



Interstate Moves: Practical Considerations Before It's Too Late

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People may want to move for a variety of reasons. Some move seeking warmer weather; others may move for jobs or to be closer to loved ones. Individuals with special needs are no different. Sometimes, however, individuals with special needs move because the need for care necessitates it. The most common scenario is an aging parent's death or inability to continue caring for their child, perhaps passing this role to the individual's sibling who lives in a different state. A move can be fraught with landmines encompassing estate planning, the new state's public benefits programs, decision-making, and living arrangements.

Mom and Dad's Estate Plan

If the parents of an individual with special needs have crafted an estate plan with the assistance of a special needs attorney, there is a good chance that the plan includes a special needs trust. Regardless of the type of special needs trust (stand-alone or pooled special needs trust subaccount), it will likely relate to the state laws in which it was created and initially administered. This is important because certain public benefits, such as Medicaid, have state-specific rules, and the trust must comply with those rules.

If the child is moving to a new state, the child is still a beneficiary of the trust. In a way, the trust "moves with" the child. But can the laws governing the trust be updated to conform to the rules of the new state? The Trustee, be it an individual family member, a professional trust company, or a nonprofit, will need to evaluate the laws in the new state and understand how the terms of the trust work – or don't work – within this different paradigm.

For the special needs trust to play an integral role in supporting the individual with special needs, the trust needs to function legally in the new state. If the special needs trust utilizes a professional trustee, can that trustee legally do business in the new state, for example, through a national charter? If the Trustee cannot legally serve in the new state, does the Trust document provide a way to appoint a successor? If it's a pooled special needs trust (PSNT), does it have a national charter to do business in any state? If not, has the PSNT's master trust been reviewed and accepted by the local Medicaid office? Perhaps most importantly, the trustee needs to understand the benefits available

and how they are administered.

Benefits

Before moving to another state, it would be helpful to explore what public benefits are available for the individual with special needs in the new state. A move to a different state should not have any impact on federal benefits, such as Social Security Disability Insurance and Supplemental Security Income; however, Medicaid, housing, supported employment, day programs, or Supplemental Nutrition Assistance Programs may vary from state to state. There is no guarantee that the new state will have a similar program or that the individual will qualify for the program upon arrival. Even if the individual qualifies, there may be a long waitlist before receiving benefits, resulting in a gap between approval and receipt – will the former state provide benefits during this period? Without determining these answers before the move, special needs trusts and the assets of loved ones will be necessary to ensure the individual with special needs has everything they need.

Decision-Making

If a person needs assistance making decisions or otherwise enforcing individual rights, whether due to being a minor or a disability, someone else will need legal authority to provide this assistance. Parents of their minor children can ordinarily assist their minor children without complication. In many states, parents may not have legal authority to assist their adult children, however. The most common legal means to obtain legal authority to help someone with their own decisions and rights include powers of attorney, supported or surrogate decision-making, or guardianship and conservatorship. Because these are all creations of state law so it is important to review these options with an attorney in the state in which they will be utilized. While documents executed in one state are effective in every state, it's just good practice to have documents that conform to the laws of the new state. If the individual does not have the capacity to execute powers of attorney, guardianship should be explored. Suppose the individual already has guardianship, and both the new and prior states have adopted the Uniform Guardianship and Protective Proceedings Jurisdiction Act. In that case, the transfer can be facilitated by attorneys in both states through their respective court systems. It requires proceedings in both states, so planning is essential.

Creating a New Living Environment

This new living situation is a significant change for the individual and family members – and with change often comes worry and anxiety. Does the environment provide the physical accommodations the individual needs? What about their emotional and social needs? The individual may miss friends and caregivers who were part of their everyday fabric. They may have felt purposeful in prior employment but cannot replicate in the new state. This, in combination with benefits considerations, can be overwhelming. Hiring a care manager to assist the individual with the transition can be invaluable, as they will know of programs, social opportunities, and support groups for the individual and family members adapting to this new reality.

Planning is critical when a caregiver loses the ability to care for a loved one with special

needs. Food, shelter, medical care, and stimulation are necessities, so planning for them before the move is fundamental. Consulting with attorneys in the old and new home states can ease the challenges associated with the process so that when the process is complete, you aren't left saying, "I wish we'd known."

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