



## **Interstate Moves: Practical Considerations Before It's Too Late**

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Individuals with special needs often consider an interstate move when a transition in their “person” – the one helping with personal and financial decisions – 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. Often, emphasis is placed on solidifying a plan for personal care. Still, the 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, it will likely include a special needs trust. Regardless of the type of special needs trust (stand-alone or pooled special needs trust



subaccount), it will be governed by the laws of the state where the trust was signed, often where Mom and Dad live. If the child is moving to a new state, the trust generally “moves with” the child, but can the laws governing the trust be updated to conform to the new state? It is an important consideration because many benefits are state-specific. The Trustee, be it an individual family member, a professional trust company, or a nonprofit, will need to understand the benefits laws in the new state to understand how they affect the special needs trust. 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? 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, and the trustee needs to understand the benefits available and how they are administered.

### **Benefits**

Before moving to another state, explore what public benefits the individual with special needs will be eligible for in the new state. The individual should continue receiving 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**

Suppose an individual with special needs is over 18. In that case, it’s essential to ensure the new “person” will have legal authority to help, whether via powers of attorney,



supported or surrogate decision-making, or guardianship and conservatorship. Suppose the individual can understand who they want to help with personal and financial decisions and has the capacity to execute powers of attorney to name an agent to help. In that case, they should meet with an attorney to sign powers of attorney that conform to that state's laws. 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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