

# New Jersey Law for Special Needs Children

NEWS & UPDATES ON ESTATE PLANNING FOR NEW JERSEY FAMILIES WITH SPECIAL NEEDS CHILDREN

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## Government Benefits for Special Needs Individuals

*September 26, 2011 by Lori I. Wolf*

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While it is critical to ensure that you have adequate planning in place to preserve your child's eligibility for government assistance, it is important for individuals to know what government benefits are available to a special needs child and when these benefits are available. Because government programs can be confusing and since they change often, anyone seeking to learn more about receiving government benefits for a special needs child should consult an attorney or review current documentation on eligibility from each individual government program.

There are four relevant government benefit programs available to special needs families. These are Supplemental Security Income ("SSI"), Medicaid, Medicare and Social Security Disability Insurance ("SSDI"). Both SSDI and Medicare are not means based programs. In other words, there is no investigation into your finances to determine if you qualify for the program based on your income or your resources. Medicare is a form of sponsored health insurance available for the elderly and the disabled and SSDI is available to individuals and minors or special needs children of an individual who has died, retired or become disabled. A special needs child who is under age 22 and who is not working can obtain SSDI benefits based on his or her parents' prior earnings.

SSI and Medicaid are both means based programs. Eligibility for those programs is based on financial need and strict requirements must be met prior to receiving benefits. Medicaid can provide in-home care, cost of hospitalization and nursing home care as well as some housing benefits to recipients. A special needs child can receive SSI, SSDI, Medicaid and Medicare all at the same time.

The distinction between means and non-means based programs is important to understand. Since these benefits add greatly to a disabled person's ability to receive care, and given the expensive cost of long-term medical and nursing care, anyone seeking to give a special needs child assets may disqualify him or her from receiving means-based program benefits. However, setting up a supplemental needs trust for your special needs individual can help provide for their care without disqualifying him or her from SSI or Medicaid benefits.

Although the requirements should be reviewed periodically for changes, currently, to qualify for SSI benefits, a disabled adult cannot own more than \$2,000 of assets. There is a link between eligibility for Medicaid and eligibility for SSI. Eligibility for SSI makes a disabled person eligible for food stamps and Medicaid, which pays medical expenses, nursing home care and mental health services. Given the very low poverty threshold, setting up a supplemental needs trust can help provide for extra care over and above that which the government may provide.

In addition to applying for the benefits above, special needs individuals with developmental disabilities who reside in New Jersey should apply with the [Division of Developmental Disabilities](#) ("DDD") to preserve availability for various benefits. DDD provides a wide array of benefits including day services such as support for people who are employed, residential services such as individual support that assists an individual living at home or elsewhere in the community, and family support services that assist families caring for loved ones at home.

Parents of special needs children should make sure their child will be protected after they have passed away as they have protected the child during their

lifetimes. Given the cost of long-term care for a special needs child, you should consider whether government benefits can be helpful in meeting some of those needs. A typical plan for an individual may include drafting a will and creating a special needs trust. Also important are designations of trustees, a conservator in the event of future incapacity or a standby guardian for a developmentally disabled family member. In addition durable powers of attorney, living will and related documents should be in place. Finally, securing government benefits for a special needs child can enable that person to have the resources necessary for quality long-term care.

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