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DESCHENE: Preparing for the future with a trust

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BY ROBERT DESCHENE | 0 comments

One in seven Americans has a disability, so for most of us, we have family, friends, neighbors or co-workers with a disability in our lives. These individuals contribute immeasurably to the quality of our lives, our economy and our society as a whole, and they face great challenges.

The National Academy of Elder Law Attorneys (NAELA) observes National Special Needs Law Month annually in October to encourage discussion and awareness of legal options for families dealing with guardianships and conservatorships, Medicare, Medicaid, special education, and other important matters.

The overall number of people with disabilities is surging and the reasons vary. As we age, we naturally are more prone to developing disabilities, and the Baby Boomer generation is reaching retirement age in record numbers with longer life expectancies due to improved medical care. By some estimates, the incidence of autism (or Autism Spectrum Disorder) is sharply on the rise. Other possible causes include obesity, diabetes and childhood asthma, increases in infant survivals from premature births and service-related injuries from foreign wartime activity. A compassionate society thoughtfully must prepare to address these anticipated needs.

Despite the Americans with Disabilities Act, which prohibits discrimination against people with disabilities in employment, housing, education and other areas, individuals with disabilities continue to face unique challenges and obstacles in protecting themselves legally and financially. The unemployment rate for persons with disabilities is far greater than that for those without disabilities. Underemployment often hampers access to health insurance, and prior to the Affordable Care Act, many special needs persons were disqualified from private health care coverage because of a pre-existing condition.

People with disabilities often must rely on financial support from family or

from governmental programs, such as Supplemental Security Income (SSI) or Medicaid/MassHealth. However, to qualify for these assistance programs, the special needs person normally can own no more than \$2,000 in assets (or \$3,000 for a married couple). So what can a married couple with an adult special needs child do to ensure them a quality life after the parents are no longer around? If parents leave their property to the special needs child, the child may no longer qualify for SSI or Medicaid. If the parents disinherit, the child faces a life of subsistence living through governmental assistance.

Special needs law advocates use many tools to prevent these unfortunate scenarios, and to ensure that a special needs person thrives, rather than merely subsists. One of the core tools is the third-party special needs trust (SNT), which is set up using assets of someone other than the special needs person.

Parents of a person with a disability can leave their property to the SNT, rather than outright to their child. Because the SNT owns the property - and not the child - SSI and Medicaid will not count it toward the \$2,000 asset threshold, and the child will continue to receive SSI and Medicaid. The parents name someone to act as trustee, who manages and distributes the trust money to enrich the child's life by paying for things which governmental programs will not cover.

After an SNT is created, any family member, not only the person who created it, can contribute money to it. Parents can also appoint a team of advocates, consisting of family members and health care professionals, who will monitor their child's progress over time to ensure they are receiving all the employment, housing, education they need.

The goal of National Special Needs Law month is to empower persons with disabilities and their families with options to allow them to thrive.

Robert Deschene is an attorney who does estate and elder law planning from Deschene Law Office in North Attleboro. The information provided in this column is for informative purposes only. He can be reached at 508-316-3853.

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