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Planning for Aging Parents and their Children with Disabilities

It has become a common scenario. A child is born with a disability, or becomes disabled at a young age. The child lives at home with his parents throughout his childhood, and then throughout his adult life. He is likely eligible for Social Security Disability Insurance, Supplemental Security Income, or Medicaid, though his parents may never have applied for benefits as they are proud people and don't take "welfare." His life revolves around his parents and his life at home. Likewise, the lives of his parents revolve around him.

Fast forward to today. Father has passed away. Mother is now aging and in poor health. She isn't wealthy but she owns the house and has an adequate retirement income. Yet she refuses to consider leaving her home in order to obtain care for herself in an assisted living or nursing home environment. She is devoted to her child; her worst fear is what will happen to him if she can't care for him, or after her death.

Are there useful planning options for a family that finds itself in this situation? Absolutely! There is no substitute for good and thorough legal and disability planning.

The importance of executing substantive well thought out and well drafted legal documents while the parent is able to do so cannot be overstated. There are three important documents that should be considered in every like situation.

First, under a Last Will and Testament the parent can establish a Special Needs Trust (SNT) for her child to be funded after her death with the assets the child would inherit.

A SNT is a discretionary trust created for a disabled beneficiary which supplements but does not supplant public benefits for which the beneficiary may be eligible. It must be carefully drafted to conform with federal and state



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statutory and regulatory requirements to assure the ongoing public benefits eligibility of the person with a disability. After the parent's death, personal property, real property, cash, stock, investment accounts, life insurance proceeds, and pension survivor benefits can be used to fund the SNT. The option of establishing such a trust should be seriously considered in any estate plan involving a beneficiary with a disability.

Second, under a Durable Financial Power of Attorney (DFPOA) the parent names a trusted individual to act as his "agent" in making financial and property decisions in the event the parent later becomes unable to do so.

One of the things the parent or her agent can do, if appropriate, is to establish and fund a SNT during her lifetime. The parent can transfer any or all of her assets to a SNT for the sole benefit of the child with a disability, without incurring a transfer penalty for purposes of the parent's application for public benefits. The result is this: the parent can become eligible for Medicaid benefits when she otherwise meets the eligibility criteria, without having to wait until a penalty period has ended. And the child can maintain any benefits he has previously been eligible for (or for which he is now applying) while having the additional benefit of the assets that are held in the SNT.

Finally, a Durable Advance Directive for Health Care (DADHC) is a document under which the parent names an individual to make medical and personal decisions on her behalf if she becomes incapacitated and cannot do so herself. This is important so that medical decisions will be made as she wishes by individuals she trusts.

Given the demographics in America – and specifically in Georgia – and given the good health care that contributes to longevity in both generations, planning for the future of the elder and her adult child can benefit many families for the foreseeable future.

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