

# PLANNING FOR THE FUTURE

of children and adults with intellectual and/or developmental disabilities



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**RUBIN  
LAW** A Professional  
Corporation



# Welcome

## Our agenda...

1. A short video introduction of the speakers...
2. Sherri Schneider on Government Benefits
3. Brian & Benji Rubin on Legal & Future Planning



FAMILY  
BENEFIT  
SOLUTIONS, INC.

Sherri Schneider

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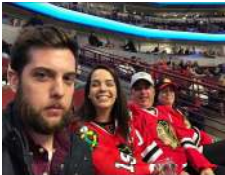
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### My Life

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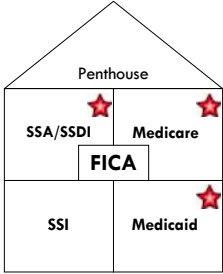
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### House of Benefits <sup>TM</sup>

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★ = Goal Room

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## SSA/SSDI

- Retirement
- Early Retirement
- Widow's pension
- Disabled – Title II

- MUST have paid into FICA
- Quarter: **2020 is \$ 1410**
- Does NOT look at assets

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## Disability Definition Requirements

Different for children  
than for adults



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## Disability for under 18 years old

- ☐ Is not working at a job that we consider to be substantial work; and
- ☐ Has a physical or mental condition (or a combination of conditions) that results in "marked and severe functional limitations." This means that the condition(s) very seriously limits his or her activities; and
- ☐ The condition(s) has lasted, or is expected to last, at least 1 year or is expected to result in death.
- ☐ To decide whether your child is disabled, SSI looks at medical and other information (such as information from schools and from you) about his or her condition(s), and they consider how the condition(s) affects his or her daily activities. SSI considers questions such as:
- ☐ What activities is your child not able to do, or is limited in doing?
- ☐ What kind of and how much extra help does your child need to perform age-appropriate activities -- for example, special classes at school, medical equipment?
- ☐ Do the effects of treatment interfere with your child's day-to-day activities?

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## Adult Disability – per Social Security

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- The definition of disability under Social Security is different than other programs.
  - Social Security pays only for total disability. **No benefits are payable for partial disability or for short-term disability.**
  - "Disability" under Social Security is based on your inability to work.
  - They consider you disabled under Social Security rules if:
    - You cannot do work that you did before;
    - They decide that you cannot adjust to other work because of your medical condition(s);
- And**  
\*\*\*\*\*Your disability has lasted or is expected to last for at least one year or to result in death.

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## Adult Disability – per Social Security

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### A. Compassionate Allowance

OR

### B. Diagnosis AND Functional Limitations

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## Disability: A. COMPASSIONATE ALLOWANCE

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### - Approved with-in 20 days

Social Security has an obligation to provide benefits quickly to applicants whose medical conditions are so serious that their conditions obviously meet disability standards.

Compassionate Allowances (CAL) are a way of quickly identifying diseases and other medical conditions that invariably qualify under the Listing of Impairments based on minimal objective medical information. Compassionate Allowances allow Social Security to target the most obviously disabled individuals for allowances based on objective medical information that we can obtain quickly.

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## Compassionate Allowance

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If NOT a compassionate allowance:

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Need to **prove** 2 things:

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First: Need to have:

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- ☐ A **DIAGNOSIS** on Social Security's list of impairments
- ☐ Go to SSA.GOV and Listings of impairments
  - ☐ "Sections" for every bodily function
  - ☐ Physical, Organ & "Mental"

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## What are they looking for??

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### DEVELOPMENTAL DISABILITY:

- WAIS – full score of 70 or below
- during developmental years

### MENTAL ILLNESS:

- 3 inpatient stays within the past 12 months
- compliance with doctor & medication
- clean & sober for at least 6 months+

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## What are they looking for Cont'

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### PHYSICAL DISABILITY:

- affecting 2 limbs

### SEIZURES:

- continuing despite medication

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## BUT:

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Many people CAN work  
having any diagnosis



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## Second: Functional Limitations

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- Because I have this diagnosis, WHY CAN'T I WORK?

NEED TO PROVE WITH DOCUMENTATION from a professional – WHY Can't work???

- ▣ Concentration, pace, persistence
- ▣ Appropriate social functioning
- ▣ Activities of daily living
- ▣ Understand/Remember/Apply information★
- ▣ Interact with others★
- ▣ Adapt or manage oneself★

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## ALL MEDICAL INFORMATION:

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- Best if not older than 3-6 months old
- MUST show functional limitations as to why CANNOT work
- Should be consistent
- School records / IEP: Should compare to a TYPICAL child

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## Once they get enough medical info:

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- Case gets reviewed by a doctor in Springfield.
  - ▣ Medically awarded ☺
  - ▣ Medically denied – there is some work that can be done ☹ - usually did not prove significant functional limitations
  - ▣ Go to a Consultative Examination (CE) ☹

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## 2<sup>nd</sup> Definition of Disability

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### □ Unable to earn:

### □ SGA : Substantial Gainful Activity

NOT BLIND

2020 = \$ 1 260

BLIND

2020 = \$ 2 110

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## Working Over SGA??

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- WIPA- Contact the IATP WIPA Program toll free at (800) 852-5110
- Work Incentive Planning and Assistance (WIPA) Program will give you the information you need to make the best choice about your future.
- - A federally funded program created to help individuals receiving SSI/SSDI make informed choices about being employed. If you are working, have a job offer or ready to start employment, they will help you understand how working will affect your benefits. They will explain Social Security work incentives in addition to state benefits, such as Medicaid, subsidized housing, TANF, food stamps, etc..

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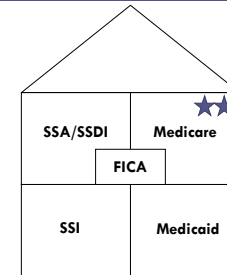
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## House of Benefits <sup>TM</sup>

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## Medicare

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### □ Who is eligible?

- 65 y/o
- 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

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## Medicare

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### □ Parts of Medicare:

- Part A – inpatient hospital
  - Usually free
- Part B – Outpatient & doctors
  - Monthly premium
- Part C – Medicare Advantage Plan
- Part D – Drug benefit
  - 14 companies selling 42 different plans – each has drug list
  - Call SHIP or 1-800-MEDICARE to determine best plan

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## Medicare

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### □ WHO pays first?

- Coordination of benefits Hotline: Medicare & other insurance: 800-999-1118
- Medicare Part A – 877-602-2430
- DME Claims – 800-270-2313
- Medicare Part B – 800-642-6930
- Medicare in general – 1-800-MEDICARE



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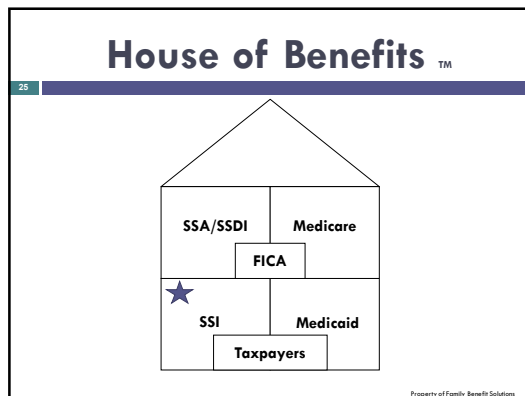
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## SSI

- **Supplemental Security Income**
  - 1 Person Maximum - > 2020 in IL = \$ 783
- MOST STATES ALSO GIVE A STATE CHECK – NOT IL
- Who is eligible?
  - 65 years old or older
  - Blind in both eyes
  - Disabled:
    - Compassionate Allowance
    - or
    - Listing level impairment AND functional limitations

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## SSI

- **How Process Works**
- **3 Decisions –**
  - **Disabled?** (have we proven CANNOT work)
  - **Date of onset?** – BE CAREFUL - if after age 22, will lose "goodies" later
  - **Need payee?**
    - **THIS IS A JOB !!!!!**

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## SSI

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- LOOKS at income, assets, and living arrangements
  - If over income or asset limit – no SSI
  - Under 18 years old, parents income & assets count (deeming)
  - Spouse's income & assets count

### THREE PARENTAL ASSETS ARE EXEMPT FOR A MINOR CHILD:

- Homestead
- One car
- Qualified retirement accounts

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## SSI: INCOME – earned & unearned

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- INCOME:
  - Between 18 - 22 y/o & Full time Student exemption
    - 2020 = \$ 7670/yr
  - 22 y/o + or Not full time Student - monthly
    - First \$85 ok
    - then for every \$2 earned, they subtract \$1 SSI

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## SSI - ASSETS

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- ASSETS:
  - One single person – 18 or older, ALLOWED:
    - Home that you live in
    - One car – any value
    - Less than \$2,000 (checking, savings, stocks, bonds, IRA, C/D, money market, 401K, cash value of life insurance – if you are the owner, savings bonds, brokerage accounts)

\*\*\*\*\* Three year look back \*\*\*\*\*

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## SSI – Living Arrangements

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- Living arrangement = where you live and who pays for your food and shelter items.
- SSI benefits may be reduced because of the living arrangement when any of the following apply:
  - ▣ You live in *another person's* home and pay less than your fair share of the food or housing costs.
  - ▣ You live in your own home and someone else is paying for all or part of your food, rent, mortgage, or utility expenses.
  - ▣ You live in a private or public hospital or nursing home for the whole month and Medicare pays for over one-half of the cost of your care.
  - ▣ You live in an institution run by a federal, state, or local government for the whole month.
  - ▣ You are a minor child living in a medical treatment facility for the whole month and private insurance or Medicaid, or both, pays over half your bill.

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## SSI

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- Living Arrangements
  - Living with another = loss of 1/3 (\$522 in 2020)
  - Living in OWN household



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## SSI – Living Arrangements Cont'

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- Rental arrangement -Needs written rental agreement
- Why wouldn't everyone rent – get more \$\$\$\$ ?
  - ▣ Will the rental income cause a tax issue for the parent?

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## SSI – Living Arrangements

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### □ FAIR SHARE

- Get all necessary household bills
- Divide the monthly amount by number of people in the household
  - If the SSI recipient's share is LESS than \$783, he/she will get \$783
  - If the SSI recipient's share is MORE than \$783, he/she is getting help & will get the reduced amount of \$522

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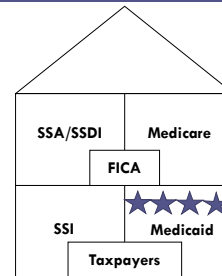
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## House of Benefits™

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## Illinois Medicaid

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- **Many names: Illinois Department of Public Aid -vs- Department of Family & Child Services -vs- KidCare -vs- All Kids -vs- Illinois Department of Healthcare and Family Services**
- **Medicaid office: CASH, MEDICAL & ??**

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### If you ONLY have IL Medicaid

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- ☐ And no Medicare or no commercial insurance, you will NOT have traditional Medicaid
- ☐ You will have to pick an INTEGRATED CARE PLAN – Health Choice IL - has it's own hospitals, doctors & pharmacies.
- ☐ If you do not actively pick one, one will be automatically assigned to you

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### Illinois Medicaid (Cont.)

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- **Traditional Illinois Medicaid covers:**
  - **Most acute care hospitals in Illinois**
  - **Certain doctors – if accept Medicaid – co-pay is \$0 – for now**
  - **\*\*\* Pharmacies – co-pay is \$0 – for now**
  - **Diapers & bed pads delivered**
  - **DME – with prior authorization**
  - **Many nursing homes**
  - **QMB – if eligible- Part B and Part D Premiums**

(There is no co-pay for pregnant women, people enrolled in the Breast & Cervical Cancer treatment program, residents of nursing homes, supportive living facilities and intermediate care facilities)

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## BEGINNING JANUARY 1, 2020

IL Medicaid will **ONLY** pay for prescriptions, referrals, services, etc....  
IF THE PRESCRIPTION IS WRITTEN BY AN IL MEDICAID ENROLLED PROVIDER

Need to:

- Find a Medicaid enrolled doctor
- Or
- Ask your doctor to enroll in IL Medicaid

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## Medicaid -> NOT JUST FOR MEDICAL



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## Medicaid Pays

- **PROGRAMMING**  
-for after 18 years old  
(alone or with another payor )

- Day Program
- Supported Employment
- Job Coach
- Residential



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## Medicaid Waiver Programs

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Some programs, ALL you need to have is IL Medicaid.

Some programs, you need to have IL Medicaid AND another source of funding.

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## MEDICAID WAIVER PROGRAMS

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**Rubin Law will be covering the specific IL Medicaid waiver programs in the next part of this presentation.**

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## Medicaid Facts

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- ☐ Medicaid is not very portable
  - Out of state
- ☐ Medicaid is not accepted at every doctor
- ☐ Medicaid is ALWAYS the payor of last resort

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## WHO CAN GET IL MEDICAID?

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BEFORE 1/1/14:  
MUST BE A CATEGORY

AFTER 1/1/14:  
Affordable Care Act (ACA)

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## Illinois Medicaid

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### TRADITIONAL CATEGORIES:

- ▣ Refugee
- ▣ 65 & over
- ▣ Blind in both eyes
- ▣ Disabled (SSDI, SSI, disease ends in death, unable to work for 12 months or more - substantiated with medical records)
- ▣ Pregnant
- ▣ Under 19 years old
- ▣ Parent(s) living with child(ren) who are under 18 years old and that are legally theirs – the entire family is eligible
- ▣ DCFS or Foster Child
- ▣ Breast or cervical cancer – thru Dept of Health

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## NEW CATEGORY

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- ▣ Now, thanks to the ACA and IL [Public Act 98-104 \(pdf\)](#), more adults are eligible for Medicaid in Illinois and the public is able to apply for Medicaid through a new, online application called the Application for Benefits Eligibility (ABE).
- ▣ Beginning January 1, 2014, all Illinois residents between 19 and 64 years of age, who are U.S. citizens or who have legal status, and who have monthly income less than (2020) \$1,467 for an individual are eligible for Medicaid through the new “ACA Adult” category.

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## Affordable Care Act Clients

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- Illinois Medicaid expansion
- "ACA"
- ONLY LOOK AT INCOME
- DO NOT LOOK AT ASSETS
- **CANNOT** have MEDICARE
- TODAY – WILL PAY FOR WAIVER PROGRAMS- including nursing homes

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## Medicaid

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- Redeterminations YEARLY
- Many people get cancelled incorrectly



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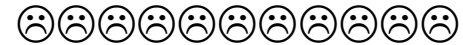
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## If we lose Medicaid:

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- We may lose payment for Medicaid waiver programs



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# Illinois Medicaid

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- **INCOME –**
  - For all categories– **NOT ACA**
  - Community
    - If over allowable standard, monthly deductible “spend-down” : **2020=(\$1063 + \$25 = \$ 1088)**
    - Long Term Care
      - Resident can keep **\$ 30, \$60 or \$90 monthly**
      - Resident can pay for Medicare and other health insurance
      - If single, balance of income to facility
      - If married, adhere to spousal rules

Department of Family Resource Services

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# Illinois Medicaid

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## □ ASSETS –

- ONLY for Aged, Blind or Disabled
- If over allowable standard = deductible “spend-down”
- Community
  - 1 single person - allowed: house they live in, 1 car and \$2000
  - No look back
- Long Term Care
- DRA - February 8, 2006
- SMART Act
- 60 month look back
- Spousal Impoverishment




Photo credit: Everett Collection

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## HBWD – Health Benefits for Workers with a Disability

HBWD – Health Benefits for Workers with a Disability

- Illinois resident between 16 & 64
- MUST have “disability”
- MUST be employed & pay into FICA
- Allows person to earn more money
- Allows person to have more assets

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### Traditional Medicaid vs. Health Benefits for Workers with Disabilities

	TRADITIONAL	NEW HBWD
INCOME {1 Person}	\$1088	\$3746 (\$3721 + \$25)
ASSETS {1 Person}	\$2,000	UP TO \$25,000 & Qualified Retirement Accounts ARE EXEMPT!
COST	If over \$1088 Monthly spend down. No coverage until spend down is met.	CANNOT be over. Monthly premium to “buy” coverage is \$0 - \$100+

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## HBWD Cont'

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HBWD allows up to \$25,000 in assets

**IF YOU LIVE IN A CILA → No longer considered "Long Term Care" under IL Medicaid.**

**You DO NOT need to spend-down your increased assets**

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## Movin' On Up

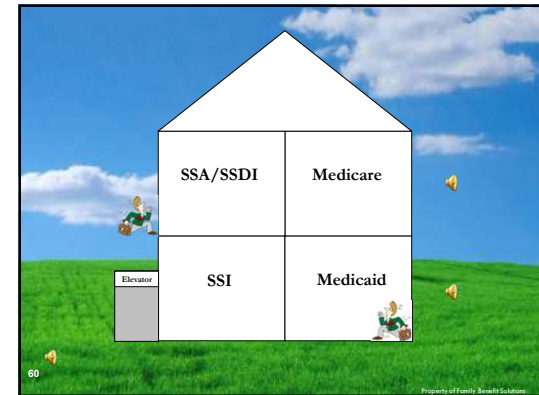
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☐ **If we are in the "basement", how do we get to the "penthouse"?**



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## Riding the Elevator

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- 1) Works and earns FICA on own but LESS than SGA = monthly (2020= \$1260)
- 2) DAC = Disabled Adult Child
  - CDB = Childhood Disability Benefits
    - a) Onset date that Social Security has is before age 22
      - AND
    - b) Parent with a FICA work record
      - AND
    - c) That Parent either:
      - Becomes retired & collects SSA
        - or
      - Becomes disabled themselves and collects SSDI
        - or
      - Becomes deceased

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## Riding the Elevator (Cont.)

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- Adult Child moves from SSI to DAC (disability)
- AND
  - In 24 months → Medicare



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## Riding the Elevator (Cont')

- 63
- OLD RULE:
- Prove you have enough FICA quarters on your own work record
  - Or
- Prove your parent has retired & collects, or your parent has a disability of their own & collects or your parent has expired
- AUTOMATICALLY MOVED TO SSDI or DAC

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## Riding the Elevator (Cont')

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### NEW RULE:

A **NEW APPLICATION** will need to be initiated.  
New Medical records will need to be provided to be sent to Springfield's doctors to review to determine if the applicant meets the current rules of disability for their diagnosis.

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## What Stops the Elevator?

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### ☐ Marriage



### ☐ Working over SGA



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## How to Lose These Benefits?

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- ☐ 1) 10 day rule
- ☐ 2) Redeterminations
- ☐ 3) Inheritances

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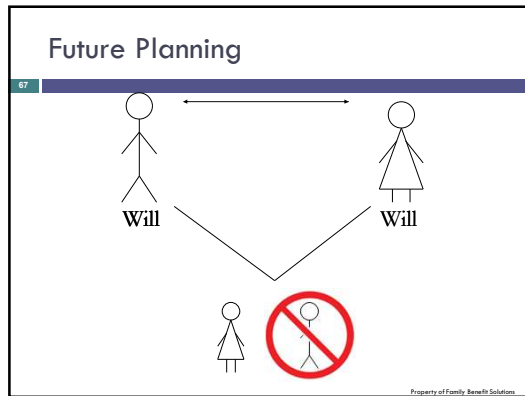
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REAL ANSWER IS- SPECIAL ESTATE  
PLANNING TO INCLUDE:

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**SPECIAL  
NEEDS  
TRUST (S)  
The Rubins  
will cover...**

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2020 STIMULUS CHECKS

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If you receive SSI and receive a stimulus check from the government, this amount:

Will NOT count as income the month you receive it  
WILL NOT count as an asset for the next 12 months.

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## 2020 STIMULUS CONTINUED

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How will SSI know if the money in your account is stimulus (to be not counted) or actual earned money to be counted?

- Report receipt of this check to SSI.
- Include: Name, SS#, proof of check (copy of check, bank statement showing direct deposit)
- Send it in a way you will have proof of their receipt (certified, request for signature, tracking, fax receipt showing complete). **This will help any potential future over-payment situations.**

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## FAMILY BENEFIT SOLUTIONS, INC.

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## Legal & Future Planning for children & adults with special needs...

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**BENJI RUBIN**  
Attorney & Sibling

**RUBIN**  
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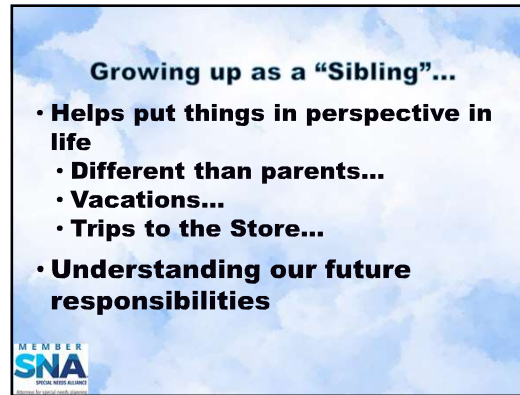
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**S.I.B.S.** [www.sibsnetwork.org](http://www.sibsnetwork.org)  
**Supporting Illinois Brothers & Sisters**  
**Illinois Chapter of the national**  
**Sibling Leadership Network**

Sibling Leadership Network  
[www.siblingleadership.org](http://www.siblingleadership.org)

The Sibling Leadership Network (SIBS) is a national organization of siblings who share the experience of having a brother or sister with a disability. SIBS provides siblings with information, support, and tools to help them understand and manage their own feelings and the feelings of others. SIBS also provides siblings with information, support, and tools to help them understand and manage their own feelings and the feelings of others.

**Request Form Item # 7**

Join the network for free at [www.sibsnetwork.org](http://www.sibsnetwork.org)  
 Visit us on Facebook at: The Sibling Leadership Network.

[www.siblingleadership.org](http://www.siblingleadership.org)

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What **YOU**,  
 or **"OTHERS"**, do  
**IMPACTS**  
 Government Benefits

MEMBER **SNA** SPECIAL NEEDS ALLIANCE

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How much?

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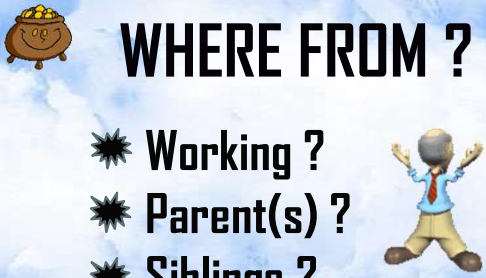
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# WHERE FROM ?

- ✱ Working ?
- ✱ Parent(s) ?
- ✱ Siblings ?

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# The "GREAT" STATE OF **ILLINOIS** **NOT!**

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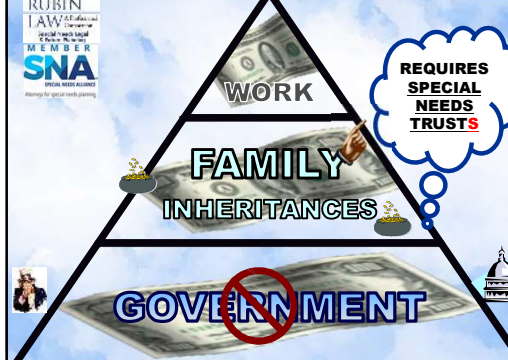
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MEMBER SNA SPECIAL NEEDS ALLIANCE

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WORK

FAMILY INHERITANCES

GOVERNMENT

REQUIRES SPECIAL NEEDS TRUSTS

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80087279 101 - 881 - 8802 - MEDICALS - MEDICARE - RUND - NYC.

**BEWARE...**  
**SSI/SSDI**  
*If living "residential"*  
*then only keep*  
*\$60 @ month*  
*for personal use...*

**RESIDENTIAL**

**SSDI**

**Medicare**  
**TWO YEARS**

MEMBER  
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## ECONOMIC IMPACT PAYMENTS

- Note for Supplemental Security Income (SSI) Recipients (From Commissioner of SSA):
  - Issuance of economic impact payments as quick and efficient as possible. We realize people are concerned, and the IRS will provide additional information on their web page when available. Please note that **we will not consider economic impact payments as income for SSI recipients, and the payments are excluded from resources for 12 months.**
  - We will continue to update Social Security's Coronavirus COVID-19 web page as further details become available."

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## PARENTS' HEALTH INSURANCE!

- 📁 **Dependent children NOT subject to "limiting age" provisions!**
- 📁 **Even if living "residentially"!**
- 📁 **Even if can't claim as dependent for IRS Income Tax purposes!**
- 📁 **since 1969, amended 1997 & 2007.**

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**ADULTS - if not “DD”**  
(or can “try” even if...)

**DHS - DRS  
HOME SERVICES  
WAIVER**

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**PUNS for DDD**

**PRIORITIZATION OF URGENCY  
OF NEED FOR SERVICES**

**REQUIRED**

for infants, children & adults with I/DD,  
since February 2008.

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**PUNS + Medicaid**

**Required** for:

- ▶ **All Medicaid Waiver Programs... For DD**
- ▶ **Children’s Waiver**
- ▶ **Adult Waiver**
  - CILA - Group Homes
  - HBSS
  - In-Home CILA
  - Supported Employment Services
  - Community Day Services (DT)
  - Regular Work (Workshop)

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## WHERE DO YOU BEGIN?

- The ISC (Independent **S**ervice **C**oordination) Agents (*used to be "Pre-Admission Screening" Agents, name change, but same organizations*) are

### THE point of ENTRY

to access state & federally funded services for persons with developmental disabilities, over the age of three, & their families.

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**LAW**

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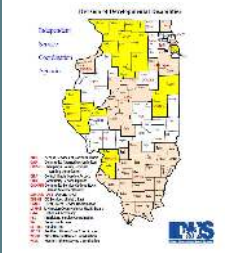

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## July 1, 2019

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## July 1, 2019

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[illegible][illegible]

**FYI as of November 2018**

**The State has changed to just 3 categories (or Crisis + 2 categories):**

- 1. Crisis – within 72 hours**
- 2. Seeking – desire services within one year:**
  - ✓ **under 18 Children's Waivers**
  - ✓ **18+ HBSS/Residential**
- 3. Planning – future will need**

**2018 PUNS CHANGE:**

- Crisis:**
  - No change.
- Seeking Services:**
  - Selection will be by length of time on the PUNS list:
    - the clock for length of time begins calculating either from initial placement on the PUNS list (if enrollment in PUNS occurred after the individual's 18th birthday) or
    - from the individual's 18th birthday (if enrollment in PUNS occurred before the individual's 18th birthday).
  - Families with loved ones currently on PUNS will not need to do anything. The Department will make certain everyone currently on the list as either "Emergency" or "Critical" gets moved over to "Seeking Services".
  - The plan is that those currently in Emergency category will be selected first as part of the next selection.
- Planning for Services:**
  - Those individuals currently in "Planning" will automatically be moved to "Planning for Services." That is, those currently NOT seeking services.

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**The Illinois Maze!**

Division of Developmental Disabilities  
Current Selection Process for Waiver Services

START  
PAS  
ISC  
AGENT

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### Speaking of PUNS and ISC Agents

→ **Families MUST contact their ISC (Independent Service Coordination) Agency, when their child turns 18 to request the change from "Planning" to "Seeking" services. It is not automatic and in fact the ISC cannot automatically move individuals into a different category without parents/guardian request.** The necessity for doing this is that only those in the "Seeking Services" category are eligible to be selected from the PUNS list for funding.

→ **Also, when meeting with the ISC Agency, if your child has exceptional support needs, make sure these are well-documented in the "Discovery, Personal Plan, and Implementation Strategies".** Examples of exceptional support needs are nursing, mental health, communication, behavior or other medical needs that will require the support and/or consultation of/with individuals that have training beyond that of a DSP (Direct Support Professional). Sometimes the need for a 1:1 support person isn't the only or the best solution... some needs require support workers with more experience or specific training, not simply an additional "body." This impacts the funding amount for residential.

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**CHILDREN'S DD WAIVER(S)**

1. 2020 is  $2 \times \$783 \text{ (SSI)} = \$1,566 @ \text{ month}$

15 hours a week

**Pare Assets**

**ADULT DD V**

**do not count!**

**Request Form Item # 9 HBSS & Taxes**

**ADULT ICFDD?**

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**CHILDREN WAIVER**

**As of now... only if in CRISIS!**

**NOT part of LIGAS Class action lawsuit!**

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**Under 18 Crisis**

Department of Human Services (DHS)/Division of Developmental Disabilities (DDD)  
Children Crisis Criteria for Funding - Effective April 16, 2008

The crisis criteria for emergency risk of abuse, neglect, or homelessness are the highest priority position of the Division of Developmental Disabilities (DDD) for children who are 3 to 17 years old. **Eligibility criteria must be assessed on an ongoing basis.** In reviewing the request for crisis intervention, the Pre-Admission Screening/Independent Service Coordination (PASS/ISCI) agency must share in writing with the network staff the proposed plan(s) for how they intend to address the crisis. The PASS/ISCI agency staff must also provide a written plan for how they intend to address the crisis. The PASS/ISCI agency staff must also provide a written plan for how they intend to address the crisis. The PASS/ISCI agency staff must also provide a written plan for how they intend to address the crisis.

The crisis criteria reduce to Waiver-Funded Children's Home-Based Services (CHBS) and Children's Group Homes (CGHs). Program 1725. The emergency crisis criteria are subject to review by the Crisis Care Institute (CCI) - Program 1725. These criteria do not apply to respite and skilled nursing facilities. Program 1725. Children who are at risk of the State are eligible for funding intervention by the DDD.

The Division's decision regarding the type of services to be provided will be based on the specific nature of the crisis. In reviewing whether to use the child crisis criteria, the DDD will consider, but not limit itself to, the following, which are presented in priority order:

1. The caregiver is unable to keep the child safe.
2. The caregiver is unable to meet the child's support needs. The family demands a child who is unable to function independently (e.g., the child has physical, emotional, or behavioral needs that the family cannot meet).
3. The child's behavior (e.g., verbal abuse, physical aggression, sexual abuse) is so severe as to pose a risk to the child and/or family members at risk of serious harm.

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## 18+ CRISIS

- \* **Definition of Crisis - Adults (same since 2/2008)**
  - Caregiver is deceased
  - Caregiver is unable to address support needs, jeopardizing health and safety of individual
  - Individual is being physically or mentally abused
  - Individual is homeless
  - Behaviors put the individual and/or family member(s) at risk
- \* **Those in Crisis will receive services "expeditiously" (72 hours?)**

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## “WAITING LIST” CLASS MEMBERS NOT IN CRISIS

1. Class member residing at home not in crisis will be placed on PUNS waiting list.
2. FY 2019 1,200
3. LIGAS case agreement June 2019:
  - a. PUNS selections “will be tailored such that by the Fiscal Year 2025 selection, no individual will wait on PUNS for more than 60 months (5 years).” Note that for individuals on the PUNS before age 18, the 60-month period begins on the 18th birthday.
  - b. Fiscal Year 2020: minimum of 600.
  - c. Fiscal Years 2021 through 2025: minimum of 630 @ year.

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## “WAITING LIST” CLASS MEMBERS NOT IN CRISIS

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  - b. Fiscal Year 2020: minimum of 600.
  - c. Fiscal Years 2021 through 2025: minimum of 630 @ year.

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**FOR DRS, NOT PUNS – RATHER  
DETERMINATION OF NEED - “DON” SCORE**  
LOCAL DRS OFFICE or call 1-800-843-6154

- Personal Assistant
- Homemaker Services
- Home Health Services
- Electronic Home Response
- Home Delivered Meals
- Adult Day Care
- Assistive Equipment
- Environmental Modifications
- Respite Services
- Brain Injury (Behavior; Habilitation;  
Pre-Vocational; Supported Employment)
- Community Reintegration

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**WRONG WAY**  **WRONG WAY**

- **“Directly”**
- **No Will**
- **“Disinherit” & leave to others (“moral Obligation”)**
- **“Traditional Trust”**

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**Special  
Needs  
Trusts**

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**2 Versions, both...**

- ✓ Reserve
- ✓ Supplemental Fund
- ✓ Over & Above Government Benefits
- ✓ No \$ limit
- ✓ Federal
- ✓ State



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**3<sup>RD</sup> PARTY TRUSTS**

**ORIGINAL - GOOD**

- ➡ by Court Decisions 1982
- ➡ by Statute 1991

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**3<sup>RD</sup> PARTY TRUSTS**

**1<sup>st</sup> Version**

**WILLTESTANCES & GIFTS**

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# 3<sup>RD</sup> PARTY TRUSTS

## ORIGINAL - GOOD

➔ by Court Decisions 1982

➔ by Statute 1991

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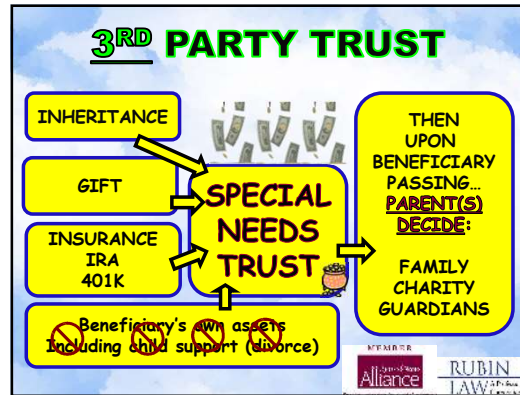
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# OK... SO

# INSIDE WILL

# OR LIVING

# TRUST ?

MEMBER SNA SPECIAL NEEDS ALLIANCE

RUBIN LAW

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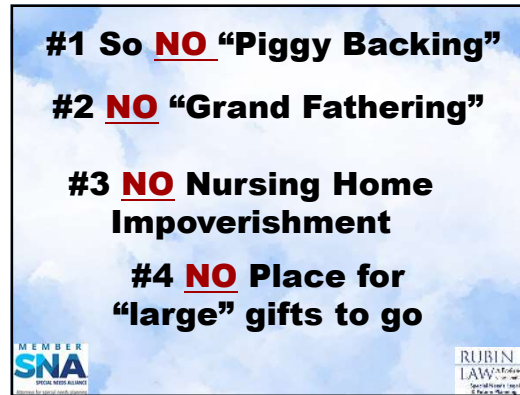
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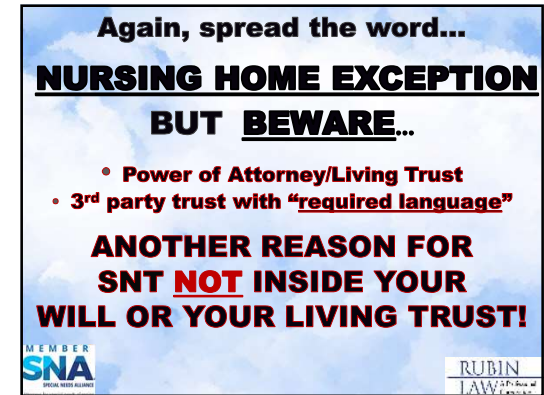
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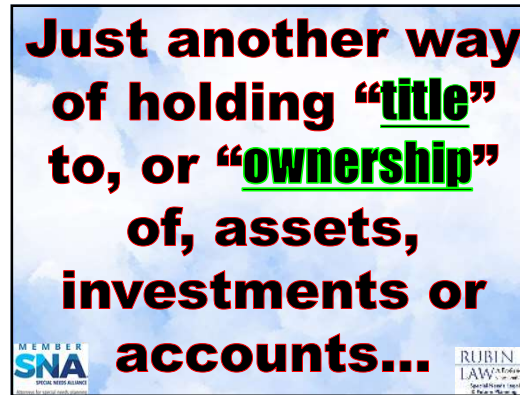
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**How to put \$  
in the Trust?  
From your  
& others'  
Wills & Trusts**

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**EXTENDED FAMILY & FRIENDS**

- Instruction letter
- Form Codicil
- Form Trust Amendment
- Trust Certification
- Consult with their Attorneys/Advisors

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**3rd PARTY  
SPECIAL NEEDS TRUST**

**REMEMBER**

**3rd PARTY  
SPECIAL NEEDS  
TRUST**

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**But...**

**Beware of**  
**absentee**  
**parents &**  
**grandparents**



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ESTABLISHED 1984

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**EX-SPOUSE**  
**LETTER**

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**So...**

**1<sup>st</sup> set up SNT**  
**2<sup>nd</sup> reference in**  
**Wills/Trusts**  
**3<sup>rd</sup> extended family**  
**too**

**But...** **But...**

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# Change Beneficiaries

- ✓ Life Insurance
- ✓ IRA
- ✓ 401k
- ✓ Profit Sharing
- ✓ Etc.

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Special Needs Planning

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# WHAT ABOUT GIFTS ?

- ☒ **NOT** Directly
- ☒ **NOT** ABLE (stay tuned!)
- ☒ **NOT** UTMA



## 3rd Party SNT

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OF NEW YORK  
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# So far just 3rd Party But what if...

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OF NEW YORK  
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**BENEFICIARY HAS ASSETS**

Savings Bonds, UTMA Accounts AT 21, Large Gift, IRA - 401k, Law Suit Settlement, Inheritance, Excess SSI/SSDI WILL/TRUST/BENEFICIARY

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**If “not that much”**

*...consider spending it down on allowed expenditures, such as:*

- ✓ COMPUTER, TV, DVD PLAYER...
- ✓ VACATION
- ✓ PRE-PAID FUNERAL
- ✓ PAY OFF DEBTS... EVEN TO PARENTS...
- ✓ CLOTHES
- ✓ BUT MUST BE FOR HIS/HER
- ✓ SOLE BENEFIT...

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**If “not that much”**

**When to consider ABLE?**

1. Excess SSI/SSDI/Earnings to avoid \$2,000 issue? But if SSD not SSI... & working, consider HBWD Ist!
2. Short term savings
3. For beneficiary to be in control of “some” spending money
4. Avoid 1/3 reduction for housing if on SSI
5. Small inheritances not correctly left to 3<sup>rd</sup> party trust
6. Small law suit settlements
7. 2018 - Convert traditional 529 Account... up to \$15,000 limit..
8. 2018 - Additional contribution of the lesser of earned income from employment for year & \$12,060, if no contribution by or for to an employer retirement saving plan. However, the earned income will still be counted for purposes of eligibility.

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ABLE SIDE NOTE

- New Illinois Statute...
- Not as advertised...
- No Pay Back is being “advertised” BUT
  - Doesn’t apply to all 9 Illinois Medicaid Waivers including DDD and DRS, and specifically CILA/ICFDD, SODC, HBSS
  - Doesn’t apply to even medical Medicaid post age 55
- Tax Deduction... so what
- Child Support... Feds say NO!

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Request Form Item # 11

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Otherwise  
1<sup>st</sup> Party  
Special  
Needs  
Trust

Federal Law 8/10/93  
Illinois Law 1/1/96

MEMBER SNA

RUBIN LAW

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# 1st Party SNT

Called... **"Self Settled"**... or

- ✓ **"OBRA 93 Trust"**...
- ✓ **"(d)(4)(A) or (C) Trust"**
- ✓ **"PAY BACK Trust"** (like an ABL account...
- ✓ **because...**

MEMBER  
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LAW  
SPECIAL NEEDS ALLIANCE

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# 1st Party SNT... "NOT" SO GOOD...

- ✗ Only if **NOT 65**
- ✗ Only by Parents, grandparents, Courts, guardians & self (new)... **NOT others**
- ✗ **SSA Position...**
- ✗ **Courts often require...**
- ✗ **Pay Back to day 1...**

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**1ST PARTY SNTS  
ARE THE VERSIONS  
REQUIRED  
FOR CHILD SUPPORT  
NOT  
3RD PARTY SNTS!  
& AS OF NOW  
NOT ABLE!**

MEMBER **SNA**  
SPECIAL NEEDS ALLIANCE

RUBIN  
LAW  
SPECIAL NEEDS ALLIANCE

145

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**Divorced? Child Support for Non-Minor Child**

**Request Form Item #3**

See other side...

MEMBER **SNA**  
SPECIAL NEEDS ALLIANCE

RUBIN  
LAW  
SPECIAL NEEDS ALLIANCE

146

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- ✓ **So NOT directly**
- ✓ **All to 3rd Party SNT**
- ✓ **IF no alternative then, & only then,**
- ✓ **to ABLE or a 1st Party SNT...**

MEMBER **SNA**  
SPECIAL NEEDS ALLIANCE

RUBIN  
LAW  
SPECIAL NEEDS ALLIANCE

147

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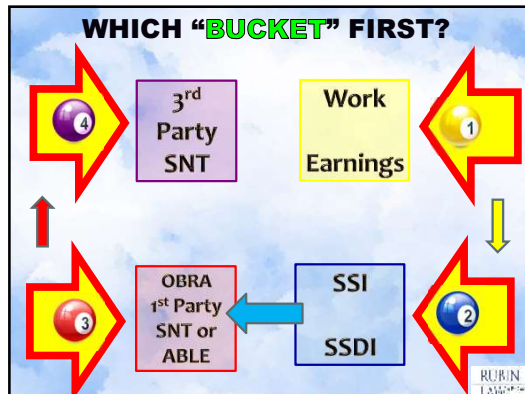
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- ★ You say you **already have** a special needs trust?
- ★ Does it **qualify**?
- ★ Was it **approved** by SSA & HFS (Illinois Medicaid Agency)? AG? Will it be approved when it is submitted (It **must** be submitted to SSA & HFS)?

MEMBER SNA RUBIN LAW'S OFFICE SPECIAL NEEDS ALLIANCE

149

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**COMMON ATTORNEY MISTAKES!**

**Calling it an SNT doesn't make it an SNT!**

MEMBER SNA RUBIN LAW'S OFFICE SPECIAL NEEDS ALLIANCE

150

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COMMON ATTORNEY MISTAKES!

**No Grand-Fathering  
Required  
Language!**

MEMBER **SNA** SPECIAL NEEDS ALLIANCE  
RUBIN LAW ATTORNEYS SPECIAL NEEDS ALLIANCE

151

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COMMON ATTORNEY MISTAKES!

**NO prohibition  
of 1<sup>st</sup> Party  
money in 3<sup>rd</sup>  
Party Trust!**

MEMBER **SNA** SPECIAL NEEDS ALLIANCE  
RUBIN LAW ATTORNEYS SPECIAL NEEDS ALLIANCE

152

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COMMON ATTORNEY MISTAKES!

**NO requirement  
to use 1<sup>st</sup> Party  
Trust money or  
ABLE money prior  
to 3<sup>rd</sup> Party Trust  
money!**

MEMBER **SNA** SPECIAL NEEDS ALLIANCE  
RUBIN LAW ATTORNEYS SPECIAL NEEDS ALLIANCE

153

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COMMON ATTORNEY MISTAKES!

**Not  
100%  
Discretionary**

MEMBER  
**SNA**  
SPECIAL NEEDS ALLIANCE  
ADVOCATES FOR SPECIAL NEEDS ATTORNEYS

RUBIN  
LAW  
ATTORNEYS  
SPECIAL NEEDS ALLIANCE  
ADVOCATES FOR SPECIAL NEEDS ATTORNEYS

154

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COMMON ATTORNEY MISTAKES!

**Permitting  
Pay TO...**

*So SHOULD provide ability  
to distribute to ABLE!*

MEMBER  
**SNA**  
SPECIAL NEEDS ALLIANCE  
ADVOCATES FOR SPECIAL NEEDS ATTORNEYS

RUBIN  
LAW  
ATTORNEYS  
SPECIAL NEEDS ALLIANCE  
ADVOCATES FOR SPECIAL NEEDS ATTORNEYS

155

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COMMON ATTORNEY MISTAKES!

**Over  
Restrictive  
Language...**

MEMBER  
**SNA**  
SPECIAL NEEDS ALLIANCE  
ADVOCATES FOR SPECIAL NEEDS ATTORNEYS

RUBIN  
LAW  
ATTORNEYS  
SPECIAL NEEDS ALLIANCE  
ADVOCATES FOR SPECIAL NEEDS ATTORNEYS

156

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**COMMON ATTORNEY MISTAKES!**

**Over  
Restrictive  
Language...**

MEMBER  
**SNA**  
SPECIAL NEEDS ALLIANCE

RUBIN  
LAW  
SPECIAL NEEDS ALLIANCE

157

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**COMMON ATTORNEY MISTAKES!**

**“No Trustee  
Powers to  
Correct” or  
terms not  
“broad” enough**

MEMBER  
**SNA**  
SPECIAL NEEDS ALLIANCE

RUBIN  
LAW  
SPECIAL NEEDS ALLIANCE

158

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**COMMON ATTORNEY MISTAKES!**

**No  
“Band Aid”  
or retro  
Language**

MEMBER  
**SNA**  
SPECIAL NEEDS ALLIANCE

RUBIN  
LAW  
SPECIAL NEEDS ALLIANCE

159

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## COMMON ATTORNEY MISTAKES!

**No “Next Generation” Trustees...**



160

## COMMON ATTORNEY MISTAKES!

# No “Next Generation” Trustees...



161

## COMMON ATTORNEY MISTAKES!

**No “Contribution”  
or  
Gift Language  
3<sup>rd</sup> Party**



162

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**COMMON ATTORNEY MISTAKES!**

**No  
Termination  
Provision...**

MEMBER  
**SNA**  
SPECIAL NEEDS ALLIANCE

RUBIN  
LAW  
SPECIAL NEEDS ALLIANCE

163

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**COMMON ATTORNEY MISTAKES!**

**No  
“Contingent”  
SNT for others**

MEMBER  
**SNA**  
SPECIAL NEEDS ALLIANCE

RUBIN  
LAW  
SPECIAL NEEDS ALLIANCE

164

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**COMMON ATTORNEY MISTAKES!**

**No  
“Contingent”  
SNT for others**

MEMBER  
**SNA**  
SPECIAL NEEDS ALLIANCE

RUBIN  
LAW  
SPECIAL NEEDS ALLIANCE

165

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**COMMON ATTORNEY MISTAKES!**

**NO  
Nursing Home  
Sub Trust for 50  
States**

MEMBER  
**SNA**  
SPECIAL NEEDS ALLIANCE

RUBIN  
LAW  
LAW OFFICES  
SPECIAL NEEDS ALLIANCE

166

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**COMMON ATTORNEY MISTAKES!**

**NO  
TRS/SURS/Military &  
other “public”  
Pensions Sub Trust**

MEMBER  
**SNA**  
SPECIAL NEEDS ALLIANCE

RUBIN  
LAW  
LAW OFFICES  
SPECIAL NEEDS ALLIANCE

167

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**COMMON ATTORNEY MISTAKES!**

**NO Grantor(s)’  
power to change  
contingent  
beneficiaries...**

MEMBER  
**SNA**  
SPECIAL NEEDS ALLIANCE

RUBIN  
LAW  
LAW OFFICES  
SPECIAL NEEDS ALLIANCE

168

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**COMMON ATTORNEY MISTAKES!**

**NO Grantor(s)'  
power to change  
contingent  
beneficiaries...**

MEMBER  
**SNA**  
SPECIAL NEEDS ALLIANCE  
SUPPORTING THE FUTURE OF SPECIAL NEEDS

RUBIN  
LAW  
SPECIAL NEEDS ALLIANCE  
SUPPORTING THE FUTURE OF SPECIAL NEEDS

169

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**COMMON ATTORNEY MISTAKES!**

**NO Trustee(s)'  
power to change  
contingent  
corporate trustee...**

MEMBER  
**SNA**  
SPECIAL NEEDS ALLIANCE  
SUPPORTING THE FUTURE OF SPECIAL NEEDS

RUBIN  
LAW  
SPECIAL NEEDS ALLIANCE  
SUPPORTING THE FUTURE OF SPECIAL NEEDS

170

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**COMMON ATTORNEY MISTAKES!**

**NO Change of  
State  
Provision...**

MEMBER  
**SNA**  
SPECIAL NEEDS ALLIANCE  
SUPPORTING THE FUTURE OF SPECIAL NEEDS

RUBIN  
LAW  
SPECIAL NEEDS ALLIANCE  
SUPPORTING THE FUTURE OF SPECIAL NEEDS

171

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COMMON ATTORNEY MISTAKES!

**Not modified for**  
**new (1/1/20)**  
**Illinois Trust Code**

MEMBER  
**SNA**  
SPECIAL NEEDS ALLIANCE

RUBIN  
LAW  
SPECIAL NEEDS ALLIANCE

172

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COMMON ATTORNEY MISTAKES!

**Other Documents**

- Wills need special language!
- Living Trusts too
- Insurance Trusts too
- Powers of Attorney too
- Beneficiary Designations too

MEMBER  
**SNA**  
SPECIAL NEEDS ALLIANCE

RUBIN  
LAW  
SPECIAL NEEDS ALLIANCE

173

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COMMON ATTORNEY MISTAKES!

**...and these are**  
**just a few of the**  
**attorney mistakes**  
**that we see...**

MEMBER  
**SNA**  
SPECIAL NEEDS ALLIANCE

RUBIN  
LAW  
SPECIAL NEEDS ALLIANCE

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Request Form Item # 1 Handbook

Request Form Item # 6 Reading Material

Request Form Item # 9 SNT/Taxes

MEMBER SNA SPECIAL NEEDS ALLIANCE

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Guardians are nominated in parents Wills!

MEMBER SNA SPECIAL NEEDS ALLIANCE

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(755 ILCS 5/11a-16)  
Testamentary guardian  
A parent of a disabled person may designate by will a person, corporation or public agency qualified to act... to be appointed as... successor guardian of the person or of the estate or both of that person...  
If the court finds that the appointment of the one so designated will serve the best interests and welfare of the ward, it shall appoint the one so designated...  
(Source: P.A. 81-795.)

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**Who will be Guardian?**



**Let me live...  
ONE  
moment longer...**

MEMBER Alliance

RUBIN LAW

178

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**Who will be Guardian?**



**Let me live...  
ONE  
moment longer...**

MEMBER SNA

RUBIN LAW

179

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**Who will be Guardian?**



**Who will make all of the necessary decisions?**

- Medical?
- Government Benefits?
- School Issues?
- Recreation & Social?
- Employment?
- Day Programs?
- Residential?

MEMBER SNA

RUBIN LAW

180

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## Who will be Guardian?





**Who is going to fill our shoes?**

- Can they understand?
- Job will outlast them!
- Other Children? Siblings? Grandparents? Friends?
- School District of Guardian?
- Married Couples?
- Same as Trustees?

MEMBER  
**SNA**  
SPECIAL NEEDS ALLIANCE

RUBIN  
**LAW**  
ATTORNEYS  
SPECIAL NEEDS ALLIANCE

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## Short Term Guardian Declaration





**Short Term Guardian Declaration**

MEMBER  
**SNA**  
SPECIAL NEEDS ALLIANCE

RUBIN  
**LAW**  
ATTORNEYS  
SPECIAL NEEDS ALLIANCE

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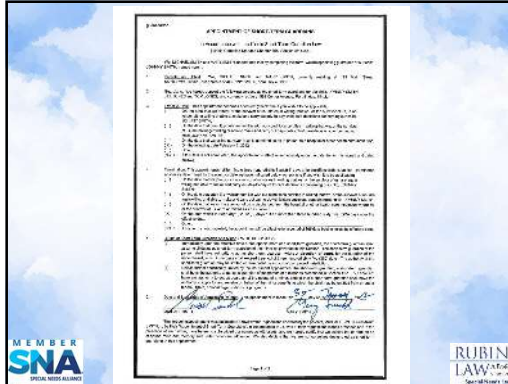
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MEMBER  
**SNA**  
SPECIAL NEEDS ALLIANCE

RUBIN  
**LAW**  
ATTORNEYS  
SPECIAL NEEDS ALLIANCE

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When someone is an adult, 18 in Illinois, that person is presumed fully legally competent... ...and only IF a court (Judge) determines otherwise, is that person NOT deemed competent...

MEMBER SNA SPECIAL NEEDS ALLIANCE

RUBIN LAW P.C. Special Needs Planning

184

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You need to write it ALL down!

Guidance & Instructions For Future Guardians, Trustees, & Care Providers.

ABOUT MITCH RUBIN

MEMBER SNA SPECIAL NEEDS ALLIANCE

RUBIN LAW P.C. Special Needs Planning

185

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**WRITE IT DOWN!**

- ✓ family information
- ✓ diagnoses, hospitalizations, medications, doctors, other

**Request Form Item # 2 Form & Articles**

funeral desires & related info...  
✓ executive summary

MEMBER SNA SPECIAL NEEDS ALLIANCE

RUBIN LAW P.C. Special Needs Planning

186

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When someone is an adult, 18 in Illinois, that person is **presumed fully legally competent...**  
**...and only IF** a court (Judge) determines otherwise, is that person **NOT** deemed competent...

MEMBER SNA SPECIAL NEEDS ALLIANCE  
 RUBIN LAW FIRM P.C. Special Needs Law Firm

187

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

MEMBER SNA SPECIAL NEEDS ALLIANCE  
 RUBIN LAW FIRM P.C. Special Needs Law Firm

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SO... the questions to ask...

- Can he/she fully manage his/her personal, medical, education & financial decisions?
- Could he/she be vulnerable to or taken advantage of by others?

MEMBER SNA SPECIAL NEEDS ALLIANCE  
 RUBIN LAW FIRM P.C. Special Needs Law Firm

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**Before considering  
"Guardianship",  
ALWAYS  
first consider the  
ALTERNATIVES**



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**Before considering  
"Guardianship",  
ALWAYS  
first consider the  
ALTERNATIVES**



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**ADULT GUARDIANSHIP  
& THE ALTERNATIVES...**

192

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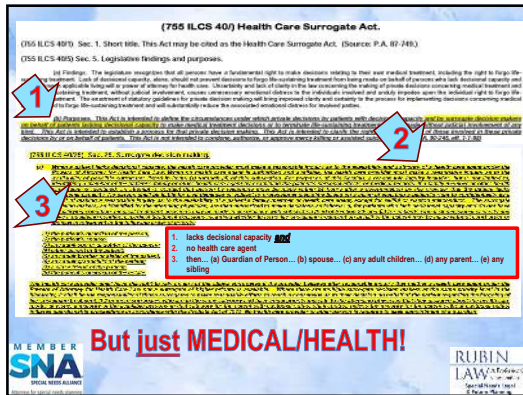
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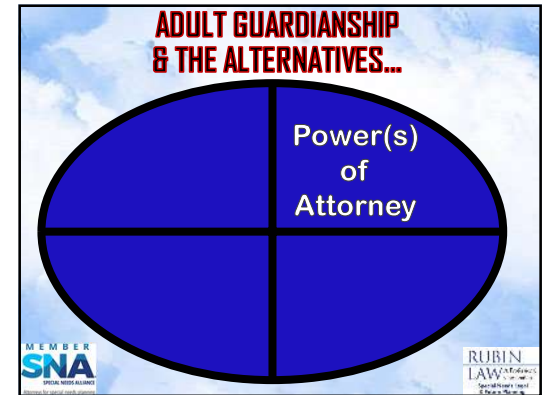
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## Powers of Attorney

- ✓ Powers of Attorney
  - Financial/Property
  - Health Care/Medical/Living Will
  - Mental Health Treatment
  - Education
- ✓ Representative Payee

MEMBER

**SNA**

SPECIAL NEEDS ALLIANCE

RUBIN  
**LAW**

Attorneys at Law

Specialty: Family Law

196

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## So, does he/she have "capacity" to sign DPAs?

MEMBER

**SNA**

SPECIAL NEEDS ALLIANCE

RUBIN  
**LAW**

Attorneys at Law

Specialty: Family Law

197

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**ILLINOIS STATUTORY SHORT FORM  
POWER OF ATTORNEY FOR PROPERTY**

I, \_\_\_\_\_ (print name and address of principal) hereby revoke all prior statutory powers of attorney for property executed by me and appoint \_\_\_\_\_ (print name and address of agent) (NOTE: You may not name co-agents using the term "and" as the attorney-in-fact may "opt out" for one and, in my name (if any agent) could act as principal) and request the following powers be granted to 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 listed 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 show 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) Creative asset litigation.
- (k) Commercial and other 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 restriction on the sale of particular stock or real estate or special rules on borrowing by the agent.)

\_\_\_\_\_

Page 2 of 2

**\$ FINANCIAL \$**

**Print?  
Mark?  
Direct  
others to  
sign?**

MEMBER

**SNA**

SPECIAL NEEDS ALLIANCE

RUBIN  
**LAW**

Attorneys at Law

Specialty: Family Law

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Example additional Powers, when appropriate...

- Government Benefits
- IRS
- Residential
- Employment matters
- Funding/establishing self settled (d4A/C) SNTs and ABLE Accounts
- HIPAA release
- UID/PW
- Copies

MEMBER  
**SNA**  
SOUTH NORTHERN ASSOCIATION

**RUBIN**  
LAW  
OF THE FUTURE  
Specialty Legal Services

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[illegible][illegible][illegible]

**THE STATE**

**DHS/HFS  
REQUIRES  
THEIR OWN  
FORM**

MEMBER SNA RUBIN LAW

205

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**IF he/she DOES have "capacity" for PAs...**

1. Will he/she "sign" them ?
2. Will he/she allow you to act, or will he/she terminate/void the PA as soon as... when...?
3. Doesn't prohibit him/her from...
4. Remain vulnerable?

MEMBER SNA RUBIN LAW

206

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**Will Powers be enough ?**

- What if he/she is on computer buying things with mom's credit card.
- What if he/she announces that he/she is getting married or moving in with "friend".
- What if he/she refuses to have parents at IEP/504/ISP meeting, or is "tricked".
- What if he/she goes for driver's license test and you said no.
- What if he/she is being asked to sign \_\_\_\_ ?

MEMBER SNA RUBIN LAW

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**If** he/she can't, or won't" sign" powers of attorneys... **AND IF** you determined that "powers" or other alternatives are simply **not enough** to assist and protect him/her... **then, maybe... just maybe,** "some form" of Guardianship could be appropriate to help, and to protect him/her, from himself/herself, and from others...

MEMBER SNA RUBIN LAW

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**IF** he/she **DOES** have "capacity" for PAs...

1. **Will** he/she "sign" them ?
2. **Will** he/she allow you to act, or will he/she terminate/void the PA as soon as... when...?
3. Doesn't **prohibit** him/her from...
4. Remain vulnerable?

RUBIN LAW

209

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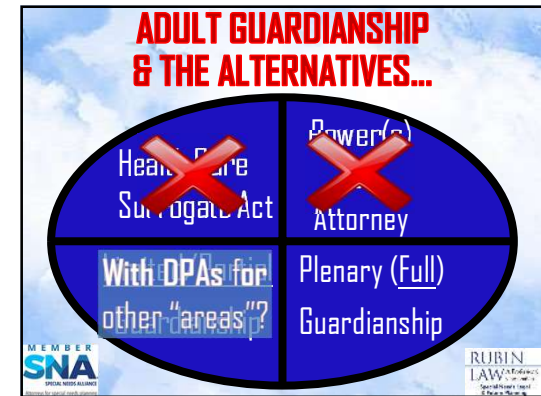
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## What is Guardianship?

A LEGAL RELATIONSHIP between an individual (the guardian) who **has been given 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 P.C. Special Needs Alliance

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## The Law!

### 755 ILCS 5/11a

### Going to court to take away someone's rights...

MEMBER SNA SPECIAL NEEDS ALLIANCE RUBIN LAW P.C. Special Needs Alliance

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### (755 ILCS 5/11a-7)

#### Venue

...the proceeding shall be instituted in the court of the county in which **(the ward)** resides.

(Source: P.A. 80-1415.)

MEMBER SNA SPECIAL NEEDS ALLIANCE RUBIN LAW P.C. Special Needs Alliance

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**Must give NOTICE to certain people, in addition to the Ward!**

**(755 ILCS 5/11a-10)**

Sec. 11a-10. Procedures preliminary to hearing... can't

(f) **Notice of the time and place of the hearing** shall be given by the petitioner by mail or in person to those persons... whose names and addresses appear in the petition and who do not waive notice, not less than 14 days before the hearing.

Specifically that means:

1. the spouse and adult children, if any, and if not the petitioners, and if none, then
2. **the parents and adult siblings (including 1 blood), if any,** and if not the petitioners and if none, then
3. the nearest adult kindred known to the petitioner.

(Source: P.A. 97-379, eff. 8-15-11; 97-1098, eff. 8-24-12; 98-49, eff. 7-1-13; 98-89, eff. 7-10-13; 98-766, eff. 7-10-14.)

MEMBER **SNA** SPECIAL NEEDS ALLIANCE

RUBIN LAW ATTORNEYS AT LAW SPECIAL NEEDS ALLIANCE

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**755 ILCS 5/11a GUARDIANS FOR ADULTS WITH DISABILITIES**

- 755 ILCS 5/11a-5 Who may act as guardian.
- (a)
  - (1) has attained the age of 18 years;
  - (2) is a legal **resident** of the **United States**; *(that is not need be Illinois)*
  - (3) is not of unsound mind;
  - (4) is not an adjudged person with a disability
  - (5) has not been convicted of a felony, unless the court finds...
- (b) Any public agency, or not-for-profit corporation found capable by the court
- (c) Any corporation qualified to accept and execute trusts in this State may be appointed guardian of the estate of a person with a disability

MEMBER **SNA** SPECIAL NEEDS ALLIANCE

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**M.D. Report**

**(755 ILCS 5/11a-9)**

Sec. 11a-9. Report.)

(a)... which contains:

- (1) a description of the nature and type of the respondent's disability and an assessment of how the disability impacts...;
- (2) an analysis... the respondent's mental and physical condition... **which have been performed within 3 months of the date of the filing of the petition**;
- (3) an opinion as to whether guardianship is needed, the type and scope of the guardianship needed, and the reasons therefor;
- (4) a recommendation as to the most suitable living arrangement...;
- (5) the name, business address, business telephone number, and signatures of all persons who performed the evaluations upon which the report is based, **one of whom shall be a licensed physician**...

(Source: P.A. 98-1094, eff. 1-1-15.)

MEMBER **SNA** SPECIAL NEEDS ALLIANCE

RUBIN LAW ATTORNEYS AT LAW SPECIAL NEEDS ALLIANCE

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## Service of Summons

(755 ILCS 5/11a-10)

Sec. 11a-10. Procedures preliminary to hearing... con't.

(e) ... the respondent shall be **personally served** with a copy of the petition and a **summons** not less than **14 days before the hearing**...

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## GAL

(755 ILCS 5/11a-10)

Sec. 11a-10. Procedures preliminary to hearing.

(a) ... The court shall appoint a guardian ad litem to report to the court concerning the respondent's best interests consistent with the provisions of this Section, **except that the appointment of a guardian ad litem shall not be required when the court determines that such appointment is not necessary for the protection of the respondent or a reasonably informed decision on the petition**... The court may allow the guardian ad litem reasonable compensation.

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## Back to Court ?

(755 ILCS 5/11a-17(b))

"Filing reports..."

**If the court directs, the guardian of the person shall file with the court at intervals indicated by the court, a report that shall state briefly:** (1) the current mental, physical, and social condition of the ward and the ward's minor and adult dependent children; (2) their present living arrangement, and a description and the address of every residence where they lived during the reporting period and the length of stay at each place; (3) a summary of the medical, educational, vocational, and other professional services given to them; (4) a resume of the guardian's visits with and activities on behalf of the ward and the ward's minor and adult dependent children; (5) a recommendation as to the need for continued guardianship; (6) any other information requested by the court or useful in the opinion of the guardian. **The Office of the State Guardian shall assist the guardian in filing the report when requested by the guardian. The court may take such action as it deems appropriate pursuant to the report.**

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**NO MORE MAILING  
ANNUAL REPORTS!  
MUST NOW E-FILE**

**BUT... Cook County ®**

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**County Specific Instructions Provided To Clients**

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**CUSTOMER SERVICE REQUEST**

**RESOURCES**

**COOK COUNTY**

**ILLINOIS**

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**Back to Court For "residential" placement!**

**(755 ILCS 5/11a-14.1)**

**Residential placement**

No guardian appointed under this Article, except for duly appointed Public Guardians and the Office of State Guardian, shall have the power, unless specified by court order, to place his ward in a residential facility.

The guardian shall have a duty to investigate the availability of reasonable residential alternatives. The guardian shall monitor the placement of the ward on an on-going basis to ensure its continued appropriateness and shall pursue appropriate alternatives as needed.

(Source: P.A. 90-250, eff. 7-29-97.)

**Need to educate agencies!**

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## Back to court for sterilization!

(755 ILCS 5/11a-17.1)

**Sterilization of ward**

(a) A guardian of the person shall not consent to the sterilization of the ward without first obtaining an order from the court... not required for a procedure that is medically necessary to preserve the life of the ward or to prevent serious impairment to the health of the ward...

(c) ...the court shall appoint a guardian ad litem to report to the court consistent with the provisions of this Section.

(d) The court (1) may appoint counsel for the ward... and (2) shall appoint counsel upon the ward's request...

(e) The court shall order a medical and psychological evaluation of the ward...

(Source: P.A. 96-272, eff. 1-1-10.)

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## GUARDIANSHIP

➤ **Health Care Surrogate Act – Guardian #1**

➤ **Make medical treatment decisions including decisions to forgo or withdraw life-sustaining treatment.**

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(755 ILCS 5/11a-22)

**Trade and contracts with a disabled person**

(b) Every note, bill, bond or other contract by any person for whom a plenary guardian has been appointed or who is adjudged to be unable to so contract is void as against that person and his estate, but a person making a contract with the person so adjudged is bound thereby.

(Source: P.A. 91-357, eff. 7-29-99.)

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**BUT, EVEN IF A PLENARY  
GUARDIAN IS APPOINTED...  
HE/SHE CAN STILL VOTE...**

**FOR THIS IS  
ILLINOIS!**

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**DMV does NOT  
follow the law!**

**Even if DMV allows  
D. letter,  
DON'T!  
liability  
insurance?**

**NOT  
PLENARY  
sure...  
Limited ?**

**Request  
Form  
Item  
# 8  
Guardianship &  
Driver's License**

1110 St. Louis Street, St. Louis, Missouri 63101-1001  
Phone: (314) 761-1001 Fax: (314) 761-1001  
www.rubinelaw.com  
Rubin Law, P.C. is a member of the SNA (Special Needs Alliance) and is a member of the SNA (Special Needs Alliance).

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**What if:**

- He/she needs a Guardian,  
**but** won't cooperate? or
- He/she will be "driving"?  
... then **try** "Limited"  
Guardian?

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**(755 ILCS 5/11a-14)**

Legal disabilities of ward

(a) An order appointing a limited guardian of the person under this Article removes from the ward only that authority... which is specifically conferred on the limited guardian by the order.

(b) An order appointing a limited guardian of the estate under this Article confers on the limited guardian the authority... not specifically reserved to the ward.

(c) The appointment of a limited guardian under this Article shall not constitute a finding of legal incompetence.

(d) An order appointing a plenary guardian under this Article confers on the plenary guardian of the person the authority provided under Section 11a-17 and on the plenary guardian of the estate the authority provided under Section 11a-18.

(Source: P.A. 81-795.)

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- Is the Guardian ready for the job ?
- Ready to be on call **24/7/365** ?
- If he/she is a danger to others &/or to property? **Could Guardian be "liable"?**
- Can the Guardian limit any liability by only seeking "emergency/temporary" or "partial/limited" Guardianship?
- Can the family hire a "company" to act?
- What if needs a Guardian, but no one steps forward? Public Guardian(s)

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## Co-Guardians ?

- Law ?
- Agencies ?
- M.D.s/Hospitals?

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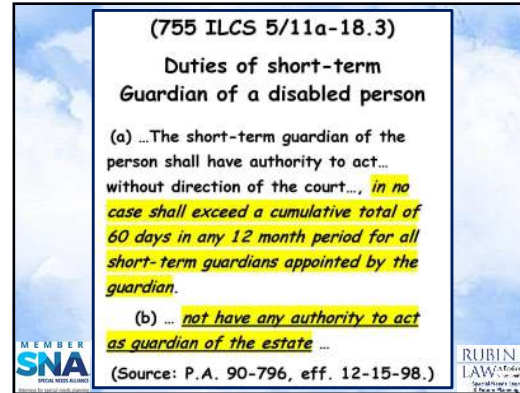
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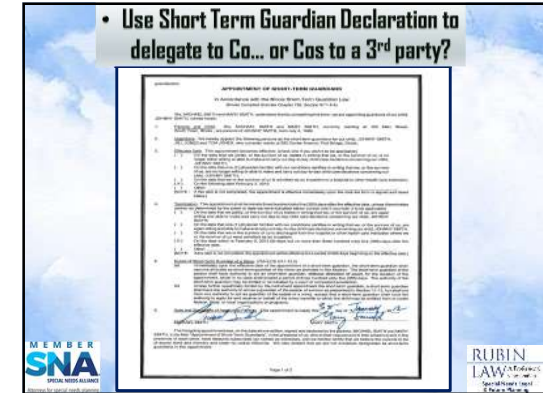
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## GUARDIANSHIP



- Move out of State
- Move out of County? ✓ (Depends on County)
- Why some parents/siblings decline?
- Then what?
- State Guardian/Private?

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## REQUIRED TRAINING!

**NEW ILLINOIS LAW - Public Act 100-483 - effective September 8, 2018**

**REQUIRED TRAINING FOR GUARDIANS... even for parents**

- **Required Training**
  - outlines the duties and responsibilities of guardians...
  - outlines the rights of a person with a disability...
  - at no cost, and shall
- **File with court a certificate of completion within one year, EXCEPT... "the court may, for good cause shown, exempt from this requirement..."**
- **However, only applies to 101 of the 102 Illinois counties...**

**NOT applicable to Cook County?!?! *Don't ask...***

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**Illinois Office of State Guardian**

**Guardianship Training**

Click on the link to the Guardianship Training that will provide you with a certificate of completion. The certificate is required to file with the court to obtain the guardianship and to maintain the guardianship. Information on this course is available at: [www.illinois.gov/guardianship](http://www.illinois.gov/guardianship)

Click here to view a list of the available materials that are available to you. All can be found in the "Resources" section: [www.illinois.gov/guardianship](http://www.illinois.gov/guardianship)

Click on the link to the list of counties that are included in the training requirement.

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**OFFICE OF STATE GUARDIAN**

OSG Regional Office

OSG Service Profile

DNR

Practitioner's Guide to Adult Guardianship in Illinois

FAQ

Guide to adult guardianship in Illinois

Guardianship Postcard

Guardianship FAQ

Guardianship Training

Online intake form

OSG Case Log

OSG's website

Volunteer guardianship advocate program information and tools

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**Office of State Guardian**  
**Guardianship Training**

Click on the links below to find training materials that will help you understand the role of a guardian and the requirements for becoming one. The links are organized by topic.

Click on the links below to find more information about guardianship. If you are looking for a specific topic, click on the link that matches your needs.

Click on the links below to find more information about guardianship. If you are looking for a specific topic, click on the link that matches your needs.

**OFFICE OF STATE GUARDIAN**

- OSG Regional Offices
- OSG Service Profile
- OSG
- Find a More Guide to Adult Guardianship in Illinois
- FAQ
- Guide to adult guardianship in Illinois
- Guardianship Fact sheet
- Guardianship FAQ
- Guardianship Training
- Online intake form
- OSG Case List
- OSG Info
- Volunteer guardianship advocates program information and tools

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**RUBIN LAW**  
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 1-800-541-5411

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**Guardianship Training Link**

Click on the links below to find training materials that will help you understand the role of a guardian and the requirements for becoming one. The links are organized by topic.

Click on the links below to find more information about guardianship. If you are looking for a specific topic, click on the link that matches your needs.

Click on the links below to find more information about guardianship. If you are looking for a specific topic, click on the link that matches your needs.

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**Request Form Item #5 Guardianship & Alternatives**

Click on the links below to find training materials that will help you understand the role of a guardian and the requirements for becoming one. The links are organized by topic.

Click on the links below to find more information about guardianship. If you are looking for a specific topic, click on the link that matches your needs.

Click on the links below to find more information about guardianship. If you are looking for a specific topic, click on the link that matches your needs.

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# Special Needs Planning is:

## **NOT JUST special needs trusts, NOT just documents...**

- **Not just** additional special provisions in Wills, Living Trusts, and Powers of Attorney
- **Not just** extended family instructions and forms
- **Not just** planning for probate court avoidance
- **Not just** federal and state estate tax (death tax) avoidance or minimization planning
- **Not just** at 18 guidance and advice on guardianship and alternative options to guardianship
- **Not just** assistance and forms for changing titles and naming beneficiaries
- **Not just** guidance on navigating the Illinois maze of children and adult services, including home based and residential options
- **Not just** guidance and forms for “Letters of Intent”, guidance for the “future team”
- **Not just** consulting and planning on the impact of divorce on government benefits and planning
- **Not just** consulting on the impact of, and planning for, litigation settlements, on SSI and Medicaid
- **Not just** advice and consulting on the proper or appropriate use of ABLE accounts
- **Not just** assistance on navigating the move to another State due to different laws and State programs
- **Not just** assistance and intervention with Government Benefits issues and correspondence from SSA and HFS (State Medicaid Agency)
- **Not just** telling you of new laws, regulations, policies, and options impacting your planning
- **Not just** parent to parent and sibling to sibling mentoring
- ❖ **But ALL of the above and much, much more**
- ❖ **It is a RELATIONSHIP that should not end with the signing of your documents and should continue, always available, without an additional “meter running”... without any additional attorney fees!**

**INFORMATION REQUEST FORM**

**DOCUMENTS WILL BE SENT BY EMAIL (select ☒ boxes below)**

1. ☐ Special Needs Alliance "Special Needs Trust Handbook"
2. ☐ Letters of Intent ("Guidance & Information Form" for "future team")
3. ☐ Impact on Divorce & Child Support on SSI & Medicaid
4. ☐ Keeping your Child on YOUR Health Insurance (past 26)
5. ☐ Guardianship & Alternatives (Powers of Attorney)
6. ☐ Special Needs Trusts & Special Needs Future Planning
7. ☐ Adult Sibling Group & Sib Shop information for younger siblings
8. ☐ Impact of Guardianship on Driver's License
9. ☐ Taxes & Special Needs Trusts
10. ☐ Taxes & Adult HBSS Waiver
11. ☐ ABLE Accounts
12. ☐ Military Pension Benefit (SBP)
13. ☐ Pre-Paid Funeral Arrangements Rules
14. ☐ Please add me/us to your list to receive your newsletters by email

**Check appropriate box and complete the needed information.**

1. ☐ Do not contact me/us, just please send by email the information requested above.

Email address is: \_\_\_\_\_

2. ☐ Please contact me (us) to schedule an "Initial Consultation".

Day time phone number: (\_\_\_\_) \_\_\_\_\_ Email: \_\_\_\_\_

Name(s): \_\_\_\_\_

3. ☐ Please contact me (us) to schedule a presentation to a group, organization, school, or agency.

Day time phone number: (\_\_\_\_) \_\_\_\_\_ Email: \_\_\_\_\_

Name(s): \_\_\_\_\_



# Family to Family

{We  
live  
it...}

RUBIN  
LAW A Professional  
Corporation

## Special Needs Legal & Future Planning

Buffalo Grove • Chicago • Old Orchard  
www.rubinlaw.com • email@rubinlaw.com  
847-279-7999 • Toll Free 866.To.Rubin

**“Legal and future planning for our fellow Illinois families of individuals with special needs, including intellectual disabilities, developmental disabilities, physical disabilities, and/or mental illness, is not one thing we do, it’s the only thing we do; it’s not one area of our practice, it’s our only area of practice.”**

### ATTORNEYS

Brian Rubin (***Parent***)

Benjamin (Benji) Rubin (***Sibling***)

Judith (Judie) Smith

Melanie Hoffman

Jolie Kaplan (***Sibling***)

### SUPPORT STAFF

Jill Yonover, Paralegal

Nicole Rosenthal, Legal Assistant & Office Manager (***Sibling***)

Linda Rubin, Legal Assistant (***Parent***)

Karen Muschkat, Legal Assistant

Carmen Cuzmanko, Administrative Assistant (***Parent***)

Mitchell (Mitch) Rubin, Clerical Support  
(Brian’s & Linda’s son, Benji’s and Nicole’s brother, ***who has Autism***)

Attorney memberships include the Special Needs Alliance and the Academy of Special Needs

**Sherri, Brian, & Benji hope that you found this virtual zoom presentation beneficial. Be safe... Be well...**

**This concludes the presentation.**

**➤ Contact Sherri at:  
[benefithelp@aol.com](mailto:benefithelp@aol.com)  
847-279-7999**

**➤ Contact Brian and Benji at:  
[email@rubinlaw.com](mailto:email@rubinlaw.com)  
866.to.rubin or 847-279-7999**