



National Alliance on Mental Illness

Special Needs Trusts Basics




Special needs require special attorneys.

What We Will Cover Today

Intro to SNA	Stephen W, Dale
Defining the Challenge	Stephen W, Dale
Intro to benefits	Brian Rubin
SNT Basics and ABLE Act	Robert Fleming
Choice of Trustee	Stephen W, Dale
POA/Advance Directives/ Guardianships	Brian Rubin
Miscellaneous problems: UTMA, bad old trusts, income tax filings,	Robert Fleming
Revisit planning periodically	Stephen W, Dale
Including NAMI in your Estate Plan	Emily
Questions	All

Brian Rubin Buffalo Grove, Illinois

- Attorney Brian Rubin is the father of a thirty-four year old son, Mitch, who is dually diagnosed with both mental illness and developmental disabilities (Bi Polar, OCD & Autism). Brian's law practice is LIMITED to appropriate "Special Needs Legal & Future Planning" for his fellow Illinois parents and families of children and adults with special needs.
- He is a frequent lecturer to NAMI Chapters in Illinois, and has spoken previously, numerous times, at NAMI National Conventions.
- Brian is an Officer and Director of the Special Needs Alliance.
- Among Brian's many "hats", he is a Commissioner on the State of Illinois Guardianship & Advocacy Commission.



email@rubinlaw.com
www.rubinlaw.com

GOVERNMENT BENEFITS...
an overview...
Brian Rubin

RUBIN LAW

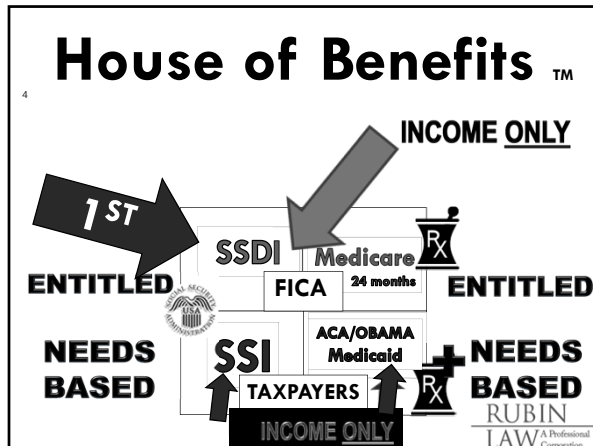
MEMBER
Special Needs Alliance

RUBIN LAW
A Professional Corporation

1st ... as you will hear...
States are different...
Please contact your local
Special Needs Alliance Attorney
<http://www.specialneedsalliance.org/find-an-attorney/>

2

SO... WHAT
“GOVERNMENT”
BENEFITS?
an overview... the
“VERY” basics...



SSDI - CASH

MUST:

1. Have paid into FICA & have "sufficient" Quarters* (2015 = \$1220)...
2. Or maybe on "another's" work record... ***stay tuned***...
3. Does NOT look at assets

MEMBER * ***Depends on age*** **RUBIN LAW** (A Professional Corporation)

SSDI - CASH

- **SSA definition of disabled:**
 1. listing level impairment
 2. functional limitations

MEMBER **RUBIN LAW** (A Professional Corporation)

Disability- Mental Disorders

Listing Level Impairments – the easy part...



- Organic Mental Disorders**
- Schizophrenic, Paranoid and other Psychotic Disorders**
- Affective Disorders**
- Anxiety Related Disorders**
- Somatoform Disorders**
- Personality Disorders**

MEMBER  RUBIN 

Disability- Mental Disorders

Functional Limitations

- Concentration, Pace, Persistence**
- Social Functioning**
- Activities of Daily Living**



MEMBER  RUBIN 

BEWARE:



- Non-Compliance**
 - **Drugs**
 - **Appointments**
- Drug & alcohol**
- The term *repeated episodes of decompensation, each of extended duration* in these listings, means three episodes within 1 year, or an average of once every 4 months, each lasting for at least 2 weeks.**

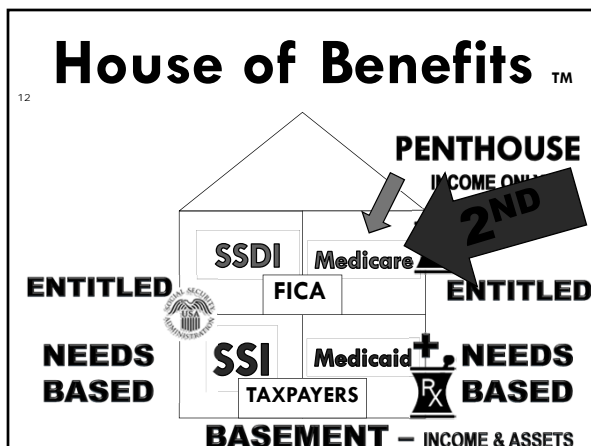
MEMBER  RUBIN 

SSDI
 ...and due to the above:
UNABLE TO EARN "SGA"
 (Substantial Gainful Activity)
SGA (Non-Blind) : 2015
= \$1,090

MEMBER  RUBIN 

SSDI If earn more than SGA
Impairment Related Work Expenses
 (Deduct the cost of certain impairment-related expenses, that are needed in order to work, from the gross earnings.
 Examples of impairment-related expenses: cost of required meds...)



MEMBER  RUBIN 



MEDICARE



- Who is eligible?
 - 65 y/o on SSA
 - 65 y/o on SSI
 - 65 y/o & Federal Employee
 - Any age - ALS
 - Any age - Renal dialysis for end stage renal disease
 - **Any age - Receiving SSDI checks for 24 months...**

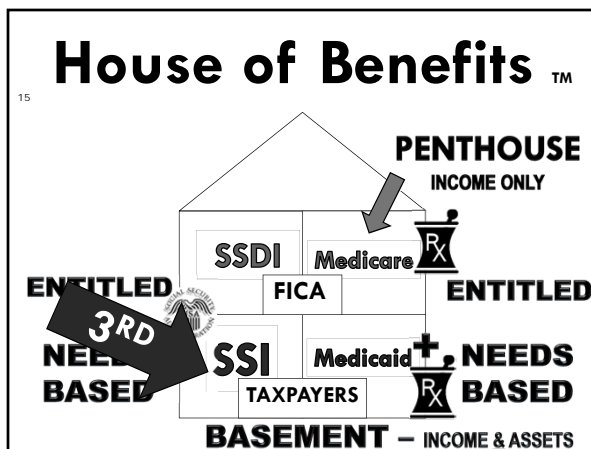
NOTE – SSDI, NOT SSI!

MEMBER  RUBIN 

MEDICARE


- ✓ Part A – inpatient hospital
- ✓ Part B – Outpatient & doctors (PREMIUM)
- ✓ Part C – Medicare Advantage Plan
- ✓ Part D – Drug benefit (PREMIUM)
- ✓ QMB – If have Medicaid &... *stay tuned...*

MEMBER  RUBIN 




SSI - CASH

- Supplemental Security Income
 - 1 Person "Federal" Maximum 2015 = \$ 733
 - Many States have "State Supplement"... but not mine!
- Who is eligible?
 - 65 years old or older
 - Blind in both eyes
 - **Disabled (Listing level impairment AND functional limitations) SAME AS SSDI...**
- How Process Works:
 - Disabled?
 - Date of onset? **VERY IMPORTANT... STAY TUNED...**
 - Need payee?




MEMBER




A Professional Corporation

SSI - CASH

- LOOKS at income, assets, and living arrangements
 - If over income or asset (\$2,000) limit – no SSI
 - Under 18 years old, parents income & assets count
 - Spouse's income & assets count
- Income
 - Under 22 y/o & Full time Student exemption = \$7,180/yr
 - 22 y/o + or Not full time Student - monthly
 - \$85 ok then \$2 earned - \$1 SSI
 - CHILD SUPPORT & ALIMONY/MAINTENANCE



MEMBER



A Professional Corporation

Types of SSI Income		
Unearned Income	Earned Income	In-Kind Support & Maintenance
Includes gifts, payments from annuities and pensions, alimony & support payments, dividends, interest, rents, awards and payment from other benefit programs.	Consists of wages, royalties, net earnings from self-employment, and any honoraria received for services rendered.	Actual receipt of food or shelter <i>or something that can be used to get one of these.</i>
Reduces benefits DOLLAR FOR DOLLAR after the first \$20	Reduces benefits one dollar for every two dollars after the first \$65 earned monthly	Reduces SSI benefit DOLLAR FOR DOLLAR, up to a maximum of 1/3 of the SSI amount...

SSI - CASH

- Living Arrangements
 - Living with another lose 1/3 due to **“in-kind support”** WHICH IS **“HELP”** (**AN SSA FOUR LETTER WORD!**)
 - Living in OWN household
 - Fair share... Rent...



SSI - CASH

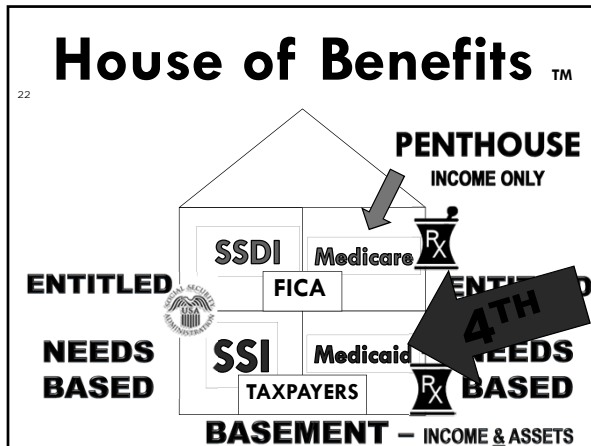
- Assets – single person – **“basically...”**
 - house they live in
 - car
 - \$2000
 - term life insurance
 - CSV life insurance \$1,500 face
 - limited burial/funeral related



SSI - CASH

- Payee Reports
- Wage Reporting





MEDICAID “DISABLED”

Medicaid Eligibility depends on which State:

1. 33 (& D.C.) “1634 States”
2. 11 “209b States”
3. 7 “SSI Criteria States”

MEMBER RUBIN LAW A Professional Corporation

MEDICAID “DISABLED”

40 STATES & D.C. SAME ELIGIBILITY AS SSI – 1634 & SSI

7 OF THOSE 40 NEED SEPARATE (OWN) APPLICATION (SSI CRITERIA)



THE REMAINING 10 STATES, LIKE MY ILLINOIS... 209b ⊗ **SEPARATE APPLICATION & CAN HAVE MORE RESTRICTIVE ELIGIBILITY RULES**

MEMBER RUBIN LAW A Professional Corporation

MEDICAID

209b STATES - BEWARE:

- CATEGORIES**
- RESOURCES**
- INCOME**



MEMBER  RUBIN 

MEDICAID

ALSO BEWARE - State Options:

- Categorically Medically Needy (24 + D.C.)**
- Income Cap States (12)**
- Spend Down - not including NH (7)**

Contact Local SNA Attorney
www.specialneedsalliance.org

MEMBER  RUBIN 

AGAIN...


States are **DIFFERENT...**

PLEASE contact your local
Special Needs Alliance Attorney
<http://www.specialneedsalliance.org/find-an-attorney/>

MEMBER  RUBIN 

MEDICAID "DISABLED"

- FEDERAL MATCH**
- MEDICAL – MANY STATES INCLUDING TRANSPORTATION – AND, MAYBE, DENTAL ? ALSO – QMB...**
- FOOD STAMPS**
- RESIDENTIAL**
- EMPLOYMENT**
- ETC.**

MEMBER  RUBIN LAW A Professional Corporation

MEDICAID "DISABLED"

- PORTABILITY ?**
- MOVE TO ANOTHER STATE ?**
- VISIT ANOTHER STATE ?**
- ACCEPTANCE – MDs, Rx, DDSs ?**
- HAVE PRIVATE POLICY ?**

Contact Local SNA Attorney
www.specialneedsalliance.org

MEMBER  RUBIN LAW A Professional Corporation


MEDICAID "DISABLED"

- 5 YEAR , NOT 3 YEAR LOOK BACK, FOR "RESIDENTIAL"...**
- CHILD SUPPORT / ALIMONY**
- SPOUSAL SUPPORT**

MEMBER  RUBIN LAW A Professional Corporation

MEDICAID "BUY IN"


- MANY STATES HAVE THEM
- WERE ON SSI/SSDI OR TRADITIONAL MEDICAID – **BUT NOW EARNING "TOO" MUCH, OR ACCUMULATED MORE THAN \$2,000**
- & WORKING & FICA IS BEING W/H**
- ALLOWS TO EARN MORE INCOME**
- ALLOWS TO HAVE MORE RESOURCES**
- NO SPEND DOWN, BUT PAY SMALL PREMIUM**

MEMBER  RUBIN LAW A Professional Corporation

**MEDICAID
ACA (Obama Care)**


**138% POVERTY LEVEL
NO ASSET/DISABILITY TEST**

- **income less than \$1,354./mo.**
- **BUT not if 65 or on Medicare!**

MEMBER  RUBIN LAW A Professional Corporation


SO ACA Medicaid...


- ONLY if not 65, or "UNTIL 65"
- IF not on Medicare, or "UNTIL on Medicare"
- THEN no asset test...
 - ***BUT, remember, 2 years after DAC/CDB or sufficient quarters for SSDI, on Medicare, and then DO have the asset test AGAIN!***
- AND still income test of \$1,354 @ mo.
- SO... DOESN'T CHANGE PLANNING!

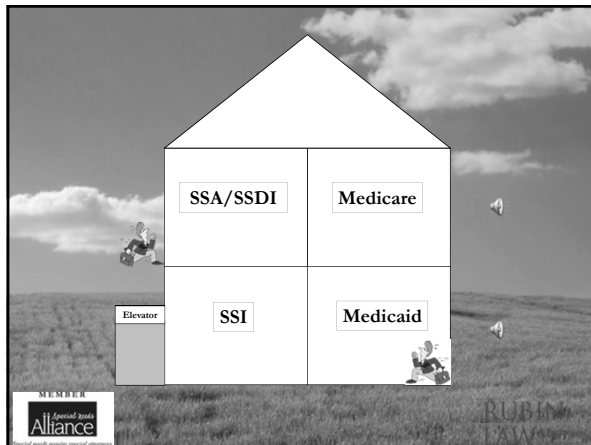
MEMBER  RUBIN LAW A Professional Corporation


“MOVIN” ON UP

If we are in the “basement”, how do we get to the “penthouse”?



MEMBER  RUBIN LAW A Professional Corporation




MEMBER  RUBIN LAW A Professional Corporation

Riding the Elevator - Your elevator “PASS”

1) Sufficient “quarters” on own, but never more than than SGA (2015=\$1090), as discussed before...

2) DAC = Disabled Adult Child
CDB = Childhood Disability Benefits

- a) Onset date on SSA’s record is before age 22 &
- b) Parent with a FICA work record &
- c) That parent either:
 - Retires & collects SSA or
 - Is disabled, themself, & collects SSDI, or
 - Dies or attains full retirement age & elects to defer collecting SSA (suspense)

MEMBER  RUBIN LAW A Professional Corporation

Riding the Elevator - Your elevator "PASS"

**Adult child moves
from SSI to SSDI
&
in 24 months
Medicare**

MEMBER
Special Needs
Alliance

RUBIN
LAW
A Professional
Corporation

Oooooops!

- While SSI does **NOT** count as income for Medicaid...
- SSDI **DOES** count as income... **BUT**
- If was on SSI before on SSDI, and moved up to SSDI as a DAC/CDB, or on own record moved from SSI to SSDI, in most states the SSDI **WILL NOT** count as income

MEMBER
Special Needs
Alliance

RUBIN
LAW
A Professional
Corporation

WHAT STOPS THE ELEVATOR?

- Marriage – UNLESS...
- Working over SGA

MEMBER
Special Needs
Alliance

RUBIN
LAW
A Professional
Corporation

How to Lose These Benefits?

- 1) **Change in circumstances**
- 2) **Redeterminations**
- 3) **Inheritances**



How to NOT lose SSI or Medicaid?

The ANSWER is
Special
Needs
Trust(s)!



and AGAIN...
 States are **DIFFERENT...**
PLEASE contact your local
Special Needs Alliance Attorney
<http://www.specialneedsalliance.org/find-an-attorney/>



Robert Fleming

- Robert Fleming is a member of the Special Needs Alliance, the premier national organization of lawyers working with "special needs" trusts. Robert is the author of The Elder Law Answer Book, now available from Aspen Publishers. He is a Fellow of both the American College of Trust and Estate Counsel and the National Academy of Elder Law Attorneys. He has been certified as a Specialist in Estate and Trust Law by the State Bar of Arizona's Board of Legal Specialization, and he is also a Certified Elder Law Attorney by the National Elder Law Foundation. Robert is a member of the State Bar of Arizona (he was President of the Young Lawyers Section in 1978, Chair of the Probate and Trust Section in 1992, and chair of the Mental Health and Elder Law Section in 1999), and the Pima County Bar Association (he was President in 1986).



Stephen W. Dale

steve@dalelawfirm.com
www.dalelawfirm.com
www.achievingindependence.com



Member of Special Needs Alliance
 Family worked three generations in California State Hospitals
 Worked 17 years as a Psychiatric Technician

5

www.specialneedsalliance.org



The Voice

The Voice Newsletter

January 2014 - Vol. 8, Issue 1

This installment of the Voice was written by Special Needs Alliance member Evan J. Krame who focuses his practice on estate planning, probate, special needs planning and elder law. Evan is a past president of Shared Horizons, operating a pooled trust serving the Mid-Atlantic region. Evan also served as co-chair of the Estates, Trusts and Probate Section of the DC Bar. He has been honored as a Top Attorney and Best Lawyer in Washington and Maryland. Evan is a candidate for rabbinic ordination, seeking to blend his work in the law with pastoral care and spiritual direction skills. You may visit his website at Law Offices of [Evan J. Krame](#).

Special Needs Trusts And Home Ownership: A Trustee's Concerns

One of the most challenging responsibilities of a trustee of a special needs trust is balancing the benefits of purchasing a handicap-modified house for a beneficiary with the financial pressures of a steadily decreasing trust balance and steadily increasing household expenses.

I am the trustee of a special needs trust established for an adult woman named Sasha. Although Sasha faces

How to Find a SNA Member

Find an Attorney Search for a Special Needs Attorney by State

Please select the state in which you would like to locate a Special Needs Alliance attorney. You may also call 1-877-572-8472 or send an e-mail to info@specialneedsalliance.org to research SNA attorneys in your area.

Free Trustee Handbook

Free Trustee Handbook

Get Your Complimentary Copy of the Handbook for Trustees

A special needs trust can be a very powerful aid in managing care for a family member with a disability. It can provide supplemental items like therapy, respite care, dental work, companions, entertainment, education — all without interfering with the beneficiary's SSI, Medicaid or other government programs. The special needs trust can be a flexible tool. It can also be very difficult and confusing to administer.

Have you been named as trustee of a special needs trust? Have you created a special needs trust, and wonder what the job of trustee is actually like? Are you a trust beneficiary, trying to figure out what the trustee is permitted — and required — to do? The Special Needs Alliance is pleased to offer its free booklet on administering special needs trusts. In plain English, it can help you understand the choices and obligations.

You can download a PDF of the Handbook for Trustees. If you'd prefer, we will send you a printed copy — at no cost — with an obligation to read it and the free booklet will send your Handbook.

Sign Up for The Voice

Your email address:

Read The Voice



Current Issue of The Voice
Past Issues of The Voice

Quick Links

- Find an Attorney
- How SNA Can Help Families
- How SNA Can Help Professionals
- SNA Member Articles
- SNA Board of Directors



Lastly

- If you have an attorney in your region that you feel is leader in your community and an advocate for persons with please give us their name and contact information.
- We are always looking for the best to join the Special Needs Alliance team so we can better serve persons with disabilities and their families

Stephen W. Dale

DEFINING THE CHALLENGE

Defining the Challenge

- When someone is asked to describe the purpose of a special needs trust, the typical answer given is to protect entitlement to public benefits.
- Focusing only on preservation of public benefits fails to address the big picture.
- The true objective should be to maximize the quality of life for the beneficiary with a disability.

Defining the Challenge

- The objective of most families we work with is to provide their loved one with the best quality of life possible; a life that promotes independence and is free from abuse and neglect.
- Maintaining benefits eligibility is merely one tool available for pursuing that broader goal.

Imagine



- You have a daughter named Kathy who has schizophrenia.
- Kathy is likely to need some level of assistance for the rest of her life.
- You come to the estate planning attorney to provide for her needs in the event of your incapacity or death.
- Kathy is otherwise healthy and is likely to live 70 years or longer.

The Challenge

- ▶ Benefit laws may will change
- ▶ Social service systems will change
- ▶ Her condition may change
- ▶ Her advocacy system may change
- ▶ Attitudes may change
- ▶ The amount of resources she needs may change
- ▶ Trustee options will change



**The Special Needs
Trust as an Advocacy Tool**

- Disability tends to be a life-changing experience.
- Part of the experience in caring for someone with a disability is advocating and securing resources.
- In all too many cases, that level of care is not intuitive; it is a skill that has to be learned, practiced, and perfected over time through practical experience.
- By necessity, family members can become quite adept at navigating disability service and benefits systems.

**The Special Needs
Trust as an Advocacy Tool**

- Focusing only on the preservation of public benefits also ignores what may be a greater issue
- Persons with disabilities are often subject of abuse and neglect and require a great amount of vigilance.
- It is often essential to be vigilant for signs that their loved one is not being abused or neglected.

**The Special Needs
Trust as an Advocacy Tool**

- In many cases it is possible for a parent to detect evidence of abuse of their child even if the child is nonverbal through changes in behaviors or other cues.
- For example, if a child begins holding their hands over their head as if to protect themselves from being hit, there is a great possibility that the child is being abused.

Ed Roberts

“Anyone can join our group at any point in life. In this way, the Disability Rights Movement doesn't discriminate.”



Definition of Estate Planning

I want to provide for myself and my loved ones during my lifetime, and upon my incapacity or death give what I have to who I want, the way I want, when I want, and if I can save every last fee, tax or court cost possible.



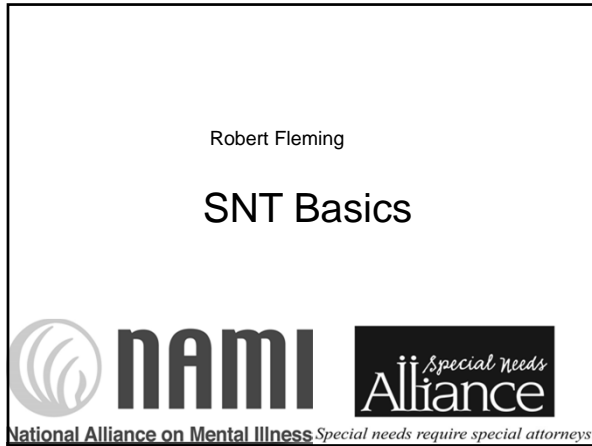
From Loving Trust

The Big Question

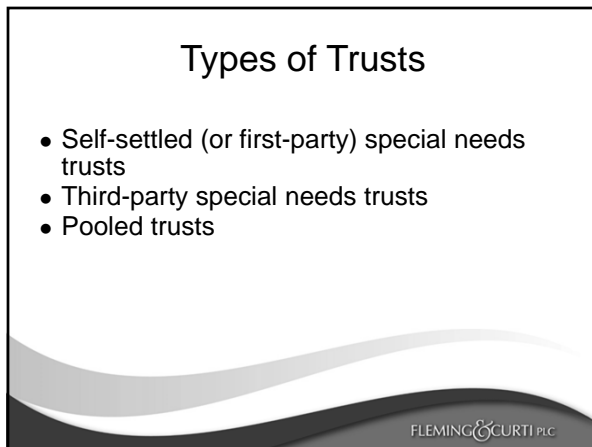


Does my disabled loved one need Special Needs Planning?

- Assistance in managing funds
- Build flexibility to deal with changed circumstances
- Focus on advocacy and asset protection
- Could maintaining qualification for SSI or Medicaid be a tool to assist my disabled loved one?







Self-settled trusts

- Funding: personal injury lawsuits, unrestricted inheritances, beneficiary designations on accounts, etc.
- Created by: parents, grandparents, guardian or court
- Key detail: payback requirement for Medicaid




Pooled trusts

- Just like self-settled trusts, except:
 - Assets in trust pooled with others
 - Trustee must be non-profit
 - Payback required, but exception to extent funds remain with non-profit
- Usually used for smaller amounts
- Some third-party pooled trusts offered




Third-party trusts

- Funding: someone else's money (like yours, set aside for your child with a disability)
- Created by: parents, grandparents, others interested in beneficiary's welfare
- No payback
- Trust can pay for food and shelter, but will reduce SSI by up to \$264.33




Resources

- “Administering the Special Needs Trust: A Handbook for Trustees” published (and updated annually) by the Special Needs Alliance (available for free download at www.SpecialNeedsAlliance.com)
- Fleming & Curti, PLC, *Elder Law Issues* (at www.FlemingAndCurti.com/issues)




Robert Fleming

The ABLE Act




nami




Special Needs
Alliance

National Alliance on Mental Illness. Special needs require special attorneys.

The ABLE Act:
What does it mean for you?



Robert B. Fleming
Fleming & Curti, PLC
Tucson, Arizona
www.FlemingAndCurti.com



What is ABLE?

- The ABLE Act:
 - Passed Congress in December
 - Signed by President Obama on 12/19/14
 - Adds §529A to the Internal Revenue Code
 - Modeled after IRC §529 (education) plans
 - Account balance excludable for purposes of eligibility for benefits (with some limitations)
- Still pending:
 - Regulations (from IRS and SSA)
 - State legislation authorizing ABLE

FLEMING & CURTI P.L.C.

ABLE Accounts: Like §529 Plans, but Different

- Disability before age 26
- Only one ABLE account per beneficiary
- Must be in state of residence

FLEMING & CURTI P.L.C.

ABLE Account Dollar Limits

- Total **contributions** in a year limited to gift tax exclusion amount (\$14,000 in 2015)
- Total **contributions** over time limited to state's 529 maximum (Arizona: \$412,000)
- \$100,000 account balance limit for SSI benefits
 - includes **earnings**
 - Medicaid/ALTCS not affected

FLEMING & CURTI P.L.C.

ABLE Act Accounts – Payback

- Upon death of designated beneficiary, state Medicaid plan may file a claim against the account
 - State/ALTCS gets repaid “subject to any outstanding payments due for qualified disability expenses”
 - Payback includes 3rd-party contributions
- Mechanics: does statute contemplate state simply debiting account?

FLEMING & CURTI P.L.C.

ABLE Accounts – Income Taxes

- No income tax benefit on contribution, but growth in ABLE account untaxed
- Withdrawals tax-free if for “qualified disability expenses”:
“education, housing, transportation, employment training and support, assistive technology and personal support services, health, prevention and wellness, financial management and administrative services, legal fees, expenses for oversight and monitoring, funeral and burial expenses” and others approved by IRS regulations

FLEMING & CURTI P.L.C.

Where ABLE Might Fit

- Small amounts of beneficiary’s own money
- Control for competent beneficiaries
- Accumulation of wages over time
- Transfer of UTMA accounts at 21 (18) to qualify for SSI and/or ALTCS
- Save for purchase of home or car or wedding expenses
- Disability has potential to resolve
- No available or competent pooled trust
- Possible two-step 3rd-party funding for ISM items (like housing costs)?
- ABLE account funded/replenished as part of trust plan

FLEMING & CURTI P.L.C.

What Could Possibly Go Wrong?

- Third party fund payback (even for 3rd-party \$\$)
- More than one account established; overfunding
- Failing to limit to “qualified disability expenses”
- Failing to report to state
- Loss of SSI relationship to Medicaid
- Educated choice between alternatives
- Confusion between SNT and ABLE rules – effect of ABLE distributions to beneficiary on SSI?
- Protection from fraud, undue influence, exploitation, bad choices
- Child support? Other creditors?

FLEMING & CURTI P.L.C.

More Resources


- “ABLE Act Passes – We’ll Tell You What It Means” and “The ABLE Act – How Will You Be Able to Use It?”, both available at www.issues.flemingandcurti.com/tag/able-act/
- Steve Dale’s informative YouTube piece: www.youtube.com/watch?v=Oi8i-N7BQwM
- Collection of materials at Steve Dale’s site: <http://achievingindependence.com/able/>

FLEMING & CURTI P.L.C.


ACHIEVING INDEPENDENCE

Stephen W. Dale

TRUSTEE OPTIONS



nami

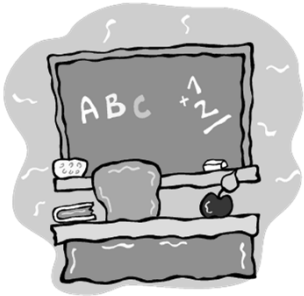


Special Needs
Alliance

National Alliance on Mental Illness *Special needs require special attorneys.*

ACHIEVING INDEPENDENCE

LET'S BEGIN WITH BASICS




2

ACHIEVING INDEPENDENCE

The Ideal Trustee

- Will use discretion in the best interest of the disabled beneficiary
- Must understand public benefits and keep up with changes in the law
- Can wisely invest and conform to all statutory fiduciary requirements
- Understands taxes
- Keeps perfect books
- Provides advocacy and prevents abuse
- Is immortal



3

ACHIEVING INDEPENDENCE

Divide These Duties Into Three Categories

Advocacy

- Will use discretion in the best interest of the disabled beneficiary
- Must understand public benefits
- Provides advocacy and prevents abuse

Accountability

- Keeps perfect book
- Carries insurance, is bondable or has deep pockets
- Is immortal

Financial

- Can wisely invest and conform to all statutory fiduciary requirements
- Understands taxes

4

ACHIEVING INDEPENDENCE

Model 1

The Trustee Directed by a Trust Advisory Committee

Trustee

- The Trustee manages funds, makes distributions, does taxes, keeps records
- The Trustee directed by a Trust Advisory Committee which directs distributions, can amend the trust or replace the Trustee

Advisory Committee

- Can include care manager

5

ACHIEVING INDEPENDENCE

Model 2

The Trustee Directed by a Care Manager

Trustee

- The Trustee manages the funds
- The Trustee can be directed by a Care Manager.
- The Care Manager interacts with the beneficiary
- The Trust Protector oversees the trust performance and can make adjustments as laws change or replace the trustee if necessary.


Care Manager

Trust Protector

6

Model 3
Limited Purpose Trust

For trusts for specific purposes, such as to provide only housing, can be more tightly defined and trustees can seek assistance from benefit, tax and financial advisors may be adequate.




Co-Trustees

7


Model 4
Pooled Special Needs Trust directed by a Trust Advisory Committee

Leaky Lagoon Pooled Trust

- Pooled special needs trust manages funds, makes distributions, does taxes, keeps records
- Pooled special needs trust shares resources between 100's of families
- Can include care managers or advocates, often at lower costs than the normal rate
- Ideally pooled special needs trusts are accountable to family or circle of support for the beneficiary.




Care Manager



Advisory Committee

The Basic Concept of an Advisory Committee


- Advisory committees have been incorporated in special needs trusts since their earliest inception.
- The concept is to provide some oversight to the trustee about the needs of the beneficiary to ensure that the SNT is being administered in the beneficiary's best interest.



9

The Basic Concept of an Advisory Committee


- In the best of circumstances the advisory committee provides a system of checks and balances
- A well run advisory committee empowers key family advocates to ensure that the beneficiary's needs are met and they are free from abuse and neglect.



10

What a Trust Advisory Committee Should Not Do


- The Trust Advisory Committee should not be seen as an entity that serves as co-trustee.
- Many good trustees are happy to be accountable to someone or some entity
- On the other hand, requiring that every action of the trustee be confirmed by the Advisory Committee is cumbersome.




11

Why Many Advisory Committee's Fail


- Vague purpose
- Lack of structure
- Poorly defined duties
- Lack of familiarity with the needs of the beneficiary
- Lack of relevant information to base advisement on.



12

 **Defining the Committee Structure and Duties**

- It is imperative to be clear about how the trust committee is structured, who is in charge, and when and how the committee members needs to act?
- More and more we are including language that requires the trustee to work with a care manager to create an annual distribution plan to be reviewed by the Trust Advisory Committee as their primary function.



13

 **Sample Language
Composition of Trust Advisory Committee**


The initial Chairpersons for the Trust Advisory Committee shall be:

- Bill Jones
- Mary Jones

In the event that either Bill Jones or Mary Jones cannot or will not serve, then the remaining chairperson shall <serve alone/select a successor chairperson/elect whether to select a co-chair>.

In the event that neither Bill Jones nor Mary Jones is willing to serve, then the remaining advisory committee members shall select a chairperson by majority vote.

14

 **Sample Language
Composition of Trust Advisory Committee**

Duties of the Chairperson(s)

- The Chairperson(s) primary duty is to ensure that the duties and the timelines of the Trust Advisory Committee are followed, and to make sure that there are at all relevant times the proper number of members on the committee.

Selection of the Remaining Trust Advisory Committee Members


- The grantors shall maintain a schedule of successor Trust Advisory Committee members to be updated from time to time to provide guidance for the Trust Advisory Committee for selection of successor Trust Advisory Committee members to maintain the requisite number of committee members.

15

ACHIEVING INDEPENDENCE

Keeping the Advisory Committee Relevant

- Continuation on the committee often depends on how relevant the committee members feel the committee was to the beneficiary.
- Conclusion – if the Committee members lack relevant information the committee will flounder, the members will loose interest and the committee will cease to function.




16

ACHIEVING INDEPENDENCE

The Power to Hire and Fire the Trustee

- The power to replace the trustee is in most cases an essential tool to keep the Trust Advisory Committee/Trust Protector in ultimate control.
- I have learned the hard way that there must always be some mechanism to fire and replace the Trustee if circumstances change.




17

ACHIEVING INDEPENDENCE

The Power to Hire and Fire the Trustee

- Adjustments may be necessary for any number of reasons.
- It could be that the trustee selected when the trust was drafted was appropriate, but that trustee is no longer the appropriate choice.
- It could also be that the successor trustee does a good job, but a better option comes along that has better services at a lower cost.




18

ACHIEVING INDEPENDENCE

The Power to Hire and Fire the Trustee

- Trust companies and services change wildly about minimum account size and services that they perform.
- There is a proliferation of pooled trusts offering services ranging from bare boned fiduciary services to a complete array of services.
- Many states like California have private licensed fiduciaries that are becoming a more competitive option.




19

ACHIEVING INDEPENDENCE

Distribution Plans

We have been advocating that special needs trusts include a mandatory or optional annual plan that we call a “Distribution Plan”.



20


ACHIEVING INDEPENDENCE

Keeping the TAC Relevant Using Distribution Plans

- Providing all parties, including the Trust Advisory Committee, with a written plan, commonly referred to as a distribution plan, will provide a tangible tool for all involved parties.

Kathy's Annual Distribution Plan


21

 **Keeping the TAC Relevant Using Distribution Plans**

- They can use this distribution plan to review, reflect upon, and to provide informed advice that the trustee can use to direct future trust activities.
- In most cases, this plan is created primarily by the care manager with input from the trustee and Trust Advisory Committee members.

Kathy's Annual Distribution Plan


22

 **Distribution Plans**

We have found that performing an annual review of a distribution plan by the advisory committee and trustee should be the advisory committee's primary function.

Kathy's Annual Distribution Plan

23

 **Sample Language**

Annual Distribution Plan

The trustee shall produce a written distribution plan to be reviewed by the Trust Advisory Committee annually. The primary purpose of the distribution plan is to provide specific recommendations of services likely to be provided to Kathy for the upcoming year, the cost of those services, and a good faith estimation of how those expenditures will affect the longevity of the trust.


The Trustee may/shall specifically employ a qualified Care Manager to assess Kathy's medical, social and direct care needs and incorporate those assessments in the distribution plan. The Care Manager shall be a qualified professional who is familiar with services in Kathy's community as well as the developmental needs of persons with disabilities similar to Kathy's.

The distribution plan shall provide guidance and advisement concerning Kathy's needs, rights, and entitlement to public benefits, and what discretionary distributions should be made for needs not covered by public benefits, as well as recommendations concerning distributions otherwise covered by public benefits, including, but not limited to, payment for supplemental medical and therapeutic care, education and habilitation services, attendant care services whenever the need arises, residential services, and daily support services. Whenever possible the distribution plan shall make a good faith estimate of the likely cost of each recommendation to be incorporated in an annual budget.


The distribution plan shall be made available to members of the Trust Advisory Committee for their review at least -15 days- prior to implementation. The distribution plan shall include a projection of longevity of the special needs trusts based on the assumed depletion of the trust as well as a reasonable rate of return on the investments of the trust.

The Care Manager shall be entitled to fair and reasonable compensation for services rendered. The amount of compensation shall be equal to the customary and prevailing charges for services of a similar nature during the same period of time and in the same geographic locale. The Care Manager shall be reimbursed for the reasonable costs and expenses incurred carrying out its fiduciary duties under this agreement.

24

 **The Power to Hire and Fire the Trustee**

- Adjustments may be necessary for any number of reasons.
- It could be that the trustee selected when the trust was drafted was appropriate, but that trustee is no longer the appropriate choice.
- It could also be that the successor trustee does a good job, but a better option comes along that has better services at a lower cost.




25

 **The Power to Hire and Fire the Trustee**

- Trust companies and services change wildly about minimum account size and services they perform.
- There is a proliferation of pooled trusts offering services ranging from bare boned fiduciary services to a complete array of services.
- Many states like California have private licensed fiduciaries that are becoming a more competitive option.



26

 **Sample Language**
Successor Trustee


Upon the death of the second grantor to die, or in the event that neither grantor is able to serve because of incapacity, REALLY BIG BANK AND TRUST, or a corporate trustee, private professional trustee, or pooled trust of the Trust Advisory Committee's choosing shall serve. In addition, the Trust Advisory Committee may replace REALLY BIG BANK AND TRUST with/without cause with a corporate trustee, private professional trustee, or pooled trust of the Trust Advisory Committee's choosing that is familiar with managing special needs trusts for beneficiaries with disabilities similar to Kathy

27

ACHIEVING INDEPENDENCE

Finding a Private Fiduciary

<http://www.pfac-pro.org/>



HOME MEMBERS ONLY FIDUCIARY ACADEMY MASTER CALENDAR ANNUAL CONFERENCE ABOUT PFAC
ABOUT FIDUCIARIES FIND A FIDUCIARY AFFILIATE MEMBERS JOIN PFAC NEWS RESOURCES

WELCOME TO THE PROFESSIONAL FIDUCIARY ASSOCIATION OF CALIFORNIA™ (PFAC™)


PFAC is committed to provide information to the membership on economic, social and political developments likely to affect the professional fiduciary; to provide continuing education and promote minimum standards in the administration of conservatorships, guardianships, trusts, estates and durable powers of attorney; to build and maintain awareness of this association among families, attorneys, probate courts officials, various city and county agencies, and among present and potential fiduciaries; to provide advocacy with the state legislature; and to cooperate with the courts of this state.

A Professional Fiduciary Bureau Announcement

The Professional Fiduciary Bureau is pleased to announce two additional ways for consumers and licensees to keep up with what is going on at the Bureau through Facebook and Twitter! Please follow the Bureau by clicking on the following links: Facebook & Twitter

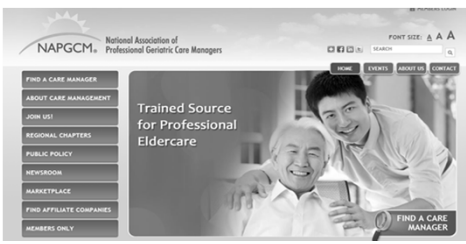
UPCOMING MEETINGS

- February and March, 2015
Chapter & Region Meetings and Conference Calls
Information Sessions about the Proposed By Laws to be voted on by early April
- Thursday, March 12, 2015



ACHIEVING INDEPENDENCE

You may be able to locate a Care Manager by asking your attorney for a reference or directly through a helpful web site, www.caremanager.org



NAPGCM National Association of Professional Geriatric Care Managers

Trained Source for Professional Eldercare

FIND A CARE MANAGER
ABOUT CARE MANAGEMENT
JOIN US!
REGIONAL CHAPTERS
PUBLIC POLICY
NEWSROOM
MARKETPLACE
FIND AFFILIATE COMPANIES
MEMBERS ONLY

FIND A CARE MANAGER

29

ACHIEVING INDEPENDENCE

Questions and Answers




30


ACHIEVING INDEPENDENCE

Stephen W. Dale

UPDATING YOUR SPECIAL NEEDS TRUST



nami




Special Needs
Alliance

National Alliance on Mental Illness. *Special needs require special attorneys.*

ACHIEVING INDEPENDENCE

Updating Your Special Needs Trust

- A question I often hear is, "How often should I have my child's special needs trust reviewed by my attorney?"
- Let me give you the typical lawyer's answer, "It depends."
- As unsatisfying as that response might be, the following information may provide you with some further guidance.

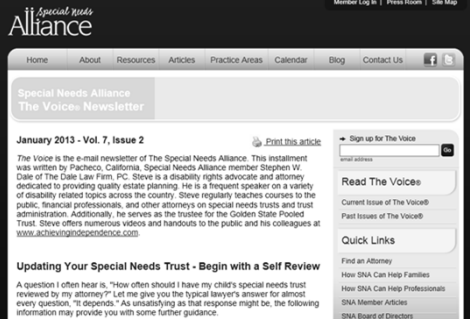


2


ACHIEVING INDEPENDENCE

Recommend Reading


Creating an Advisory Committee that Actually Functions
<http://specialneedsalliance.org/the-voice/7/2>




3

 **Two Levels of Review**
Begin with a Self-Check


- ✓ Begin with an annual review that you may undertake yourself or with the assistance of your financial or tax advisors who help with your overall financial planning.
- ✓ Once you have performed this self-check you will be able to determine if now really is the time to update your estate plan and special needs trust.




4

 **Two Levels of Review**
Begin with a Self-Check


- ✓ Once you have performed this self-check you will be able to determine if now really is the time to update your estate plan and special needs trust.




5

 **Two Levels of Review**
Begin with a Self-Check


- Most estate planning attorneys will help develop a funding plan including how each asset will be titled and keeping beneficiary designation up to date.
- If the family has a financial or tax advisor, it is a very good practice to include them in the process.
- Most advisors will work with their clients to ensure that all assets are beneficiary designations are correct.




6

 **Two Levels of Review
Begin with a Self-Check**


- It is important that your financial or tax advisor know about all of your assets including those that they may not manage.
- One advantage of involving your advisors is that in an emergency or upon your passing they will be able to better facilitate your successor trustee to gain access to your assets




7

 **Two Levels of Review
Begin with a Self-Check**


- ✓ Being prepared makes the formal review process less stressful and costly.
- ✓ You might want to consider scheduling a specific date to do your self-check, for instance your loved one's birthday or possibly the date you signed your trust.



8

 **Two Levels of Review
Begin with a Self-Check**

- ✓ You might want to consider scheduling a specific date to do your self-check, for instance your loved one's birthday or possibly the date you signed your trust.




9

ACHIEVING INDEPENDENCE

Two Levels of Review Begin with a Self-Check

The second level of review is with your attorney to review the trust and your estate plan in general.

- ✓ Generally done on an as-needed basis when a significant change occurs or relevant changes occur in the law.
- ✓ Having the relevant information from your self-review will help the attorney focus on your specific issues



10

ACHIEVING INDEPENDENCE

COMMON ISSUES




11

ACHIEVING INDEPENDENCE

Is My Plan Practical?

Have there been major changes in your own circumstances?

- If your finances have changed you may want to modify your estate plan accordingly.
- You may wish to rework the trust's directives and memorandum of intent to reflect what you now feel the trust management's focus.
- You may also want to change the amount you have allocated to the special needs trust and the portion of your estate you intend to leave to other family members.




12

ACHIEVING INDEPENDENCE

Have There Been Changes In My Loved One's Condition Or Benefits?

You should consider any changes in your loved one's situation, including changes in:

- government benefits,
- living arrangements,
- medical condition or support systems.



13

ACHIEVING INDEPENDENCE

Changes in the Beneficiaries Advocacy or Support System


- If a family member is serving as an advocate, part of the review process should also include any changes in that family member's condition.
- For instance, if a parent advocate is diagnosed with dementia or has a debilitating stroke, then it might be prudent to shift some of the advocacy duties to another family member or a professional fiduciary or care manager.

14

ACHIEVING INDEPENDENCE

Have There Been Changes In My Loved One's Condition Or Benefits?

- If there have been significant changes to benefit eligibility, it is important to bring all official documentation from the federal or state agency related to the change to the meeting with your attorney
- This meeting also will be a good time to review whether the trust beneficiary is receiving all of the benefits he or she is eligible for.




15

ACHIEVING INDEPENDENCE

Changes In My Ability To Be My Loved One's Advocate?

- Many family members serve as the primary advocate for a loved one with disabilities.
- If there is a question regarding your ability to continue in this role, it is very important to discuss your situation frankly with your attorney.




16

ACHIEVING INDEPENDENCE

Changes In My Ability To Be My Loved One's Advocate?

For example, what should you do if you have been diagnosed with a psychological condition (i.e., dementia or early stage Alzheimer's) or possibly even a physical condition which might impede your ability to advocate for your loved one?




17

ACHIEVING INDEPENDENCE

Changes In My Ability To Be My Loved One's Advocate?

- Both for your sake and that of your loved one, you should make changes to your estate plan to anticipate your future inability to serve as the primary advocate.
- Engaging a care manager both to assess the overall benefits and support network for a loved one and to help the family plan for future contingencies is one of the most efficient, and in many cases, financially advantageous steps available.




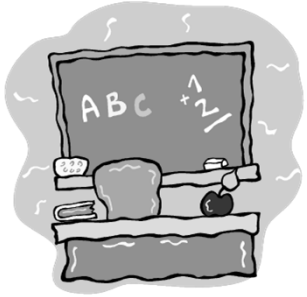
18

 You may be able to locate a Care Manager by asking your attorney for a reference or directly through a helpful web site, www.caremanager.org




The screenshot shows the NAPGCM website with a navigation menu on the left containing: FIND A CARE MANAGER, ABOUT CARE MANAGEMENT, JOIN US!, REGIONAL CHAPTERS, PUBLIC POLICY, NEWSROOM, MARKETPLACE, FIND AFFILIATE COMPANIES, MEMBERS ONLY. The main content area features a banner with the text "Trained Source for Professional Eldercare" and a "FIND A CARE MANAGER" button. A search bar is located in the top right corner.


 **LET'S BEGIN WITH BASICS**



The illustration shows a classroom setting with a chalkboard. On the board, the letters 'ABC' and the equation '1+2=3' are written. There is a desk with a chair in front of the board, and a small table with books and an apple.


 **Updating Trustees And Advisory Committee Members**

- The most common change to a special needs trust we see concerns changing the trustee, trust protectors or advisory committee members.
- For example, ten years ago it may have made sense to appoint Uncle Eddy to serve as an adviser on financial investments.
- Now, Uncle Eddy might be in prison on federal racketeering charges, and it clearly is a good time to rethink your decisions.


 **Updating Trustees And Advisory Committee Members**

- Luckily, most situations are not this extreme, but the point remains that lives can change drastically within a few short years.
- Accordingly, you should look at your trust annually to be sure it names people who best are able to perform the duties necessary to provide for and protect your loved one.


22

 **Are All Of My Assets Properly Titled?**


- You need to review your assets and confirm how they are titled.
- A financial advisor can be invaluable.
- An error in title or beneficiary designation could cause unnecessary taxes, a lengthy probate and, in the worst of circumstances, the loss of governmental benefits and unnecessary, and ongoing court supervision.




23

 **Are All Of My Assets Properly Titled?**


- For example, if an IRA or 401K upon your death by default is directed to your loved one with the disability, his or her share of the proceeds will be received directly instead of being protected in the special needs trust.
- Not only will this cause a loss of eligibility for Needs Based Benefits
 - ✓ If your loved one is unable to manage the funds a costly conservatorship of the estate
 - ✓ The entire IRA or 401K to become taxable immediately





24

 **Coordination of Gifts from Others?**

- If you anticipate that others may wish to make gifts to your disabled loved one, consider asking them to direct those gifts to the special needs trust.
- We have a letter that can be sent instructing them on how to make the gift.



 **And now is a good time to update any charitable beneficiaries as well**


 **nami**

The Nation's Voice on Mental Illness


26

Robert Fleming

Fixing Problems



nami



Special Needs
Alliance

National Alliance on Mental Illness. Special needs require special attorneys.

Administering Trusts; Fixing Problems

Robert B. Fleming
Fleming & Curti, PLC
Tucson, Arizona
www.FlemingAndCurti.com



FLEMING & CURTI PLC


Income Taxation

- Self-settled trusts are “grantor” trusts, don’t need to file separate tax returns
- Third-party trusts might be taxable to the person who put money in (during their life)
- Third-party trusts are separate taxpayers after death of contributor
 - Tax return might declare income to beneficiary
 - Taxable income should not affect SSI or Medicaid

FLEMING & CURTI PLC


Modifying Trusts with Problems

- Social Security rules on modification
- Trust rules on modification, reformation, decanting
- Who has power to modify?
 - Trustee?
 - "Trust protector"?
 - Court?




Other Problems

- Uniform Transfer to Minors Act (UTMA) accounts
 - Age 18 or age 21?
 - Transfer to trust?
- Child support for adult child with disability
- [Your Problem Here]




Brian Rubin

DURABLE POWERS OF ATTORNEY'S, GUARDIANSHIPS AND HEALTH CARE DIRECTIVES



nami



Special Needs
Alliance

National Alliance on Mental Illness. Special needs require special attorneys.



The "SITUATION"

RUBIN LAW




RUBIN LAW A Professional Corporation


MEMBER Special Needs Alliance

- **School**
- **Doctors/Hospitals/Insurance Claims**
- **Signing documents/Contracts**
- **Dealing with SSA /State**
- **Residential/Living arrangements**
- **Employment/Day Programs, Agencies**
- **Marriage**
- **Driving**
- **Arrests – MI is NOT Diplomatic Immunity...**

RUBIN LAW A Professional Corporation

MEMBER Special Needs Alliance

- If that is the situation, then:
 - What do you do WANT to do? 
 - What CAN you do **to** help Sam? 
 - Options? 


RUBIN LAW A Professional Corporation 

**Before considering
“Guardianship”,
ALWAYS
first consider the
ALTERNATIVES**

RUBIN LAW A Professional Corporation 

ALTERNATIVES – “maybe”

- ✓ SSA REP. PAYEE for SSI/SSDI
- ✓ JOINT BANK ACCOUNT
- ✓ ACCOUNT SIGNATURE AUTHORITY – FAMILY/FRIENDS
- ✓ ILLINOIS HEALTH CARE SURROGATE ACT

RUBIN LAW A Professional Corporation 

When someone is 18+:

- **presumed fully legally competent, and**
- **Only IF a court determines otherwise, is that person NOT deemed to be competent...**

RUBIN LAW A Professional Corporation

MEMBER Special Needs Alliance

IF Sam DOES have “capacity” to sign Powers of Attorney

1. Will Sam sign them?
2. Who will Sam agree to be his Agent(s)? Sam’s choice(s)?
3. What “powers” will Sam agree to “give” to the Agent(s)?
4. Will Sam allow the Agent(s) to act, or will Sam terminate the Agency as soon as... when...?

RUBIN LAW A Professional Corporation

MEMBER Special Needs Alliance

IF Sam DOES have “capacity” to sign & WILL sign Powers of Attorney.

- Should the Power(s) of Attorney, be “IMMEDIATE” or “SPRINGING” ?
- What powers should be added to statutory versions?

RUBIN LAW A Professional Corporation

MEMBER Special Needs Alliance

Example additional Powers, when appropriate... subject to State's statutory forms...

- Education
- Government Benefits
- IRS
- Residential
- Hospital Admission
- Employment matters
- Funding self settled (d4A/C) SNTs
- HIPAA release

RUBIN LAW A Professional Corporation

MEMBER Special Needs Alliance

ILLINOIS STATUTORY SHORT FORM
POWER OF ATTORNEY FOR PROPERTY

1. I, _____, hereby revoke all prior statutory powers of attorney for property executed by me and appoint _____ as my attorney-in-fact (my "agent") to act for me and in my name (in any way I could act in person) with respect to the following powers as defined in Section 2-4 of the Statutory Short Form Power of Attorney for Property Law (including all amendments), but subject to any limitations on or additions to the specified powers included in paragraph 2 or 3 below.

(NOTE: You must strike out any one or more of the following categories of powers you do not want your agent to have. Failure to strike the title of any category will cause the powers described in that category to be granted to the agent. To strike out a category you must draw a line through the title of that category.)

- (A) Real estate transactions.
- (B) Financial institution transactions.
- (C) Stock and bond transactions.
- (D) Tangible personal property transactions.
- (E) Safe deposit box transactions.
- (F) Insurance and annuity transactions.
- (G) Retirement plan transactions.
- (H) Social Security, employment and military service benefits.
- (I) Tax matters.
- (J) Claims and litigation.
- (K) Commodity and option transactions.
- (L) Business operations.
- (M) Borrowing transactions.
- (N) Estate transactions.
- (O) All other property transactions.

(NOTE: Limitations on and additions to the agent's powers may be included in this power of attorney if they are specifically described below.)

2. The powers granted above shall not include the following powers or shall be modified or limited in the following particulars:

(NOTE: Here you may include any specific limitations you deem appropriate, such as a prohibition or conditions on the sale of particular stock or real estate or special rules on borrowing by the agent.)

RUBIN LAW A Professional Corporation

9 PAGE FORM

MEMBER Special Needs Alliance

ILLINOIS STATUTORY SHORT FORM
POWER OF ATTORNEY FOR HEALTH CARE

1. I, _____, hereby revoke all prior powers of attorney for health care executed by me and appoint _____ as my attorney-in-fact (my "agent") to act for me and in my name (in any way I could act in person) to make any decisions for me concerning my personal care, medical treatment, hospitalization and health care and to require, withhold or withdraw any type of medical treatment or procedure, even though my death may ensue.

A. My agent shall have the same access to my medical records that I have, including the right to disclose the contents to others.

B. Effective upon my death, my agent has the full power to make an anatomical gift of the following:

(NOTE: Initial one. In the event none of the options are initialed, then it shall be concluded that you do not wish to grant your agent any such authority.)

_____ Any organs, tissues, or eyes suitable for transplantation or used for research or education.

_____ Specific organs:

_____ I do not grant my agent authority to make any anatomical gifts.

C. My agent shall also have full power to authorize an autopsy and direct the disposition of my remains. I intend for this power of attorney to be in substantial compliance with Section 10 of the Disposition of Remains Act. All disbursements made by my agent with respect to the disposition of my remains, including cremation, shall be binding. I hereby direct any cemetery, crematorium, business operating a columbarium or both, funeral director or embalmer, or funeral establishment who receives a copy of this document to act under it.

D. I intend for the person named as my agent to be treated as if I would be with respect to my rights regarding the use and disclosure of my individually identifiable health information to other medical facilities, including records or communications governed by the Mental Health and Developmental Disabilities Confidentiality Act. This release authority applies to any information generated by the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and regulations thereunder. I intend for the person named as my agent to serve as my "personal representative" as that term is defined under HIPAA and regulations thereunder.

(i) The person named as my agent shall have the power to authorize the release of information governed by HIPAA to third parties.

(ii) I authorize any physician, health care professional, dentist, health plan, hospital, clinic, laboratory, pharmacy or other covered health care provider, any insurance company and the Medical Information Bureau, Inc. or any other

RUBIN LAW A Professional Corporation

7 PAGE FORM

MEMBER Special Needs Alliance

Social Security Administration (How to complete) **Please read the instructions before completing this form.** Form number SSN-1023 (08-11)

Name (last, first or Type) _____ Social Security Number _____

Image (name of person or Type) _____ Social Security Number _____

Part I APPOINTMENT OF REPRESENTATIVE

I appoint this person, _____

to act as my representative in connection with my claim(s) or asserted right(s) under:
 Title I Title XVI Title XVIII Title XXII Title XXXI
 This person may, on my behalf, make and appear on direct any application or draw out evidence or statement of information and receive and receive any notices, plan or draw out evidence or statement of information. I have read and understand the contents of this appointment of representative and I authorize the Social Security Administration to release information about my pending claim(s) or asserted right(s) to designated associates who perform administrative duties (e.g. clerks, paralegals, under parties or other contractual arrangements (e.g. copying services) for or with my representative.

I request, if I have have, more than one representative. By each representative _____

Signature (Representative) _____ Address _____
 Telephone Number (with Area Code) _____ Fax Number (with Area Code) _____ Date _____

Part II ACCEPTANCE OF APPOINTMENT

I, _____, have not been suspended or prohibited from practice, hereby accept the above appointment. I certify that I am not a disqualified person as defined by the Social Security Administration, that I am not disqualified from representing the claimant as a current or former officer or employee of the United States, and that I do not receive or expect any fee for the representation, except if that party will pay the fee, unless I have been approved or distributed with the fees and more referred to on the reverse side of this representative's copy of this form. If I decide not to charge or collect a fee for the representation, I will notify the Social Security Administration. (Completion of Part II satisfies the requirement.)

Check one: I am an attorney. I am a non-attorney who is participating in the direct fee payment demonstration project.

I have been disbarred or suspended from a court or law to which I was previously admitted to practice as an attorney: Yes No

I have been disqualified from participating in or appearing before a Federal program or agency: Yes No

I declare under penalty of perjury that I have examined all the information on this form, and on any accompanying signature, and it is true and correct to the best of my knowledge.

Signature (Representative) _____ Address _____
 Telephone Number (with Area Code) _____ Fax Number (with Area Code) _____ Date _____

Part III (Optional) WAIVER OF FEE

I waive my right to charge and collect a fee under sections 206 and 1815(e)(2) of the Social Security Act. I release my client (the claimant) from any obligations, contractual or otherwise, which may be owed to me for services I have provided in connection with my client's claim(s) or asserted right(s).

Signature (Representative) _____ Date _____

Part IV (Optional) WAIVER OF DIRECT PAYMENT

I, _____, by Attorney or Non-Attorney Waiver to Receive Direct Payment. I waive my right to direct payment of a fee from the withheld post-debit refund, survivor, disability insurance or supplemental security income benefits of my client (the claimant). I do not waive my right to receive benefits directly from the Social Security Administration. I do not waive my right to file a complaint or request a hearing with respect to my client or a third party.

Signature _____ Date _____

RUBIN LAW A Professional Corporation MEMBER Special Needs Alliance

State of Illinois Department of Human Services (PERMANENT)

APPROVED REPRESENTATIVE CONSENT FORM

APPROVED REPRESENTATIVE'S INFORMATION (PLEASE PRINT LEGIBLY OR TYPE)

Name _____

Address _____

City _____ State _____ Zip Code _____

Telephone Number _____

CLIENT SECTION

I want the person named above to apply for cash, medical and/or Food Stamp benefits for me and/or my family. I understand that I am still responsible for the information that my representative gives to the Department.

Client's Signature (or mark) _____

Signature of Witness (if client signed with a mark) _____

Date: _____

REPRESENTATIVE SECTION

I have talked to the client about why they are signing this form. I (or the company I represent) will submit to the Illinois Department of Human Services a request for cash, medical, and/or Food Stamp benefits on their behalf. I have also told the client that DHS needs to have certain facts to make a correct decision on their eligibility for benefits.

I have told the client that they need to cooperate with DHS to obtain any needed verification(s) for the eligibility decision.

Representative's Signature _____

Relationship to Client: _____

RUBIN LAW A Professional Corporation MEMBER Special Needs Alliance

Page 1 of 1

➤ What if Sam refuses to sign?

➤ What if Sam does not have the "capacity", at this time, to sign?

➤ What if Sam just can't help getting himself into trouble:

- **Legal**
- **Criminal**
- **Financial**
- **Medical/health related?**

➤ What if Sam is a danger to himself or others?

RUBIN LAW A Professional Corporation MEMBER Special Needs Alliance

SO... IF... Sam won't sign PAs... BUT:

- **Sam is not able to fully manage his personal, medical, & financial decisions? OR**
- **Sam be vulnerable to others?**

RUBIN LAW A Professional Corporation MEMBER Special Needs Alliance

OR, Sam is not in the appropriate “state of mind” to make his own, good, financial, medical **AND/OR mental health decisions... THEN do you consider a **Court GUARDIANSHIP**?**

RUBIN LAW A Professional Corporation MEMBER Special Needs Alliance

1st CONSIDER...

- We all value our right to make our own choices.
- The right to make choices that, may, not always be in our best interest (i.e. what others may consider poor choices).

RUBIN LAW A Professional Corporation MEMBER Special Needs Alliance

& CONSIDER...

that to the maximum extent of one's capabilities:

- all individuals should be permitted to participate, as fully as possible, in all decisions that will affect that individual.

RUBIN
LAW A Professional Corporation

MEMBER
Special Needs Alliance

If Sam can't, or won't sign powers of attorneys...

& if you have asked yourself all of these questions...

then maybe... *just maybe*, "some form" of Guardianship could be appropriate to help, & to protect Sam, from himself, &/or from others...

RUBIN
LAW A Professional Corporation

MEMBER
Special Needs Alliance

What is a Guardianship?

A legal relationship between an individual (the guardian) who has been given Judge the legal authority & duty to make decisions on behalf of another individual (the ward), who lacks sufficient capacity to manage his or her own affairs or make & communicate important decisions.

RUBIN
LAW A Professional Corporation

MEMBER
Special Needs Alliance

What is a Guardianship?

Guardianship should seek to preserve for the person the opportunity to exercise those rights that are within his/her comprehension & judgment, allowing for the possibility of error to the *same degree as is allowed to persons who are not found by a court not to be competent.*

RUBIN
LAW A Professional Corporation



Guardianship is acquired by demonstrating to a judge that the person lacks the capacity to make decisions, due to a lack of meaningful understanding of the nature of his/her situation, due to mental illness.

RUBIN
LAW A Professional Corporation



Guardianship is acquired so that the individual with mental illness can be helped to achieve the highest level of functioning possible, despite self-defeating decisions, choices, & behaviors due to the person's illness.

RUBIN
LAW A Professional Corporation



Will Sam agree to the appointment of a Guardian, or at least not object...?

How will your decision to proceed for Guardianship, or after your appointment, your decisions as Guardian, impact Sam's "state of mind"... & your relationship with Sam?

RUBIN
LAW A Professional Corporation



- Do you want to be Sam's Guardian?
- Are you ready for the 24/7/365 job?
- Is Sam a danger to others &/or to property? Could you be "liable"?
- Can you limit any liability by only seeking "partial/limited" Guardianship?
- Can you hire a "company" or a "person" to act as Guardian?
- What if Sam needs a Guardian, but no one steps forward?

RUBIN
LAW A Professional Corporation



-  **GUARDIANSHIP** 
- Court... Law Suit...
 - M.D. Report
 - Sheriff Summons
 - Guardian ad Litem
 - Co-Guardians
 - Voting... Driving

RUBIN
LAW A Professional Corporation



DRIVER'S LICENSE?
(625 ILCS 5/6-103) (Source: P.A. 92-343, eff. 1-1-02.)


- **Sec. 6-103.** The Secretary of State shall not issue, renew, or allow the retention of any driver's license nor issue any permit under this Code:
- ...
- **5.** *To any person, as a driver, who has previously been adjudged to be afflicted with or suffering from any mental or physical disability or disease and who has not at the time of application been restored to competency by the methods provided by law;*
- ...
- **8.** To any person when the Secretary of State has good cause to believe that the person by reason of physical or mental disability would not be able to safely operate a motor vehicle upon the highways, unless the person shall furnish to the Secretary of State a verified written statement, acceptable to the Secretary of State, from a competent medical specialist to the effect that the operation of a motor vehicle by the person would not be inimical to the public safety;


Even if no assets...

- **What about SSI/SSDI?**
- **Consider Guardian of the Estate even if no assets, so that contracts can be voided? (Bonds? Reporting?)**

maintenance of the ward.)

GUARDIANSHIP

- **Move out of State** 
- **Move out of County?**
- **Why some parents/siblings decline?**
- **Then what?**

RUBIN LAW A Professional Corporation 



**ADULT
SHORT TERM
GUARDIAN
DECLARATION**

**RUBIN
LAW** A Professional Corporation

MEMBER
Special Needs
Alliance



**ADULT
STAND BY
GUARDIAN
DECLARATION**

**RUBIN
LAW** A Professional Corporation

MEMBER
Special Needs
Alliance




**RUBIN
LAW**

**Contact your local
Special Needs Alliance Attorney**
<http://www.specialneedsalliance.org/find-an-attorney/>


39

Brian Rubin

DURABLE POWERS OF ATTORNEY'S, GUARDIANSHIPS AND HEALTH CARE DIRECTIVES



nami



Special Needs
Alliance

National Alliance on Mental Illness. Special needs require special attorneys.



The "SITUATION"

RUBIN LAW




RUBIN LAW A Professional Corporation


MEMBER Special Needs Alliance

- **School**
- **Doctors/Hospitals/Insurance Claims**
- **Signing documents/Contracts**
- **Dealing with SSA /State**
- **Residential/Living arrangements**
- **Employment/Day Programs, Agencies**
- **Marriage**
- **Driving**
- **Arrests – MI is NOT Diplomatic Immunity...**

RUBIN LAW A Professional Corporation

MEMBER Special Needs Alliance

- If that is the situation, then:
 - What do you do WANT to do? 
 - What CAN you do **to** help Sam? 
 - Options? 


RUBIN LAW A Professional Corporation 

**Before considering
“Guardianship”,
ALWAYS
first consider the
ALTERNATIVES**

RUBIN LAW A Professional Corporation 

ALTERNATIVES – “maybe”

- ✓ SSA REP. PAYEE for SSI/SSDI
- ✓ JOINT BANK ACCOUNT
- ✓ ACCOUNT SIGNATURE AUTHORITY – FAMILY/FRIENDS
- ✓ ILLINOIS HEALTH CARE SURROGATE ACT

RUBIN LAW A Professional Corporation 

The statute below applies when a patient lacks decisional capacity, at least as the health care provider assesses that the patient will make his or her own medical decisions. In accordance with this statute, if the patient has not signed, or does not have the authority to sign a Durable Health Care Power of Attorney, and there is no next-of-kin available, and the patient is not married, and the patient does not have any adult children, then a person can make all medical decisions.

(755 ILCS 400) Health Care Surrogate Act.

(755 ILCS 400-25) - Sec. 25. Surrogate decision making.

(a) When a patient lacks decisional capacity, the health care provider must make a reasonable inquiry as to the availability and authority of a health care agent under the Powers of Attorney for Health Care Law. When no health care agent is identified and available, the health care provider must make a reasonable inquiry as to the availability of possible surrogates listed in items (1) through (4) of this subsection. For purposes of this section, a reasonable inquiry includes, but is not limited to, contacting a member of the patient's family or other health care agent by examining the patient's personal effects or medical records. If a family member or other health care agent is identified, an attempt to contact that person by telephone must be made within 24 hours after a determination by the provider that the patient lacks decisional capacity. No person shall be liable for civil damages or subject to professional discipline based on a claim of violating a patient's right to confidentiality as a result of making a reasonable inquiry as to the availability of a patient's family member or health care agent, except for willful or wanton misconduct.

The surrogate decision makers, as identified by the attending physician, are then authorized to make decisions as follows: (i) for patients who lack decisional capacity and do not have a qualifying opinion, medical treatment decisions may be made in accordance with subsection (b-5) of Section 20; and (ii) for patients who lack decisional capacity and have a qualifying condition, medical treatment decisions including whether to forgo life-sustaining treatment on behalf of the patient may be made without court order or judicial involvement in the following order of priority:

- (1) the patient's guardian of the person;
- (2) the patient's spouse;
- (3) any adult son or daughter of the patient;
- (4) any adult brother or sister of the patient;
- (5) any adult grandchild of the patient;
- (6) a close friend of the patient;
- (7) the patient's guardian of the estate.

The health care provider shall have the right to rely on any of the above surrogates if the provider believes after reasonable inquiry that neither a health care agent under the Powers of Attorney for Health Care Law nor a surrogate of higher priority is available.

Where there are multiple surrogate decision makers at the same priority level in the hierarchy, it shall be the responsibility of those surrogates to make reasonable efforts to reach a consensus as to their decision on behalf of the patient regarding the forgoing of the sustaining treatment. If 2 or more surrogates who are in the same category and have equal priority indicate to the provider that they disagree about the health care matter at issue, a majority of the available persons in that category (or the parent with custodial rights) shall be the decision maker.

Courtesy of the Rubin Law, Professional Corporation

RUBIN LAW A Professional Corporation

MEMBER Special Needs Alliance

888 to Rubin - 847.274.7899 - www.patientsurrogate.com - 800Rubin@illscra.com Page 1 of 2

ADVANCE DIRECTIVES

Powers of Attorney

- Financial/Property
- Health Care/Medical
- Living Will
- Mental Health Treatment
- Could be limited/partial

RUBIN LAW A Professional Corporation

MEMBER Special Needs Alliance

Does Sam have “capacity” to sign Powers of Attorney?

Sam must understand the purpose of the PA, the “role” of the “Agent”, & his ability to terminate the agency.

RUBIN LAW A Professional Corporation

MEMBER Special Needs Alliance

When someone is 18+:

- **presumed fully legally competent, and**
- **Only IF a court determines otherwise, is that person NOT deemed to be competent...**

RUBIN LAW A Professional Corporation

MEMBER Special Needs Alliance

IF Sam DOES have “capacity” to sign Powers of Attorney

1. Will Sam sign them?
2. Who will Sam agree to be his Agent(s)? Sam’s choice(s)?
3. What “powers” will Sam agree to “give” to the Agent(s)?
4. Will Sam allow the Agent(s) to act, or will Sam terminate the Agency as soon as... when...?

RUBIN LAW A Professional Corporation

MEMBER Special Needs Alliance

IF Sam DOES have “capacity” to sign & WILL sign Powers of Attorney.

- Should the Power(s) of Attorney, be “IMMEDIATE” or “SPRINGING” ?
- What powers should be added to statutory versions?

RUBIN LAW A Professional Corporation

MEMBER Special Needs Alliance

Example additional Powers, when appropriate... subject to State's statutory forms...

- Education
- Government Benefits
- IRS
- Residential
- Hospital Admission
- Employment matters
- Funding self settled (d4A/C) SNTs
- HIPAA release

RUBIN LAW A Professional Corporation

MEMBER Special Needs Alliance

ILLINOIS STATUTORY SHORT FORM
POWER OF ATTORNEY FOR PROPERTY

1. I, _____, hereby revoke all prior statutory powers of attorney for property executed by me and appoint _____ as my attorney-in-fact (my "agent") to act for me and in my name (in any way I could act in person) with respect to the following powers as defined in Section 5-4 of the Statutory Short Form Power of Attorney for Property Law (including all amendments), but subject to any limitations on or additions to the specified powers included in paragraph 2 or 3 below.

(NOTE: You must strike out any one or more of the following categories of powers you do not want your agent to have. Failure to strike the title of any category will cause the powers described in that category to be granted to the agent. To strike out a category you must draw a line through the title of that category.)

- (a) Real estate transactions.
- (b) Financial institution transactions.
- (c) Stock and bond transactions.
- (d) Tangible personal property transactions.
- (e) Safe deposit box transactions.
- (f) Insurance and annuity transactions.
- (g) Retirement plan transactions.
- (h) Social Security, employment and military service benefits.
- (i) Tax matters.
- (j) Claims and litigation.
- (k) Commodity and option transactions.
- (l) Business operations.
- (m) Borrowing transactions.
- (n) Estate transactions.
- (o) All other property transactions.

(NOTE: Limitations on and additions to the agent's powers may be included in this power of attorney if they are specifically described below.)

2. The powers granted above shall not include the following powers or shall be modified or limited in the following particulars:

(NOTE: Here you may include any specific limitations you deem appropriate, such as a prohibition or conditions on the sale of particular stock or real estate or special rules on borrowing by the agent.)

RUBIN LAW A Professional Corporation

9 PAGE FORM

MEMBER Special Needs Alliance

ILLINOIS STATUTORY SHORT FORM
POWER OF ATTORNEY FOR HEALTH CARE

1. I, _____, hereby revoke all prior powers of attorney for health care executed by me and appoint _____ as my attorney-in-fact (my "agent") to act for me and in my name (in any way I could act in person) to make any decisions for me concerning my personal care, medical treatment, hospitalization and health care and to require, withhold or withdraw any type of medical treatment or procedure, even though my death may ensue.

A. My agent shall have the same access to my medical records that I have, including the right to disclose the contents to others.

B. Effective upon my death, my agent has the full power to make an anatomical gift of the following:

(NOTE: Initial one. In the event none of the options are initialed, then it shall be concluded that you do not wish to grant your agent any such authority.)

_____ Any organs, tissues, or eyes suitable for transplantation or used for research or education.

_____ Specific organs: _____

_____ I do not grant my agent authority to make any anatomical gifts.

C. My agent shall also have full power to authorize an autopsy and direct the disposition of my remains. I intend for this power of attorney to be in substantial compliance with Section 10 of the Disposition of Remains Act. All disbursements made by my agent with respect to the disposition of my remains, including cremation, shall be binding. I hereby direct any cemetery, crematorium, business conducting a crematorium or columbarium or both, funeral director or embalmer, or funeral establishment who receives a copy of this document to act under it.

D. I intend for the person named as my agent to be treated as if I would be with respect to my rights regarding the use and disclosure of my individually identifiable health information to other medical facilities, including records or communications governed by the Mental Health and Developmental Disabilities Confidentiality Act. This release authority applies to any information generated by the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and regulations thereunder. I intend for the person named as my agent to serve as my "personal representative" as that term is defined under HIPAA and regulations thereunder.

(i) The person named as my agent shall have the power to authorize the release of information governed by HIPAA to third parties.

(j) I authorize any physician, health care professional, dentist, health plan, hospital, clinic, laboratory, pharmacy or other covered health care provider, any insurance company and the Medical Information Bureau, Inc. or any other

RUBIN LAW A Professional Corporation

7 PAGE FORM

MEMBER Special Needs Alliance

DECLARATION FOR MENTAL HEALTH TREATMENT *Page 1 of 5*

I, _____, being an adult of sound mind, willfully and voluntarily make this declaration for mental health treatment to be followed if it is determined by 2 physicians or the court that my ability to receive and evaluate information effectively or communicate decisions is impaired to such an extent that I lack the capacity to refuse or consent to mental health treatment. "Mental health treatment" means electroconvulsive treatment, treatment of mental illness with psychotropic medication, and admission to and retention in a health care facility for a period up to 17 days.

I understand that I may become incapable of giving or withholding informed consent for mental health treatment due to the symptoms of a diagnosed mental disorder. These symptoms may include:

PSYCHOTROPIC MEDICATIONS

If I become incapable of giving or withholding informed consent for mental health treatment, my wishes regarding psychotropic medications are as follows:

_____ I consent to the administration of the following medications: _____

_____ I do not consent to the administration of the following medications: _____

Conditions or limitations: _____

ELECTROCONVULSIVE TREATMENT

If I become incapable of giving or withholding informed consent for mental health treatment, my wishes regarding electroconvulsive treatment are as follows:

_____ I consent to the administration of electroconvulsive treatment.

_____ I do not consent to the administration of electroconvulsive treatment.

Conditions or limitations: _____

RUBIN LAW A Professional Corporation
5 PAGE FORM
MEMBER Special Needs Alliance

755 ILCS 43/75

DECLARATION FOR MENTAL HEALTH TREATMENT

- To make clear preferences & may give authority to someone regarding (but not limited to):
 - Psychotropic Medications
 - Hospitalization for mental health issues for up to 17 days.
 - Electroconvulsive Therapy/Treatment (ECT)
- Requires 2 witnesses, not related, nor the agent, nor the mental health service provider.
- In effect only when by Court order or 2 physicians determine person incapable of making own decisions on such matters.
- Limited to 3 years - unless in operation per above.
- Appointment must be accepted in writing.
- Can be revoked if 1 physician determines person does have sufficient capacity, and signs the revocation along with the person.

RUBIN LAW A Professional Corporation

RUBIN LAW A PROFESSIONAL CORPORATION
1110 W. Lake Cook Rd., Buffalo Grove, Illinois 60089-1997
Voice 847.279.7899, Fax 847.279.0000, Toll Free 866.to.rubin
email@rubinlawcorp.com, www.rubinlawcorp.com
Attorneys: Benjamin A. Rubin, Brian N. Rubin, Judith L. Smith
Legal Assistants: Karen Muchnik, Nicole Rosenthal, Linda Rubin

DELEGATION OF RIGHTS TO MAKE EDUCATIONAL DECISIONS
Illinois Statute 105 ILCS 5/14-6.10

On this _____ day of _____, 20____, I, _____ (DELEGATOR'S NAME), hereby grant my rights to give consent and make decisions concerning my education to _____ (DELEGATEE'S NAME), my designated representative, who will be considered my "parent" for purposes of the Individuals with Disabilities Education Improvement Act of 2004 and Article 16 of the School Code and will exercise all of the rights and responsibilities concerning my education that are conferred on a parent under those laws. I understand and give my consent for my Designated Representative, to make all decisions relating to my education on my behalf. I understand that I have the right to be present at meetings held to develop my individualized education program and that I have the right to visit my school or campus if I may have and that the school district must consider them. This delegation will be in effect for one year from the date of execution of this document, and may be renewed by my action or other formal notification. I also understand that I have the right to revoke this Delegation of Rights at any time and reserve the right to make my own decisions regarding my education. I understand that I must notify the school district immediately if I revoke this Delegation of Rights prior to its expiration.

Student: _____

Accepted by: _____
Designated Representative

RUBIN LAW A Professional Corporation
MEMBER Special Needs Alliance

SO... IF... Sam won't sign PAs... BUT:

- **Sam is not able to fully manage his personal, medical, & financial decisions? OR**
- **Sam be vulnerable to others?**

RUBIN LAW A Professional Corporation MEMBER Special Needs Alliance

OR, Sam is not in the appropriate “state of mind” to make his own, good, financial, medical **AND/OR mental health decisions... THEN do you consider a **Court GUARDIANSHIP**?**

RUBIN LAW A Professional Corporation MEMBER Special Needs Alliance

1st CONSIDER...

- We all value our right to make our own choices.
- The right to make choices that, may, not always be in our best interest (i.e. what others may consider poor choices).

RUBIN LAW A Professional Corporation MEMBER Special Needs Alliance

& CONSIDER...

that to the maximum extent of one's capabilities:

- all individuals should be permitted to participate, as fully as possible, in all decisions that will affect that individual.

RUBIN
LAW A Professional Corporation

MEMBER
Special Needs Alliance

If Sam can't, or won't sign powers of attorneys...

& if you have asked yourself all of these questions...

then maybe... *just maybe*, "some form" of Guardianship could be appropriate to help, & to protect Sam, from himself, &/or from others...

RUBIN
LAW A Professional Corporation

MEMBER
Special Needs Alliance

What is a Guardianship?

A legal relationship between an individual (the guardian) who has been given Judge the legal authority & duty to make decisions on behalf of another individual (the ward), who lacks sufficient capacity to manage his or her own affairs or make & communicate important decisions.

RUBIN
LAW A Professional Corporation

MEMBER
Special Needs Alliance

What is a Guardianship?

Guardianship should seek to preserve for the person the opportunity to exercise those rights that are within his/her comprehension & judgment, allowing for the possibility of error to the same degree as is allowed to persons who are not found by a court not to be competent.

RUBIN
LAW A Professional Corporation



Guardianship is acquired by demonstrating to a judge that the person lacks the capacity to make decisions, due to a lack of meaningful understanding of the nature of his/her situation, due to mental illness.

RUBIN
LAW A Professional Corporation



Guardianship is acquired so that the individual with mental illness can be helped to achieve the highest level of functioning possible, despite self-defeating decisions, choices, & behaviors due to the person's illness.

RUBIN
LAW A Professional Corporation



Will Sam agree to the appointment of a Guardian, or at least not object...?

How will your decision to proceed for Guardianship, or after your appointment, your decisions as Guardian, impact Sam's "state of mind"... & your relationship with Sam?

RUBIN
LAW A Professional Corporation



- Do you want to be Sam's Guardian?
- Are you ready for the 24/7/365 job?
- Is Sam a danger to others &/or to property? Could you be "liable"?
- Can you limit any liability by only seeking "partial/limited" Guardianship?
- Can you hire a "company" or a "person" to act as Guardian?
- What if Sam needs a Guardian, but no one steps forward?

RUBIN
LAW A Professional Corporation



-  **GUARDIANSHIP** 
- Court... Law Suit...
 - M.D. Report
 - Sheriff Summons
 - Guardian ad Litem
 - Co-Guardians
 - Voting... Driving

RUBIN
LAW A Professional Corporation



DRIVER'S LICENSE?
(625 ILCS 5/6-103) (Source: P.A. 92-343, eff. 1-1-02.)


- **Sec. 6-103.** The Secretary of State shall not issue, renew, or allow the retention of any driver's license nor issue any permit under this Code:
- ...
- **5.** *To any person, as a driver, who has previously been adjudged to be afflicted with or suffering from any mental or physical disability or disease and who has not at the time of application been restored to competency by the methods provided by law;*
- ...
- **8.** To any person when the Secretary of State has good cause to believe that the person by reason of physical or mental disability would not be able to safely operate a motor vehicle upon the highways, unless the person shall furnish to the Secretary of State a verified written statement, acceptable to the Secretary of State, from a competent medical specialist to the effect that the operation of a motor vehicle by the person would not be inimical to the public safety;


Even if no assets...

- **What about SSI/SSDI?**
- **Consider Guardian of the Estate even if no assets, so that contracts can be voided? (Bonds? Reporting?)**

maintenance of the ward.)

GUARDIANSHIP

- **Move out of State** 
- **Move out of County?**
- **Why some parents/siblings decline?**
- **Then what?**

RUBIN LAW A Professional Corporation 



**ADULT
SHORT TERM
GUARDIAN
DECLARATION**

**RUBIN
LAW** A Professional Corporation

MEMBER
Special Needs
Alliance



**ADULT
STAND BY
GUARDIAN
DECLARATION**

**RUBIN
LAW** A Professional Corporation

MEMBER
Special Needs
Alliance



**RUBIN
LAW**

**Contact your local
Special Needs Alliance Attorney**
<http://www.specialneedsalliance.org/find-an-attorney/>

39
