient's income and resources. A means test program, on the other hand, requires the recipient to meet income and resource limits in order to be eligible for benefits. Some of the most common benefit programs that a special needs individual may be eligible for include:

- **Social Security Disability Insurance** – Social Security Disability Insurance, or SSDI, provides a monthly monetary benefit to recipients. There are a number of ways in which your child may qualify; however, all of them are ultimately based on your earnings record. The parent must be deceased, retired or collecting disability for a child to qualify for SSDI. Income and resources are not considered for the SSDI program.

- **Medicare** – Medicare is a federally funded and administered program that provides healthcare benefits to the elderly and disabled. Once your child is an adult, he or she may qualify for Medicare in conjunction with the SSDI benefits regardless of age.
- **Medicaid** – Medicaid is jointly funded by the federal and state governments but is administered at the state level. Like Medicare, Medicaid provides healthcare benefits but unlike Medicare the Medicaid program does take both income and resources into account when determining eligibility. Qualifying for Medicaid may be very important if your special needs loved ones needs long-term at some point as Medicare does not cover those costs.
- **Supplemental Security Income** – like the SSDI program, Supplemental Security Income, or SSI, provides a monthly monetary benefit to recipients. To be eligible for SSI the applicant must meet income and resource guidelines but prior work history of the applicant or his/her parent is not important.
- **Supplemental Nutritional Assistance Program** – formerly known as the Food Stamp program, the SNAP program offers monthly assistance purchasing food. Eligibility is dependent on the applicant's income and resources among other criteria.

ESTATE PLANNING MISTAKES WITH A SPECIAL NEEDS CHILD

There are a number of pitfalls that you can fall into when it comes to estate planning if you have a special needs child. Some of the more common mistakes that people make include:

- **Failing to Plan** – Failing to create a comprehensive estate plan is a mistake whether you have a special needs child or not. It is an even bigger mistake when you have a special needs child. If you fail to leave behind an estate plan your estate will be probated using the Texas intestate succession laws. Under those laws your special needs child will likely inherit a portion of your estate. That inheritance could cause your child to lose his or her eligibility for any or all of the means test benefit programs.
- **Disinheriting the Special Needs Child Altogether** – Another common mistake that a parent makes is disinheriting a special needs child altogether without making provisions for the child elsewhere in the estate plan. A well-meaning parent may do this in an attempt to prevent the child from losing his or her eligibility for much-needed assistance programs; however, this also cuts your child off from any supplemental assistance you could have provided through your estate plan.
- **Transferring the Inheritance to Other Children** -- Yet another strategy that a parent may employ is to leave assets intended for a special needs child to the siblings of that child with the understanding that the assets will be used to care for a special needs individual. One problem with this strategy is that those assets will always be subject to claims made by creditors of the siblings and/or being lost entirely in a divorce. In addition, a parent must consider the fact that once those assets have been legally transferred to someone other than a special needs child the recipient of the gift is under no legal obligation to use the assets as you intended them to be used.

THE SOLUTION – A SPECIAL NEEDS TRUST

Now that you are familiar with some of the wrong ways to handle a special needs child in your estate plan let's take a look at a solution. Creating a special needs trust, often referred to as a supplemental needs trust, is an estate planning option that is tailor-made for protecting a special needs child. A special needs trust works in essentially the same manner as any other trust by guarding assets for someone's benefit. In this case your special needs child will be a beneficiary. You have the ability to appoint a professional trustee to ensure that the assets are well-managed. When the proper language is used in the creation of a special needs trust the assets held by the trust cannot be reached by creditors and are not subject to recovery by the Medicaid program after your child's death. Assets held by the trust may be used to supplement the care provided by state and federal programs.

It should be clear by now how important estate planning is if you have a special needs child or loved one with whom you wish to protect and provide for in the event of your death. Moreover, one of the benefits to creating a special needs trust is that it can start working for you and your child from the moment of creation. Consult with your estate planning attorney if you have specific questions about special needs planning.

Texas Health and Human Services Commission, [Texas Medicaid Program](#)

Social Security Administration, [Benefits for Children with Disabilities](#)

Texas Health and Human Services, [SNAP Food Benefits](#)

About the Author



Stephen A Mendel

Stephen A. Mendel is a member of the American Academy of Estate Planning Attorneys, a national organization that serves the needs of legal professionals whose practices focus on estate planning and asset protection. The Academy fosters excellence among its members and helps them deliver the highest possible service to their clients. Stephen A. Mendel provides a broad spectrum of strategies and planning tools that can accomplish very diverse goals.

Mr. Mendel is an attorney who focuses a substantial part of his practice on estate planning. Mr. Mendel's guiding principle is to provide his clients with quality legal services tailored to each client's specific needs and goals.

Mr. Mendel has been providing quality estate planning for Houston and surrounding area clients for many years. His firm helps numerous people who are concerned about protecting their families from the devastating legal effects of disability and death. The aim of the firm is to help you accomplish your estate planning goals and to take the mystery out of the planning process.

Specific services include, but are not necessarily limited to, design and preparation of wills & trusts, asset protection, use of family limited partnerships as part of the planning process, buy-sell agreements, business counseling, and succession of closely held, family owned businesses.

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