

Episode 5: Legal and Long-Term Financial Planning (Part 2)

EFMP & Me podcast transcript

Karen Terry:

Are you a family in the EFMP facing the decision of guardianship for your child but you've just received PCS orders? Do you know how that affects your court decision? We'll talk about that and more in this podcast for EFMP families. Hi, I'm Karen Terry and today we're going to be talking about guardianship and conservatorship.

So welcome back, everybody. We are at part two of our episode on financial and legal long-term planning. Again, we have our subject matter experts returning with us, that's Lt. Col. Graham Bernstein and Mr. Andrew Cohen. Can you guys just remind everybody who you are, where you're from?

Lt. Col. Graham Bernstein:

Sure. Karen, this is a Lt. Col. Graham Bernstein. It's good to be back. After my last performance, I'm surprised that you asked me back. I work out of the Office of the Deputy General Counsel for Personnel and Health Policy.

Andy Cohen:

And I am Andy Cohen, director of the Office of Financial Readiness at OSD. And I think if anyone's more surprised at being asked back, it's me. So I'm glad to be back though.

Karen Terry:

So another consideration when planning for your family's long-term health, financial health or legal health, maybe guardianship and or conservatorship, we all know children are legal adults when they reach what is called the quote, age of majority, unquote, which for most states and the DOD is 18. But I think there are parents of children with special needs who don't necessarily realize what that means for their ability to advocate for their child or manage their affairs once that child turns 18. So, Graham, can you share a little bit more of what that means from the legal perspective?

Lt. Col. Graham Bernstein:

You're right, Karen, that yes when a child reaches the age of majority based on state law or, like you said, DOD considers it to be the age of 18, the law views them automatically as competent adults. That means a variety of protections and limitations on their legal rights from when they were children are removed. All of a sudden like that, they gained the right to marry, to refuse medical treatment, to enter



into contracts, to move out of the home and various other rights which may interfere with caring for special needs individuals. In order to ensure caregivers can continue to pursue the best interest of their loved ones when that individual cannot or will not be able to care for themselves, caregivers should seek adult guardianship and or conservatorship.

Karen Terry:

OK. So what's the difference between those two?

Lt. Col. Graham Bernstein:

Another riveting and exciting topic for me to discuss, thank you Karen.

Karen Terry:

I do my best.

Lt. Col. Graham Bernstein:

Guardianship generally refers to a person appointed to make decisions related to the ward – and the ward is just a fancy term for the person that's being cared for – for things like health care and living arrangements. So, again, guardianship is concerned about the person specifically, whereas conservatorship refers to a person charged with caring for the property and the financial affairs of the ward. So guardianship is about the person and conservatorship is about their finances. Now these two statuses are obviously intertwined and are often lumped together under the single term, guardianship.

To become a guardian or conservator for a special needs individual, a state court must determine that that person is unable to manage his or her own personal or financial affairs. Then the court will appoint a guardian and/or a conservator for that person. It's important to note here that each state has their own laws and process for establishing guardianship and conservatorship.

However, for the purposes of this podcast, we can lump almost all of the states together with some general requirements. Almost every state is going to require a would-be guardian to do what is called petitioning the court for guardian or conservatorship status. That means basically it's on you to go to the court and start the process of requesting this status being given to you. The court will then appoint a guardian ad litem, which is just a fancy lawyer term for a court-appointed attorney who is charged with looking after the best interest of the special needs person during the ensuing court proceedings. This is done as a protection for that special needs person. Since no one listening to this podcast is going to be out there looking to swindle their loved ones, it is very probable that you and the guardian ad litem are going to be seeing eye-to-eye on just about every issue before the court.

Again, that guardian ad litem is there to protect the vulnerable individual and keep them, basically, from getting swindled or taken advantage of. Likely before the decision is made, the court will require an investigation of the special needs person's status to assist the courts in its determination. So, they're going to probably need medical records, statements from families and friends and other documents that help to prove that this person in fact is not capable of taking care of themselves. Ultimately, at the end of the process, the court will decide, A) if guardianship and or conservatorship is warranted and



necessary, and B) determine to whom and with what authority the power of guardianship and conservatorship should be given.

Karen Terry:

OK. So if this decision is being made in the state court, what happens to the family if they PCS out of that state?

Lt. Col. Graham Bernstein:

Yeah, this is an unfortunate area in the law for a lot of our military families, because, as we previously alluded to, guardianship and conservatorship are controlled by state courts. And generally, those determinations are not transferrable between states. That means one state's order will not necessarily hold up when a military family PCSes to their next assignment. However, the good news is that the DOD and the military departments have been working hard to inform the states over the past couple of years of how huge of a burden this places on our military families and have encouraged the states to adopt what is known as the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act. It just rolls off the tongue.

Karen Terry:

Wow.

Lt. Col. Graham Bernstein:

This model legislation helps to significantly streamline the transfer of a guardianship, conservatorship from one state to another. As of this recording, most states have adopted this law. Unfortunately for our military families, the states that have not adopted it, which include Texas, Florida, Kansas and Michigan, have a lot of military presence in those states. So it behooves you as a special needs military family to do a little digging into the state that you're PCSing to and whether they have adopted this model legislation or not. A quick internet search can help you determine if your state or the state you're PCSing into has adopted the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act.

Karen Terry:

OK. I'm going to try my hand at saying that, too, because I think it's a great thing and I had never really heard of it before. So I'm pleased that so many states are part of the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act. And I'm hoping that those outliers join soon. So fun fact, I am currently working with a civilian lawyer myself to establish guardianship over my son. He's going to be 18 later this year. And I can tell you, it is a stressful and emotional process.

I am sincerely relieved that the act exists in as many states as it does, but I hope that the others join soon to help our military families. I think for many parents when their child becomes an adult, it's a happy occasion and not one that necessarily causes a great deal of anxiety, but for some parents like myself, depending on the child's special need and the nature and severity of that need, this turning adult, turning 18 becomes very anxiety inducing. So I'm glad that this is an option, but financially



speaking, Andy, if a family is planning on pursuing guardianship or just keeping that adult child at home, what do you suggest that they do to plan ahead?

Andy Cohen:

So Karen, those are some great questions and some great points because it really is stressful and anxiety producing. And there are a number of factors depending on each family's individual's circumstances. Simply put, we have to plan for how we're going to provide for our child's needs, either paying directly for them or determining if there's eligibility for benefits that might help provide for our child's needs and subsidize their care, provide other support. For example, my child still lives at home, and however, while she may be able to live on her own in an apartment according to her caregivers, she's really not able to work at a level where she can afford to do so.

So one of the current conversations we're having within our household is one confirming that she does have the life skills to live on her own and how might we subsidize the expenses of living on her own in a high-cost area. While we're factoring in how to manage these risks to our own retirement assets and potentially meeting our other financial needs as being part of the sandwich generation right now. My wife's 90-year-old mother, my mother-in-law, is currently in assisted living. And given the fact that she beat colon cancer in 2019 and survived a week in the hospital with COVID in 2020, she just may outlive her assets.

Karen Terry:

Oh, wow. She's had a lot to deal with these past few years.

Andy Cohen:

Yes, she has. But more to the topic of taking care of our family members, one area is the issue of planning for medical care. For example, active-duty and retired service members under their military health benefits can continue the coverage for an adult child over the age of 21 if the child is unmarried and has severe disabilities, and this child is also unable to work or go to school full time. The program or benefit is commonly referred to as medical benefits for an incapacitated child over the age of 21. For additional details on this benefit, you can go to the DFAS website and search the term, secondary dependency.

Karen Terry:

Yeah. There are also checklists for establishing an incapacitated child and/or secondary dependency on the EFMP & Me website or web tool, just for your information.

Andy Cohen:

Thank you. And the more places where these resources are posted certainly makes them easier to find.

Karen Terry:



Mm-hmm (affirmative). Definitely.

Andy Cohen:

Continuing discussion about medical benefits is we also need to understand that we have veterans that may not retire from the military and don't have the same access to military programs. Your health care provider may still have some means of allowing coverage post-service if you're able to provide your child's medical history and prognosis. The same may also apply if you're a retiree and you go to work for an employer where you may want to take advantage of your employer's health plan as your primary insurance in lieu of TRICARE. For example, after retiring from the Army, I worked for a private company with a great health care plan that minimized our need for TRICARE. And by documenting the fact that my adult child qualified for and enrolled in TRICARE coverage under the secondary dependency program, the insurance company for the company I worked for, they let us carry her on our health insurance policy as well.

While this may not be true of all health insurance carriers, you don't know until you ask, is how the saying goes.

Karen Terry:

Right.

Andy Cohen:

It's important to remember when addressing the long-term financial and legal needs of your special needs child is that there's no one-size-fits-all approach to this problem. It's based on the unique factors pertaining to you, your family and your child. Research is needed. Talk to everyone, your child's caregivers, legal assistance, your EFMP coordinator, state assistance programs, and don't forget your child's school district, about plans to transition into adulthood. Being informed and being able to make the best choice based on your child's needs is the best tool you can have.

Karen Terry:

That's good advice. Every situation continues to be unique throughout your child's life and the journey you're on with your special needs. Can you talk about developing a financial plan? You've mentioned some different elements, but what questions should families ask and what do you think they need to do in order to get started with developing their plan? I'll admit it, my husband and I have talked about this often and it's a little intimidating, so what should we do to get started?

Andy Cohen:

Karen, you are not alone and it's a great question. And it does intimidate a lot of folks, but it really doesn't need to. First and foremost, it's important to understand, a financial plan does not need to be complicated, it does not need to account for every item or be detailed down to the penny, nor does it constrict you in what you can or can't spend money on. Its purpose is to simply identify what we want to achieve in various timeframes today, two years from now or in retirement and we translate that into an



estimated dollar value. We identify how we intend to get the dollars, where they intend to come from and how we intend to achieve those goals. In other words, simply where's my money coming from? Is it regular income? Is it a pension? Is it a retirement account? Is it other savings or investments?

And where's it going? A couple of key points or considerations in creating a financial plan is it's more important and it costs less to focus on financial planning early on when you have time to consider the long-term needs of family members, and it costs less. The sooner you start saving and investing for your future or the future of your child, the more you have time for that money to earn because you're using that resource of time to let your investments grow. In setting your goals and costing them out, remember to determine and factor in any eligibility for ongoing benefits to ensure care and maintenance will be there to help you support and focus on what you really do need, those gaps, and what may not be covered. State benefits again, may also be available. So be sure, again, to do your research, check locally for additional support, especially for those people who are looking for support post-militarily. Also identify the long-term care needs and the other needs of your special needs family members, such as housing or transportation that your family members, include special needs, members may need and to estimate how these needs may impact your financial plans and resources.

And use the resources available to you to help you along your journey. Not only the legal and financial, but to a great extent, the health care world, which will intertwine as we look at the total requirements, and we look at the best way to save and invest to meet those future needs or requirements. The best questions to ask involve how to save and invest and where to get started. And getting started means preparing the spending plan to know what funds you will have available to save and invest to meet those future needs and determine if now's the time to make adjustments to your income or spending to accommodate the greater savings that we may need in the future to care for our families.

Karen Terry:

Well, that's great. Thanks. So we've talked about some of the financial readiness services available on an installation, but y'all have a fabulous website, the FINRED website. Can you talk about that a little bit? What does it offer military families with special needs?

Andy Cohen:

So, thank you Karen. And let me do talk about the websites for a minute. The Office of Financial Readiness website is finred.usalearning.gov. And on it you'll find a number of resources to include the how to do things on education and support for every stage of financial readiness, whether you're just getting ready to start learning about basic finances, interested in tweaking your current plan or ready to jump in with both feet. You'll also find information not only on special needs, but how to get to other resources such as how to locate a financial counselor.

In addition, we have a website that has similar information geared towards military spouses, called milsposumoneymission.org. And then in addition to our websites, we publish a financial education app called Sen\$e. That's spelled S-E-N-Ş-E and it's a free app from the Apple app store or Google play store. In there, you'll find a wealth of information on how then to start the financial plan that we talked about, how to take a financial needs assessment tool, all things to help walk you through the how-tos of getting



started, because a lot of what we need to do in terms of financial well-being for special needs children and taking care of them really are grounded in the basic financial well-being and basic financial literacy.

Karen Terry:

I will be looking up that app as soon as we are done recording this. OK. So we have covered a lot of information and I would just like to get some suggestions from both of you for the families that are new to EFMP, where do they start when it comes to legal or financial connections, resources, etc.? Graham, do you want to start that first?

Lt. Col. Graham Bernstein:

Yeah, sure. There definitely are, and we've talked about a couple of them here today, a lot of resources out there for special needs families within the DOD. I would encourage new families to start with some self-help research through Military OneSource or EFMP & Me, and to schedule a sit-down with your local installation legal office to talk through some of the questions you might have.

Karen Terry:

Great. Andy.

Andy Cohen:

Thank you. I would start, again, with your local military and family readiness centers to access your personal financial counselor and the additional support for EFMP families. While it may feel like it, you are not alone. While the department has a number of resources, don't forget, there are other resources like support groups where information and support is shared among others of us with similar challenges.

On the side, personally it becomes a source of personal satisfaction when my wife and I can pass on information and experiences that we've dealt with in our journey to help others just starting theirs. Don't be afraid to ask questions. There are many considerations to account for, to plan for, and meet the needs of a special needs family member. Take the time to ask questions and research options that best fit the needs of your family.

Karen Terry:

OK, well, gentlemen, you have shared so much with us during this episode. I think our families have a lot of things to follow up on. Do you have any last-minute words, tips, advice, anything you'd like to add?

Lt. Col. Graham Bernstein:

Sure. I guess I'll go first again. As a parent of two young children and the guardian and conservator of an aging cat, I can say from personal experience that parenthood simultaneously has brought the biggest joys and the biggest challenges of my adult life. Add to that the rigors of military life and the demands that some of our folks must meet as special needs families and I know it can feel overwhelming. And to jump on what Andy said, please know that you're not alone out there. None of us are the first people to



meet these challenges and the support and awareness offered by the military community and society in general has been steadily growing in recent years. DOD services like Military OneSource and the Exceptional Family Member Program are here for you. Specifically, my advice to any special needs family would be the same as my advice to any military family, which is to be prepared. From my perspective as a JAG, that means identifying your goals and your wishes and prepping the battlefield to meet those objectives.

Look, I get it. No one wants to talk about death, money, taxes or growing old, but those are the exact in-depth conversations you need to have with your family in order to identify what your goals are and what you really want to accomplish. This is especially true if you're a special needs family. Once you know where you want to end up, then you can tap the resources that we've talked about today to help you get there. For a special needs family, the big ticket legal areas where your Installation legal office can start helping you and set you on the right path are estate planning, which includes wills and living wills and special need trusts, counseling and powers of attorney, guardianship and conservatorship, which we talked a little bit about earlier, and a big one that we haven't really talked a lot about today but that has been becoming more and more relevant in the past few years is education law.

I encourage special needs families to reach out to your installation legal office to seek assistance on these matters. As we've said throughout this podcast, if they can't directly help you, they will be there to hold your hand in finding a way forward.

Karen Terry:

Great. Andy.

Andy Cohen:

I think Graham summed up pretty well. I mean, the important thing to realize, again, is we are not alone in our journeys here. There are a myriad of resources and they can be put together to meet the individual needs that our families have and to use them. Don't be ashamed to use them. Don't be ashamed to ask for help, because, again, you are not alone. At times it may feel like it, but we're all in this together and the best thing to do is to get started, especially if you don't have a financial plan or an estate plan, it's something that you certainly need to do, and then make sure that you pull it out every now and then and update it. But the day will come that we are not here to take care of those who depend on us, especially those with special needs and it's really incumbent upon us to make sure that we get our affairs in order to do so.

Karen Terry:

Thank you. So guys, we are at the end of our conversation, and I would just like to remind our listeners that in addition to the great resources our guests have mentioned, families are always encouraged to contact their installation EFMP Family Support provider. Or for those who are not near an installation, Military OneSource special needs consultants are available for information on financial and the legal services available to them. Additionally, EFMP & Me is an online tool that is always available rain or shine, weekday or weekend, whenever or wherever you have a question, it is there to help you find the



answer. So Graham, Lt. Col. Bernstein; Andy, Mr. Cohen, I appreciate you both for joining me today. And I know our listeners learned a lot. Are there any final words before we sign off?

Lt. Col. Graham Bernstein:

Thank you for the opportunity, Karen. I really enjoyed our chat. I hope your listeners found this podcast to be time well spent. Good luck. And please remember, you're not alone out there.

Andy Cohen:

And I would offer the same comments. I appreciate the opportunity to contribute to this important discussion. And I too hope that our comments were able to release some of the stress and angst that families may feel on this important topic. And I too learned a lot as we went through it. So it's always a learning opportunity. Again, it's not a one-and-done exercise.

Karen Terry:

Yeah. Great. Thank you so much. Well, folks, that is it for this podcast. A big thanks to everyone listening and another shameless plug before we go encouraging you all to go to EFMP & Me and take a look at the topics and the available checklists. Everything we talked about today can be found in those checklists. We are really excited about the tool, but we want to make it even better. So when you're using EFMP & Me, in the upper right-hand corner of the screen you will see a contact button. If you click that. There's a dropdown. And one of those things on the dropdown says feedback. Click on that. We want your feedback and ideas so we can continue to refine EFMP & Me and make it the best tool possible for helping you find your answers. Service members and families, you can learn all about how enrollment works on EFMP & Me and through the free online courses offered by the Department of Defense at MilLife Learning. You can go to efmpandme.militaryonesource.mil and efmplearning.militaryonesource.mil to find either of those resources.

Service providers and leaders, please check out the recently added sections for you on EFMP & Me. Again, that is [efmpandme](http://efmpandme.militaryonesource.mil), all one word, dot [militaryonesource](http://militaryonesource.mil), all one word, dot mil. Thank you both for joining us today and all our listeners out there. I hope you found the information we shared valuable, and don't forget, again, all these resources are listed on EFMP & Me. And if you have feedback or questions, please reach out to us. Our next podcast discussion is all about you, the caregiver. So please listen and get some information on how to care for yourself. Thank you very much.

You've been listening to a podcast for families in the EFMP brought to you by the Office of Special Needs and Military OneSource. Come back to catch our episode on caregiving. I'm Karen Terry. Thanks for listening.

