

What Individuals with Disabilities Need to Consider before Age 18

Turning 18 is a big deal for all individuals. An 18-year-old is legally considered an adult in Virginia. Therefore, when your child turns 18, they are the person that makes legal, financial, medical, and educational decisions in their life. For some individuals with disabilities, this will not be an issue. Others may need support. My son is over 21, so I have personally gone through most of the processes listed below. This list gives a place to start an individualized discussion with you and your soon-to-be-adult, so please call me at 703 969-6730 with any questions. ***Items specifically for military families are in italics, red, and bolded.*** Good luck! Scott Campbell

Before your child reaches their 18th birthday, certain decisions may need to be planned for necessary life, legal, and financial actions depending on their support needs and/or eligibility.

- **Talk to your child's pediatric physicians about transitioning to adult physicians.** Many pediatric providers may stop seeing a person once they are adult age.
- **Get a valid photo ID.** Formal photo identification is important for adults. This could be a passport, driver's license, or DMV-issued identification card. The application for a "Walker" or "Non-Driving ID" card from the Virginia DMV is at <https://www.dmv.virginia.gov/webdoc/pdf/dl1p.pdf>. ***Fortunately for military families, your loved one can keep a military identification card up to age 23, and after that age if you are approved for TRICARE For Life.***
- **Provide and annually update a "911 flag sheet" with your local police station.** For a sample template and other disability safety suggestions, see the safety section of the POAC-NoVA web page at <https://poac-nova.org/resources>.
- **Register to vote.** At age 18, an individual can register to vote in many places including the DMV, public libraries, the Department of Rehabilitation Services, Centers for Independent Living and online at <https://vote.elections.virginia.gov/VoterInformation>.
- **Open a bank account and get a debit card.** This can help some individuals begin to establish credit. If the individual will apply for and receive SSI as an adult, they will need to have a bank account for direct deposits. Be advised that there are financial limitations associated with SSI & Medicaid Waivers.
- **If your teen has an IEP, verify with your child's case manager or school counselor the anticipated "graduation" or exit date from high school.** If your child is not working toward a diploma, they can choose to remain in school up until the end of the school year that they turn 22 years old. Students with IEPs working towards a diploma must exit school upon completion of the diploma or the end of the school year that they turn 22 years old, whichever comes first.
- **After your child ages out of school system, contact your local Community Services Board** to see if that county has any money allocated for transitioning young adults that can be applied toward an adult day program, self-directed services or vocational supports. More info is at <http://www.dbhds.virginia.gov/community-services-boards-csbs>.
- **Decide if you need to apply to be your child's "Educational Representative" as opposed to going through the courts for guardianship.** An educational representative is a competent adult authorized to make ONLY educational decisions on behalf of an adult student. Some students will be able to make educational decisions on their own, while others will need assistance. You may be able to do this without an attorney. More info on the transfer of rights for students with disabilities is at the Virginia Department of Education Technical Assistance Resource Document at http://www.doe.virginia.gov/special_ed/regulations/state/transfer_rights_students_disabilities.pdf.
- **Consider having your child sign an advance health care directive, naming you as the Representative for Health Care Decisions.** An advance directive is a written document in which people clearly specify how medical decisions affecting them are to be made if they are unable to make them, and/or to authorize a specific person to make such decisions for them. Most hospitals have a blank form. You may be able to do this without an attorney.
- **Decide if your child should apply for Supplemental Security Income (SSI) as soon as they turn 18 years old.** SSI is a federally-funded, needs-based disability program for adults and children which provides monthly cash benefits. The applicant must meet disability and income requirements to qualify. As an adult, your child can apply as soon as the month after they turn age 18, but hopefully before they turn age 19. If your child is getting Medicaid or has a Medicaid Waiver before age 18, they MUST have a Medicaid Disability Determination from the Department of Social Services (DDS) or disability determination from the SSA, or their Medicaid benefits will automatically be cancelled. More info on the SSA and SSI is at <https://www.ssa.gov/benefits/disability> and <https://www.ssa.gov/benefits/ssi>. More info on DDS is at <http://www.vadrs.org/dds.htm>.
- **Decide if you should apply for Medicaid for your child at your local Department of Social Services (DSS) office as soon as they turn 18 years old.** Medicaid, a program funded by the federal and state governments, pays for health insurance coverage for eligible low-income adults,

children, pregnant women, elderly adults and people with disabilities. More info about Virginia's medical assistance programs is at http://www.dss.virginia.gov/benefit/medical_assistance/index.cgi.

- **If your child isn't already receiving services through a Medicaid Waiver and/or is not currently on a waiting list for a Waiver, decide if your child should be screened for one of the Medicaid Waivers.** Virginia Medicaid Waivers provide services and supports to assist individuals with disabilities with their needs at home and in the community through their lifetime. The applicant must meet disability and income/resource requirements to qualify. More info about Virginia's Medicaid Waivers is at <http://www.dmas.virginia.gov/#/longtermwaivers>. If your child is on a Medicaid Waiver waitlist, make sure to contact your waiver case manager before your child turns 18, and talk about how that affects their priority level on the wait list. Note that if you move to a new state, you will have to start the process for a new Medicaid Waiver from scratch, since they do NOT transfer from state to state.
- **Look into connecting with the Virginia Department for Aging and Rehabilitative Services (DARS).** DARS provides services such as vocational assessments and employment supports. More info is at <https://www.vadars.org>. If your adult child receives SSI, Medicaid, or Medicare and is interested in working, contact vaACCSES at <http://www.vaaccses.org> for free counseling on work incentives BEFORE your child starts working to avoid decreases in SSI & Medicaid Waivers benefits.
- **Investigate independent housing opportunities** such as the voucher program available to those 18 and older who receive waiver services or who are on the waiver waiting list. More info is at <https://www.vhda.com>.
- **If your child will be heading to college**, make sure to check out the disability services that are available at the college or university being considered.
- **Apply for TRICARE for Life, depending on level of "incapacitation". Submit DD Form 137-5 (Dependency Statement- Incapacitated Child Over Age 21), Medical Sufficiency Letter signed only by an MD, and DD Form 1172 (Application for Identification Card/ DEERS Enrollment), and a cover letter to the Defense Finance and Accounting Service (DFAS) offices in Indianapolis for a TRICARE For Life application between ages 21 and 23. This process is the only way to maintain military medical benefits past the age of 23. A redetermination must be done every four years after the initial approval to verify financial dependency. More info and web link to do this online is at <https://milconnect.dmdc.osd.mil/milconnect/help/pdf/incapredetermination.pdf>.**
- **If your child is a male, he must register with the Selective Service; no matter if he has a disability.** Register online at <https://www.sss.gov/regver/wfregistration.aspx> or print off a registration form.

Consider making an appointment with an elder law attorney or an attorney who is experienced with disability laws and rights and/or with a certified financial planner to:

- **Discuss whether guardianship and/or alternatives to guardianship are appropriate BEFORE age 18.** A guardian is a person appointed by a court who is responsible for the personal affairs of an incapacitated person, and for making decisions for that person. If possible, recommend appointing co-guardians if you go that route to provide an immediate back-up plan. An alternative to guardianship is any legal tool, social service, natural support, community resource, or government program that does not lead to FULL guardianship. Limited guardianship is also an option, but what items will or will not be included must be discussed with your child BEFORE the legal processes are started. Alternatives to guardianship include Powers of Attorney, Living Wills, and Representative Payees, depending on the needs and abilities of the child and what legal action you are endeavoring to cover with the alternative.
- **Discuss your current estate plan and how you plan to provide for your child at your death.** If you believe that your adult child will use Medicaid, SSI, or other governmental subsidies; discuss a Special Needs Trust (SNT) and/or an ABLE account with the attorney. These tools can help prevent Medicaid and SSI financial disqualification. More info about SNT and ABLE is at <http://www.specialneedsalliance.org>. Ask other family members if their estate plans include the possibility of any assets/resources coming to your child. Financial gifts to your child from well-meaning family members, upon their death or before, can jeopardize your child's eligibility for governmental benefits (i.e. Medicaid, SSI, etc.). It is very important that you discuss these things with a legal advisor and/or certified financial planner to plan accordingly. Consider writing a Letter Of Intent for or with your child to help document their history, hopes, and expectations. This can be an invaluable guide in providing continuity of care, and good templates are normally available from any competent certified financial planner. **Survivor Benefit Plan (SBP) proceeds can now go into an SNT, but you must send copy of SNT, SNT certification, and a cover letter to the Defense Finance and Accounting Service (DFAS) offices in Indianapolis. More DFAS info on this SBP to SNT option is at <https://www.dfas.mil/retiredmilitary/provide/sbp/special-needs-trust.html>.**

The following are two sample cover letters for military families sending applications to the Defense Finance and Accounting Service (DFAS) offices in Indianapolis, which I have successfully used. Your application cover letters will likely have different text and deal with other issues, but these sample cover letters will hopefully give you a place to start yours. Again, if you have any questions at all, please CALL me at 703 969-6730 with any questions. Good luck! Scott Campbell

Survivor Benefit Plan (SBP) proceeds to Special Needs Trust (SNT):

Defense Finance and Accounting Service
U.S. Military Retired Pay
8899 E 56th Street
Indianapolis, IN 46249-1200

Subject: Request Designation of Special Needs Trust for Survivor Benefit Plan Annuity

Request designation of a Special Needs Trust (SNT) for a Survivor Benefit Plan (SBP) annuity. The SBP annuity is to be paid to the Irrevocable OBRA SNT, dated __ for __, SSN ___-__-____.

The Attorney's Special Needs Trust Certification and a copy of the SNT are enclosed. If you need any further information for this request, please phone me at (703) 969-6730.

For a TRICARE For Life application:

Defense Finance & Accounting Service- Indianapolis
Code JMTCB
8899 East 56th Street
Indianapolis, IN 46249-0865

Subject: Initial Application for Incapacitated Child Over Age 21 Status

Request approval of my enclosed initial application for Incapacitated Child Over Age 21 status for my son, __. He has had significant autism and an intellectual disability since birth, but he was not formally diagnosed until he was __ years old at __. His latest, enclosed psychological evaluation was done the local school system in __ and again confirms his permanent disabilities. To this day, he requires diapers, has never talked, needs assistance with all of his activities of daily living, and is incapable of self support, as documented in the enclosed medical sufficiency letter from our local MTF, dated __. His status as "a disabled dependent" is verified in the enclosed SSA letter, dated __. A notarized copy of his DD Form 137-5 is also enclosed.

He is unmarried and is my legitimate child. A copy of his notarized certificate of live birth is enclosed. He has been enrolled in DEERS since birth, and a verified copy of a DD Form 1172-2 is also enclosed. His current ID card expires on __.

He currently lives with my ex-wife, since we are divorced. A copy of the notarized, final court order of divorce and the notarized court order appointing us as co-guardians are enclosed. Nearly all of his support comes from me. Family support of \$__ a month is ordered in the enclosed, notarized final court order of divorce. He also specifically receives \$__ a month in SSDI benefits through me as verified in the enclosed SSA letter, dated __.

He has been receiving SSDI benefits through me since 2013. He is currently enrolled in Medicare Parts A and B as of April 2018, as stated in the enclosed SSA letter, dated __. The State of Virginia has paid for his Medicare medical insurance since April 2018, as stated in the enclosed SSA letter, dated __.

If you need any other documentation to make a favorable decision, please phone me at 703 969-6730.