

**Analyze This: AI and Human Insights, Elder Law, and Ethical Oversight
What's AI Got to Do With It? Turns Out, A Lot.**

Robert Fleming and Rebecca Morgan

I. AI Ethics Opinions or Rules

- a. ABA Formal Ethics Opinion # 512 (adopted June, 2024) [Formal Opinion 512](#)

Here's the conclusion:

Lawyers using GAI tools have a duty of competence, including maintaining relevant technological competence, which requires an understanding of the evolving nature of GAI. In using GAI tools, lawyers also have other relevant ethical duties, such as those relating to confidentiality, communication with a client, meritorious claims and contentions, candor toward the tribunal, supervisory responsibilities regarding others in the law office using the technology and those outside the law office providing GAI services, and charging reasonable fees. With the ever-evolving use of technology by lawyers and courts, lawyers must be vigilant in complying with the Rules of Professional Conduct to ensure that lawyers are adhering to their ethical responsibilities and that clients are protected.

- b. More rules that you might expect: 1.1, 1.4, 1.5, 1.6, 1.9, 1.18, 3.1, 3.3, 5.1, 5.3, and 8.4(c).
- c. Which states? [State Bar AI Ethics Opinions: The Free 50-State Tracker \(2026\)](#).
- d. Co-pilot gave us this answer when we asked for a list of state bar associations with ethics opinions on AI use:

State Bars That Have Issued AI Ethics Opinions

As of mid-2026, at least 15 U.S. state bars have issued formal ethics opinions on lawyers' use of generative AI, in addition to the ABA's Formal Opinion 512. [legalaicompliance.help+1](#)

States with Formal Ethics Opinions

According to the Legal AI Compliance Register and Law Firm Brief's comparative analysis, the following states have issued **formal, citable ethics opinions** on AI use by attorneys [legalaicompliance.help+1](#):

- **Alabama** – Formal Opinion 2026-01 (best practices under existing professional conduct rules) [legalaicompliance.help](#)

- **Alaska** – Formal opinion on generative AI and the practice of law legalaigovernance.com
- **Connecticut** – Formal ethics opinion lawfirmbrief.com
- **District of Columbia** – Ethics Opinion 388 (2024) lawfirmbrief.com
- **Florida** – Formal Ethics Opinion 24-1 (Jan 2024) legalaigovernance.com+1
- **Illinois** – Formal ethics opinion lawfirmbrief.com
- **Kentucky** – Formal opinion on ethical use of AI in the practice of law legalaigovernance.com
- **Michigan** – Formal ethics opinion lawfirmbrief.com
- **Minnesota** – Formal ethics opinion lawfirmbrief.com
- **New Jersey** – Formal ethics opinion lawfirmbrief.com
- **New York** – Formal ethics opinion lawfirmbrief.com
- **North Carolina** – Formal ethics opinion (2024-1) ixsor.com
- **Ohio** – Formal ethics opinion lawfirmbrief.com
- **Pennsylvania** – Formal ethics opinion lawfirmbrief.com
- **Texas** – Formal ethics opinion lawfirmbrief.com
- **Virginia** – Formal ethics opinion lawfirmbrief.com

Additional Context

- **Total count:** The Legal AI Compliance Register lists **17 formal ethics opinions** from state bars plus the ABA’s Formal Opinion 512 legalaicompliance.help.
- **Other jurisdictions** have issued informal guidance, court rules, or policy statements, but these are not formal ethics opinions in the same sense legalaicompliance.help+1.
- **Common themes** across opinions include duties of competence (Rule 1.1), confidentiality (Rule 1.6), candor, supervision, and client communication lawfirmbrief.com+1.
- **Florida’s position** is notable for its explicit emphasis on verifying AI outputs and reviewing vendor data-handling terms before inputting client information lawfirmbrief.com+1.

Tip for practitioners: Even in states without a formal opinion, the underlying state Rules of Professional Conduct apply, and many bars cite

ABA Op. 512 as persuasive authority [ixsor.com](https://www.ixsor.com). Always check the latest state bar guidance before using AI tools in client matters.

Microsoft Co-Pilot Search (08/12/2026); [state bars that have issued AI ethics opinions - Search](#)

- e. ***Something more authoritative***, See Bloomberg Law, [Legal Profession, Comparison Table - State Legal Ethics Guidance on Artificial Intelligence \(AI\)](#)

Infographic Creation Example 1

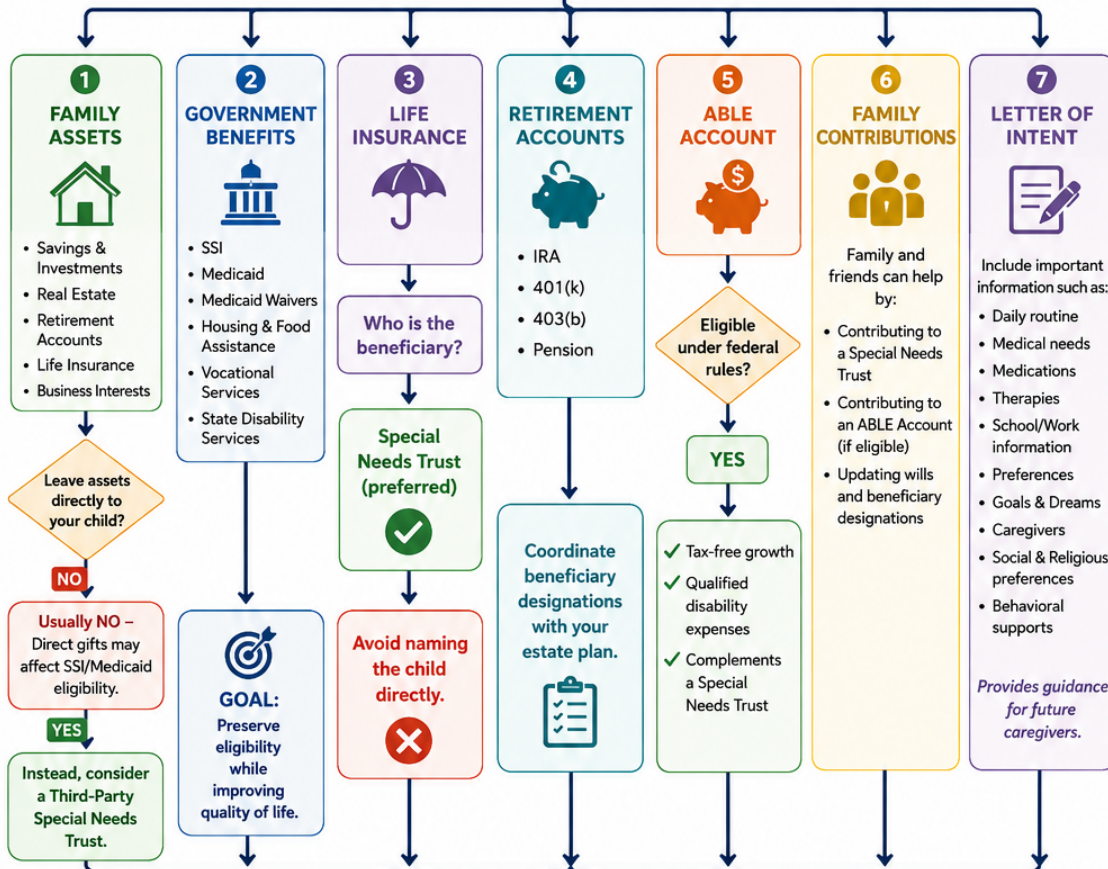
Prompts (I used them one after the other until I got what I intended).

1. draft a flow chart for a client whose child has special needs and have the flow chart explain the options for paying for the child's care
2. In response, ChatGPT provided this:
 - {"prompt": "Design a clean, professional one-page infographic titled 'Planning for the Lifetime Care of a Child with Special Needs.' Use a modern, easy-to-read layout with color-coded decision boxes connected by arrows on a white background.\n\nTop header (navy blue): 'Planning for the Lifetime Care of a Child with Special Needs'\nSubtitle: 'A roadmap for funding care while protecting benefits.'\n\nStart box (dark blue): 'START: What resources are available to provide for your child's future care?'\n\nFlow downward with arrows into seven color-coded sections:\n\n1. Green box: 'Family Assets'\n- Savings & Investments\n- Real Estate\n- Retirement Accounts\n- Life Insurance\nDecision diamond (gold): 'Leave assets directly to your child?'\nRed box: 'Usually NO – Direct gifts may affect SSI/Medicaid eligibility.'\nGreen box: 'Consider a Third-Party Special Needs Trust.'\n\n2. Light Blue box: 'Government Benefits'\nInclude icons and bullets:\n- SSI\n- Medicaid\n- Medicaid Waivers\n- Housing & Food Assistance\n- Vocational Services\nFooter: 'Goal: Preserve eligibility while improving quality of life.'\n\n3. Purple box: 'Life Insurance'\nDecision: 'Who is the beneficiary?'\nGreen box: 'Special Needs Trust (preferred)'\nRed box: 'Avoid naming the child directly.'\n\n4. Teal box: 'Retirement Accounts'\n- IRA\n- 401(k)\n- Pension\nCallout: 'Coordinate beneficiary designations with your estate plan.'\n\n5. Orange box: 'ABLE Account'\nDecision diamond: 'Eligible under federal rules?'\nGreen box:\n- Tax-free growth\n- Qualified disability expenses\n- Complements a Special Needs Trust\n\n6. Yellow box: 'Family Contributions'\nArrow to:\n- Contribute to Special Needs Trust\n- Contribute to ABLE Account (if eligible)\n- Update wills and beneficiary designations\n\n7. Lavender box: 'Letter of Intent'\nChecklist icon with:\n- Daily routine\n- Medical needs\n- Caregivers\n- Preferences\n- Goals\nCaption: 'Provides guidance for future caregivers.'\n\nBottom section (dark green): 'Build Your Team'\nIcons and labels:\n- Trustee\n- Successor Trustee\n- Guardian (if needed)\n- Financial Agent\n- Health Care Decision Maker\n- Care Manager\n\nFinal banner (navy): 'A coordinated plan can provide financial security, protect public benefits, and ensure lifelong care.'\n\nStyle: elegant legal/financial infographic, professional typography, rounded rectangles, subtle icons, color-blind-friendly palette, clear arrows, suitable for CLE presentation or client handout, portrait US Letter (8.5 x 11)."} }
3. I then asked it this way: “make one page infographic with color-coded decision boxes and arrows that can easily be formatted and printed as handout”
4. The result follows:

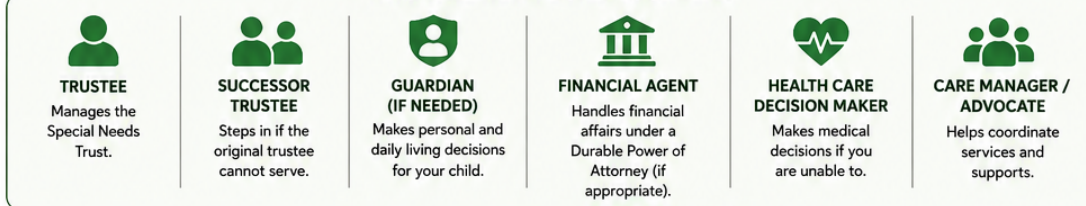
PLANNING FOR THE LIFETIME CARE OF A CHILD WITH SPECIAL NEEDS

A roadmap for funding care while protecting benefits.

START: What resources are available to provide for your child's future care?



WHO WILL HELP? BUILD YOUR TEAM



A COMPREHENSIVE PLAN OFTEN INCLUDES:



KEY TAKEAWAY: Your goal is not simply to leave assets to your child—it is to create a coordinated plan that provides financial security, preserves eligibility for important public benefits, and ensures trusted people are available to provide care and oversight throughout your child's lifetime.



This infographic is for educational purposes only and is not legal advice. Consult with an attorney who focuses on special needs and elder law planning in your state.

Date: _____

Example #2 from Robert:**Here's the prompt:**

“You are an experienced financial advisor, with particular expertise in dealing with the care costs of family members with special needs. You are working with an experienced elder law/special needs attorney to give a particular family some ideas about how they should plan financially for their now 8-year-old son, who has a diagnosis of autism spectrum disorder. They do not know what kinds of support he will need, but they are quite certain that he will not be able to earn significant income given the kinds and extent of disabilities he suffers. They are both in their early 40s, and both working. She is a physician, earns about \$250,000 / year in a part-time position, and can work from home on a fairly regular basis. He is a banker, earning about \$400,000 / year. Can you prepare a graphic representation to share with the lawyer for comment, with the ultimate goal to be to give the parents a roadmap for funding their son's likely future care and well-being while (to the extent possible) protecting his access to public benefits?”

A Lifelong Security Roadmap for Your Son

A funding framework built around one goal: give an 8-year-old with an autism spectrum diagnosis every resource his parents can provide, without ever putting his eligibility for SSI or Medicaid at risk — because no one yet knows how much support he'll need, or for how long.

Family

Two working parents, physician + banker, combined household income ≈ \$650,000

Child

Age 8, autism spectrum diagnosis, future earning capacity uncertain

Prepared

August 2026, for discussion with special needs / elder law counsel

GUIDING PRINCIPLES

Four things this plan is built to do

Everything below — every account, trust, and policy — exists in service of these four commitments. Where a tactic conflicts with one of them, the principle wins.

01

Protect the benefits

SSI and Medicaid — especially Medicaid's home & community-based waivers — will likely fund the bulk of lifetime care. No asset should be titled or

02

Stay flexible

At 8, no one can predict his needs at 28. The plan favors vehicles that can flex — a trust with broad distribution powers, not a rigid formula.

03

Fund parents first

A well-funded parental retirement is itself special needs planning — it keeps the parents solvent, housed, and able to advocate for decades. Retirement savings are not

04

Document the intangible

Money follows instructions. A Letter of Intent — routines, preferences, medical and care history — is what lets a future

gifted in a way that disqualifies him.

sacrificed to over-fund the trust.

trustee actually use the money well.

THE LONG VIEW

Seven milestones between now and full funding

Each age is a decision point — a filing deadline, a legal capacity question, or a shift in which system (school, SSI, Medicaid, SSDI) is primarily responsible for him.

8	12	17	18	22	65	∞
Now	~2030	~2035	~2036	~2040	Parents' retirement	Second death
Build the foundation	Get on waiver lists	Capacity review	He applies in his own right	Ages out of school	Disabled Adult Child benefit	Trust becomes irrevocable
Draft the trust, buy the insurance, open the ABLE account, write the first Letter of Intent.	Many states allow early registration for Medicaid HCBS waivers — often years-long waits reward early filing.	Guardianship vs. supported decision-making vs. power of attorney — decided close to majority, based on his actual capacity then.	Parental income no longer counts against him ("deeming" ends). SSI and Medicaid applications typically filed here.	IDEA entitlement to services ends. Adult day/vocational programs are not guaranteed — this is the most common funding gap.	Once a parent files for Social Security (or dies), he may qualify for SSDI on that record — often larger, and it starts a Medicare clock.	Life insurance and residual estate pour into the special needs trust. Successor trustee takes over, guided by the Letter of Intent.

FUNDING ARCHITECTURE

Where the money comes from, where it lives, what it protects

The core design choice: almost nothing is ever titled in his name. Instead, money is routed into two purpose-built containers that the benefits system already knows how to treat correctly.

SOURCES

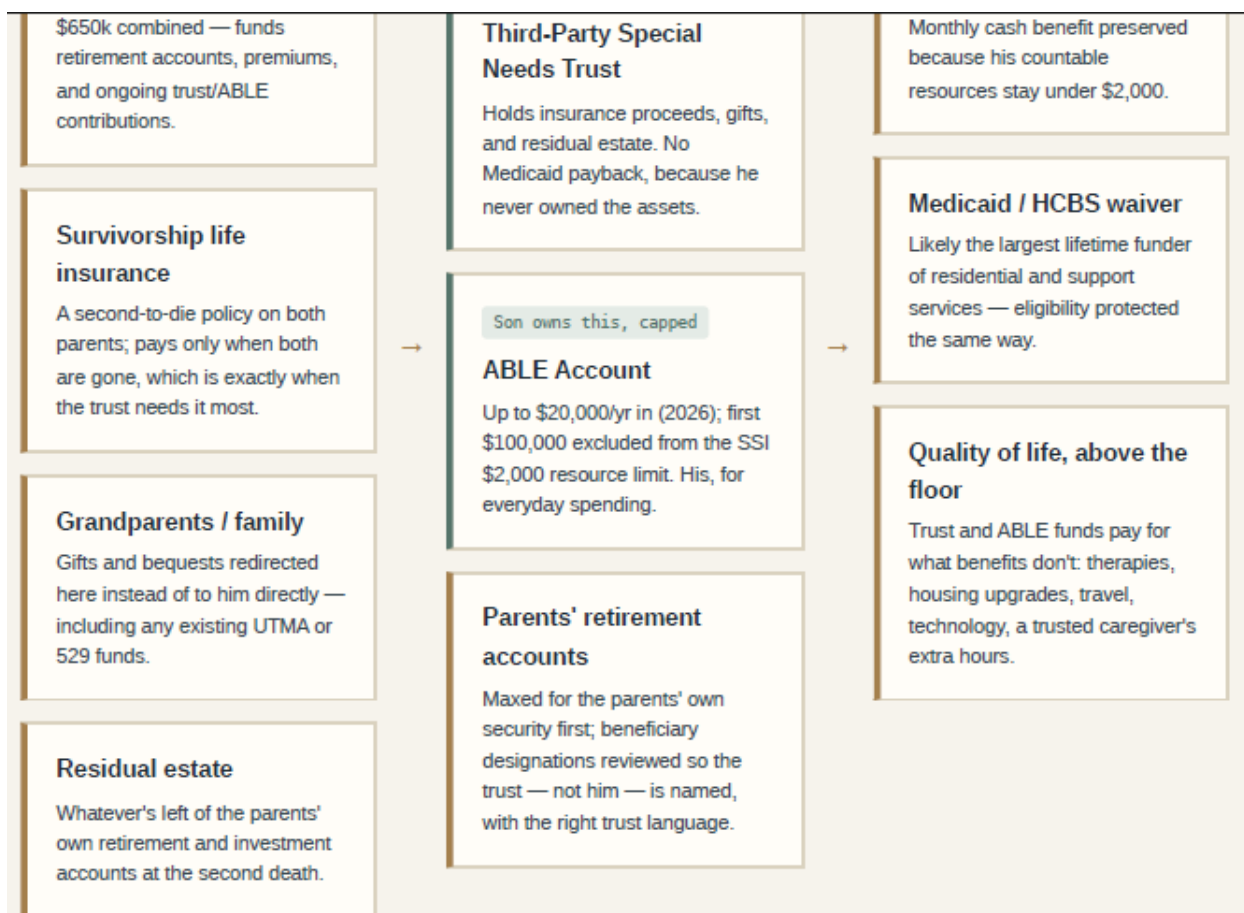
Earned income

VEHICLES

Son does not own this

WHAT IT PROTECTS

SSI eligibility



TWO CONTAINERS, COMPARED

Special needs trust vs. ABLE account

These aren't competitors — nearly every family plan uses both. The trust is for scale and discretion; the ABLE account is for small, everyday autonomy.

	Third-Party SNT	ABLE Account
Who owns the assets	The trust — not him	He does, directly
Practical funding limit	None — sized to the family's estate	\$20,000/yr in; \$100,000 balance shielded from SSI

Who decides on spending	Trustee, using discretion for his benefit	He (or his agent) spends it directly
Medicaid payback at death	None — it was never his asset	Yes, for Medicaid paid after the account opened
Best for	Housing, large purchases, long-term care funding, professional management	Groceries, rent, transportation — everyday dignity and choice

BENEFITS LANDMINES

The mistakes that most often cost a family their child's benefits

These are almost always well-intentioned — a grandparent's gift, a beneficiary form filled out on autopilot. Counsel should stress-test the family's existing accounts against this list.

AVOID

Naming him directly as beneficiary on life insurance or retirement accounts.

UTMA/UGMA accounts or any account titled in his name once he's an adult applicant.

Direct cash gifts from grandparents or relatives above the resource limit.

Leaving him assets outright in a will — even a well-meaning "equal shares to all children" clause.

A self-settled ("first-party") trust when a third-party trust will do — it carries a Medicaid payback provision the third-party version avoids entirely.

INSTEAD

Name the special needs trust as beneficiary, with counsel confirming the trust language qualifies for favorable retirement-account tax treatment.

Redirect existing UTMA or 529 funds into the trust or ABLE account before he turns 18.

Ask relatives to gift to the trust or ABLE account — one relative's ABLE gift and the trust can both receive funds in the same year.

Update the will so his share pours into the trust, not to him outright.

Confirm every existing account and policy with the attorney before, not after, a life event forces the issue.

THE FIRST 12 MONTHS

Where to start

Organized by who's driving each task. Nothing here is sequenced — most can run in parallel.

WITH THE ATTORNEY

- Draft the third-party special needs trust and name trustee/successors
- Update both wills to pour over into the trust
- Review retirement account beneficiary language for trust compatibility
- Confirm the state's specific SSI/Medicaid rules and waiver waitlist process

WITH THE FINANCIAL ADVISOR

- Get survivorship life insurance quotes and confirm ownership structure
- Open and begin funding the ABLE account
- Confirm both parents' retirement accounts are being maxed
- Redirect or convert any existing UTMA/529 assets earmarked for him

AS A FAMILY

- Draft the first version of the Letter of Intent
- Tell grandparents and relatives how to gift going forward
- Calendar a full plan review every 2–3 years and at each milestone above
- Register for the state Medicaid waiver waitlist if early enrollment is allowed

THE TEAM

Who holds which piece

Elder law / SN attorney
Trust drafting, benefits eligibility, guardianship

Financial advisor
Funding strategy, investments, insurance coordination

CPA
Trust and family tax filings

Insurance specialist
Survivorship policy design and underwriting

Care coordinator
Waiver navigation, day/vocational program search

Figures reflect 2026 federal rules (ABLE contribution limit, SSI resource limit); state Medicaid and waiver rules vary and should be confirmed locally.

Example #3 from Robert

Here's the prompt:

“If I gave you these additional pieces of information, could you update your roadmap?”

1. The child with autism is the third of four children. The oldest is now 18 and headed off to college this year, the next oldest is 13 and seems to be very bright, the youngest is 6 and it's too early to tell whether she will be self-supporting or have any special needs of her own.
2. This family lives in New York state.
3. The couple owns their own home, and is convinced that it would be the perfect place for their disabled son to live after they both die.
4. They do not currently have life insurance of any kind. Their investment portfolios are worth about \$500,000, and their retirement accounts another \$1,000,000.”

A Lifelong Security Roadmap for Your Son

A funding framework built around one goal: give an 8-year-old with an autism spectrum diagnosis every resource his parents can provide, without ever putting his eligibility for SSI or Medicaid at risk — because no one yet knows how much support he'll need, or for how long.

Family

Two working parents, physician + banker, combined income ≈ \$650,000. Four children: 18 (college-bound), 13, 8 (our subject), 6

Location

New York State — state-specific Medicaid, OPWDD, and estate tax rules apply throughout

Current assets

\$500,000 investments, \$1,000,000 retirement accounts, a home they own outright — no life insurance in place today

Prepared

August 2026, for discussion with special needs / elder law counsel

GUIDING PRINCIPLES

Four things this plan is built to do

Everything below — every account, trust, and policy — exists in service of these four commitments. Where a tactic conflicts with one of them, the principle wins.

01

Protect the benefits

SSI and Medicaid — especially the OPWDD home & community-based waiver — will likely fund the bulk of lifetime care. No asset should be titled or gifted in a way that disqualifies him.

02

Stay flexible

At 8, no one can predict his needs at 28 — or whether his 6-year-old sister will one day need parallel planning of her own. The documents should flex without a full rewrite.

03

Fund parents first

A well-funded parental retirement is itself special needs planning. With four children to launch and no life insurance yet in place, sequencing matters as much as the total amount saved.

04

Document the intangible

Money follows instructions. A Letter of Intent — routines, preferences, medical and care history — is what lets a future trustee, sibling, or caregiver actually use the money well.

THE LONG VIEW

Seven milestones between now and full funding

Each age is a decision point — a filing deadline, a legal capacity question, or a shift in which system (school, SSI, Medicaid, SSDI) is primarily responsible for him.

8

Now

Build the foundation

Draft the trust, get insurance underwriting started, open the ABLE account, register with OPWDD, write the first Letter of Intent — while the oldest heads off to college.

12

~2030

Confirm waiver status

New York's OPWDD waiver has long waits — early registration (already begun) should be converted to active waiver status well before he needs services.

17

~2035

Capacity review

Guardianship vs. supported decision-making vs. power of attorney — decided close to majority, based on his actual capacity then.

18

~2036

He applies in his own right

Parental income no longer counts against him ("deeming" ends). SSI and Medicaid applications typically filed here.

22

~2040

Ages out of school

IDEA entitlement to services ends. Adult day/vocational programs are not guaranteed — this is the most common funding gap.

~65

Parents' retirement

Disabled Adult Child benefit

Once a parent files for Social Security (or dies), he may qualify for SSDI on that record — often larger, and it starts a Medicare clock.

∞

Second death

Trust becomes irrevocable

Life insurance, the home, and residual estate pour into the special needs trust. Successor trustee takes over, guided by the Letter of Intent.

WHY THIS IS URGENT

Sizing the gap

Nobody can hand you a precise target number today — that takes a real needs analysis with the attorney and a life-care planner. But the order of magnitude is already clear enough to act on.

\$1.5M

Today's investments and retirement accounts combined — the pool currently expected to cover two parents' retirement, three siblings' launches, *and* a lifetime plan for your son.

\$0

Life insurance in force today. This is the single largest gap in the plan, and the one item on this page that should not wait for the trust to be finished.

\$7.35M

New York's 2026 estate tax exemption — comfortably above the family's current net worth, but worth watching once a large death benefit and a growing home value are added in.

A rough way to think about it: if unreimbursed care and quality-of-life costs beyond what Medicaid/OPWDD covers run **\$30,000–\$60,000 a year** for his adult life, a trust corpus of roughly **20–25 times that** would be needed to sustain it indefinitely, in today's dollars. That points toward a survivorship life insurance death benefit in the **low seven figures** as the anchor of this plan — a number the advisor and attorney should refine together, but not one to wait on before applying for coverage.

FUNDING ARCHITECTURE

Where the money comes from, where it lives, what it protects

The core design choice: almost nothing is ever titled in his name. Instead, money is routed into purpose-built containers that the benefits system already knows how to treat correctly.

not yet in place

Survivorship life insurance

A second-to-die policy on both parents; pays only when both are gone. Apply now — pricing only gets worse with age and health changes.

Earned income

\$650k combined — funds retirement accounts, premiums, and ongoing trust/ABLE contributions.

Grandparents / family

Gifts and bequests redirected here instead of to him directly.

The home

Currently owned outright by the parents; earmarked as his future residence — see the dedicated section below before assuming this works automatically.

Residual estate

Whatever's left of the parents' own retirement and investment accounts at the second death.



VEHICLES

policy owned outside the estate

Irrevocable Life Insurance Trust

Holds the survivorship policy so the death benefit lands outside the taxable estate — increasingly relevant as the benefit and the home's value grow.

son does not own this

Third-Party Special Needs Trust

Receives insurance proceeds, gifts, and residual estate. May ultimately hold the home itself. No Medicaid payback, because he never owned the assets.

son owns this, capped

NY ABLE Account

Up to \$20,000/yr in 2026; first \$100,000 excluded from the SSI resource limit. His, for everyday spending. No NY state tax deduction on contributions, unlike NY 529.

Parents' retirement accounts

Maxed for the parents' own security first; beneficiary designations reviewed so the trust — not him — is named, with the right trust language.



WHAT IT PROTECTS

SSI eligibility

Monthly cash benefit preserved because his countable resources stay under \$2,000.

Medicaid / OPWDD waiver

Likely the largest lifetime funder of residential and support services — eligibility protected the same way.

Quality of life, above the floor

Trust and ABLE funds pay for what benefits don't: therapies, housing upkeep, travel, technology, a trusted caregiver's extra hours.

NEW YORK NOTE

New York's estate tax exemption is **\$7.35 million in 2026** — but it has a harsh "cliff": cross about 105% of that (~\$7.72M) and the *entire* estate becomes taxable, not just the excess. The family is well under that today, but a several-million-dollar death benefit owned personally, stacked on a home that's appreciated for another 20–30 years, could approach it. Owning the policy inside an ILIT rather than personally is the standard fix.

TWO CONTAINERS, COMPARED

Special needs trust vs. ABLE account

These aren't competitors — nearly every family plan uses both. The trust is for scale and discretion; the ABLE account is for small, everyday autonomy.

Third-Party SNT

ABLE Account

Who owns the assets

The trust — not him

He does, directly

Practical funding limit

None — sized to the family's estate

\$20,000/yr in; \$100,000 balance shielded from SSI; \$520,000 NY ABLE account cap

Who decides on spending

Trustee, using discretion for his benefit

He (or his agent) spends it directly

Medicaid payback at death

None — it was never his asset

Yes, for Medicaid paid after the account opened

Best for

Housing, large purchases, long-term care funding, professional management

Groceries, rent, transportation — everyday dignity and choice

NEW YORK NOTE

SSI's cash benefit still uses the federal **\$2,000** resource limit. But New York's own Medicaid resource limit for adults applying on a disability basis is far more generous — roughly **\$33,038** for a single applicant in 2026. In practice that

means it's possible to lose the SSI cash payment while keeping Medicaid, and the OPWDD services it unlocks, fully intact. Worth confirming with counsel exactly how tightly the ABLE balance needs to be managed given that gap.

THE FAMILY HOME

Protecting the plan you've already made

Wanting him to live in the family home after both parents are gone is a plan, not just a hope — but only if the home is positioned correctly well before that day.

THE RISK

Medicaid Estate Recovery. If either parent ever needs Medicaid-funded long-term care themselves in old age, New York can seek repayment from their estate at death — including the home — unless it's protected in advance.

A house-rich, cash-poor trust. A home with no accompanying liquidity becomes a burden: property tax, insurance, and upkeep still need to be paid every year, indefinitely.

An SSI reduction, misunderstood. If the trust owns the home and he lives there rent-free, SSI can treat that as in-kind support and reduce his cash benefit — manageable, but easy to miss if no one plans for it.

Four children, one house. Without an explicit plan, siblings may reasonably expect the home's value is part of a shared inheritance, not set aside for one of them.

THE FIX

Separate the parents' own Medicaid planning from his. A Medicaid Asset Protection Trust for the parents' home, started with a five-year runway, can shield it from estate recovery on their side.

Plan for the home to ultimately sit inside his special needs trust, funded with enough liquid assets alongside it to cover taxes, insurance, and maintenance indefinitely — not just the house itself.

Ask the attorney about an occupancy agreement that structures how he "pays" for housing, to manage the SSI in-kind-support reduction deliberately rather than by accident.

Address the home explicitly in the estate plan so the other three children understand — and ideally were part of the conversation about — why it's earmarked this way.

NEW YORK NOTE

New York exempts up to **\$1,097,000** of home equity from the Medicaid asset test while a parent still lives there. That protection is about the parents' own eligibility during their lifetimes — it does not, by itself, protect the home from estate recovery after both have passed, which is the piece that actually determines whether the house is still available for your son.

ONE PLAN, FOUR CHILDREN

Balancing fairness with what he specifically needs

"Equal" and "fair" aren't the same thing here. The goal is a plan the other three children understand and don't resent — which starts with naming it explicitly rather than assuming it works itself out.

AGE 18

Heading to college

Normal 529 funding continues. Any funds left in this account after school can later roll into your son's ABLE account tax-free — a family member rollover, not a new gift.

AGE 13

On a similar track

No complications yet. Her inheritance can mirror her older sibling's. Whether she's ever asked to play a role — co-trustee, informal support — is worth raising as a choice, not an assumption, as she gets older.

AGE 8

Our subject

His "share" flows through the special needs trust instead of outright — likely a larger share in practice, given the lifetime need. Naming that difference openly, now, is easier than explaining it later.

AGE 6

Still an open question

Too early to know if she'll need parallel planning. Ask the attorney to draft the estate plan so *any* child receiving means-tested benefits at the time of distribution automatically inherits through a trust — no full rewrite required if she turns out to need one.

BENEFITS LANDMINES

The mistakes that most often cost a family their child's benefits

These are almost always well-intentioned — a grandparent's gift, a beneficiary form filled out on autopilot. Counsel should stress-test the family's existing accounts against this list.

AVOID

Naming him directly as beneficiary on life insurance or retirement accounts.

Leaving him assets outright in a will — even a well-meaning "equal shares to all four children" clause.

Direct cash gifts from grandparents or relatives above the resource limit.

Assuming the home passes to him automatically without addressing Medicaid estate recovery first.

A self-settled ("first-party") trust when a third-party trust will do — it carries a Medicaid payback provision the third-party version avoids entirely.

INSTEAD

Name the special needs trust as beneficiary, with counsel confirming the trust language qualifies for favorable retirement-account tax treatment.

Draft contingent special needs language into all four children's shares, not just his — see the sibling section above.

Ask relatives to gift to the trust or ABLE account instead of to him directly.

Register with OPWDD's intake process now, even though services are years away — New York's waiver waits reward early registration.

Confirm every existing account, policy, and the home's title with the attorney before, not after, a life event forces the issue.

THE FIRST 12 MONTHS

Where to start

Organized by who's driving each task. Nothing here is sequenced — most can run in parallel.

WITH THE ATTORNEY

— Draft the third-party special needs trust and name trustee/successors

- Draft contingent SNT language into all four children's shares
- Evaluate a Medicaid Asset Protection Trust for the home, on its own timeline
- Set up the ILIT to own the new life insurance policy
- Confirm New York's current OPWDD, Medicaid, and estate-tax specifics

WITH THE FINANCIAL ADVISOR

- Start survivorship life insurance underwriting now — this is the most time-sensitive item on the page
- Open and begin funding the NY ABLE account
- Confirm both parents' retirement accounts are being maxed alongside the new premium
- Model a real target trust corpus with a life-care planner, once available

AS A FAMILY

- Draft the first version of the Letter of Intent
- Register with OPWDD's front-door intake process
- Talk with the older two children about how the home and trust are structured, and why
- Calendar a full plan review every 2–3 years and at each milestone above

THE TEAM

Who holds which piece

Elder law / SN attorney Trust drafting, benefits eligibility, guardianship, home protection	Financial advisor Funding strategy, investments, insurance coordination
CPA Trust and family tax filings	Insurance specialist Survivorship policy design and underwriting

OPWDD care coordinator

Waiver registration, day/vocational program search

Discussion draft — prepared for review with elder law / special needs counsel. Not legal or tax advice.

Figures reflect 2026 federal and New York State rules (ABLE limits, SSI and NY Medicaid resource limits, NY estate tax exemption); confirm current figures before relying on them.