

THE B&B ALERT

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CRUCIAL LIFE STAGES OF A DISABLED CHILD

By Thomas D. Begley, Jr., Esquire

Harry and Sally have a disabled son, Billy, who is two years old. They are concerned as to what lies ahead. There are several crucial stages to be anticipated in Billy's life. The stages are as follows:

- *Under 18* - Likely to be ineligible for SSI and Medicaid, because of the deeming rules deeming the parents' income and assets to the child. Special education is available to all children with disabilities ages 3 through 21 and is not means-tested. Occasionally special education programs cover the cost of residential care if that is the only setting in which the child can learn.
- *At Age 18* - The child with disabilities may be eligible for SSI. If the child is incompetent, a guardian should be appointed.
- *At Age 22* - At age 22 special education ends. For many families chaos begins. It is critical to find a job that begins immediately at age 22. Private services are available to assist in this effort. Attorneys practicing disability law must be familiar with these providers.
- *After 22* - Families quickly discover that publicly-funded rehabilitation and transition services are inadequate. By using private or trust funds for good transition services, these years can be used to establish a good work pattern that can promote the individual's future independence. If a good work pattern is not established between ages 22 and 25, it is often impossible to establish later.

Experience dictates that young people with disabilities want a car, a job and sex on Saturday night.

If the person with disabilities is competent, she should execute a will, living will and power of attorney if she is 18 or older. Many families of persons with disabilities will argue that a will is not necessary since the person has very little in the way of assets and is receiving means-tested public benefits. However, no one knows if or when a person with disabilities may receive an unexpected inheritance or receive monies from a personal injury, which for various reasons they may elect not to place in a self-settled special needs trust. A medical power of attorney is as necessary for a person with disabilities as for a person without disabilities. A financial power of

attorney is often critical in giving parents or siblings the legal authority to act on behalf of the person with disabilities.

If the person with disabilities is incompetent, a parent, sibling or other interested person should apply for guardianship on or about the 18th birthday of the person with disabilities. This will give the guardian the authority to make legal decisions on behalf of the person with disabilities.

If the child with disabilities did not meet the definition of “disabled” prior to attaining age 22, he may be eligible for Social Security Disability Insurance (SSD) benefits upon the retirement, disability or death of a parent. However, these benefits would be lost if the child with disabilities marries or lives independently and works for an extended period of time. These are known as Disabled Adult Child (DAC) benefits.



Begley & Bookbinder, P.C. is a law firm that specializes in Elder & Disabilities Law. We are based in Moorestown, NJ, with offices in Stone Harbor & Lawrenceville.

If you have any comments, e-mail us at ccaruso@begleylawyer.com

Our web site contains a library of firm newsletters, articles, on-line forms for Medicaid, Estate Planning and Guardianship, as well as our upcoming speaking engagements, our products, and other relevant information.

If you are interested in having an Elder & Disabilities Law Attorney from Begley & Bookbinder speak at an event, please contact Colleen Caruso at (856) 787-4237.

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