

## **Estate Planning and Probate Section MCLE Program Webinar May 27, 2020**

**12:00 PM – 1:00 PM**

### **Welcome/Announcements and Introduction**

Bill Hardesty – Estate Planning & Probate Section Chair

### **Program – Special Needs Planning**

#### **Speaker**

Benjamin Rubin, Rubin Law, A Professional Corporation

#### **Speaker's Bio – see attached**

#### **Presentation Summary**

Estate planning for families of children with special needs is a very complicated specialty. Benjamin will discuss some of the complexities.

#### **Link to Evaluation**

The evaluation must be completed in order to receive CLE credit.

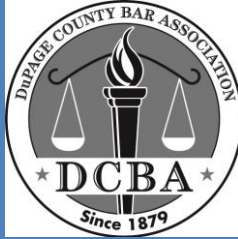
<https://www.surveymonkey.com/r/EstPlanning05272020>

#### **Next Meeting:**

June 24, 2020 – The Benefits of Working with a Professional Fiduciary, William E. Hardesty, Arboretum Wealth & Trust Management

#### **DCBA Events:**

May 27, 2020 – Lawyers Lending a Hand/DuPage County Courthouse – [Joint Drive-thru Food Drive](#)



### **Membership Renewals Have Begun**

Sign into your membership profile at DCBA and click on the \*\*\*Renew Your Membership Now\*\*\* banner to renew your membership. Anybody who renews by July 3<sup>rd</sup> will be placed into a drawing to win one of three \$100 Amazon gift cards.

### **COVID Relief Fund**

The DCBA and the DuPage Bar Foundation have established an assistance fund for lawyers facing personal hardship due to the downturn in work caused by the COVID-19 pandemic. Please help us promote the availability of this fund, and, if you are in need, please submit a confidential application at [www.dcba.org/reliefapply](http://www.dcba.org/reliefapply). Donations to the fund are also welcome at [www.dcba.org/reliefdonate](http://www.dcba.org/reliefdonate)."

### **Earn CLE Online!**

**DCBA OnDemand CLE is Now Powered by IICLE** The Illinois Institute for Continuing Legal Education (IICLE®) and the DuPage County Bar Association (DCBA) are excited to offer a new IICLE®Share collaboration to provide DCBA members a high quality and reliable online learning experience. Members can find the link to The Illinois Institute for Continuing Legal Education (IICLE) on the DCBA website under "Legal Community" → OnDemand CLE → Online CLE Catalog. You must be logged into your DCBA Membership Profile in order to view courses for free or at a reduced price.

### **View & Print CLE Certificates through the DCBA Website:**

Manage Profile -> Professional Development (under content & features) and choose the icon to the left of each meeting to print your certificate directly or choose to have them emailed to you to save to your computer (you MUST be logged in to view this feature)



Attorney Benjamin (Benji) Rubin, Brian's youngest son, Mitchell's "little/big" brother, has been a member of the Law Firm since 2010. Benji graduated from the University of Illinois College of Law, Magna Cum Laude, received his undergraduate degree from Northwestern University, and his Graduate Law Degree, an LLM (Tax), with honors, also from Northwestern University.

Benji is a member of the Academy of Special Needs Planners, a member, by invitation, of the Special Needs Alliance (the national not for profit association of special needs planning attorneys with membership by invitation only), is Chairman of the American Bar Association Special Needs Planning Committee, serves as the President of SIBS (Supporting Illinois Brothers and Sisters), the Illinois

chapter of the national Sibling Leadership Network, an organization of adult siblings of individuals with intellectual disabilities, developmental disabilities and/or mental illness. Benji is a member and officer (Treasurer) of the Board of Directors of The Arc of Illinois, is a member of the Clearbrook Associate Board, an organization serving more than 8,000 individuals with disabilities, including his brother, Mitchell, serves on the Board of Directors of DayOne PACT, which serves as Trustee of Special Needs Trusts as well as Guardian for individuals with intellectual disabilities, developmental disabilities and/or mental illness, serves on the Board of Directors of the Foundation of The Special Education District of Lake County (SEDOL Foundation), serves on the Advisory Council of Encompass (Encompass in partnership with Jewish Child & Family Services, Jewish United Fund, JVS Chicago, JCC Chicago, Keshet, and The Center for Enriched Living and Center for Independent Futures). Benji is also a Faculty Member for the Illinois Institute for Continuing Legal Education (IICLE) on the topic of special needs planning, as well as a Speaker for the American Bar Association and the Illinois State Bar Association on those topics.

Having Mitchell as a brother profoundly shaped who Benji is today, and thus the type of law he chose to practice. His personal experiences as a sibling offer a unique perspective into the responsibilities that come with caring for a sibling with special needs. Now as an adult, those sometimes present and future responsibilities he has regarding his brother's care are a concern that he shares with all brothers and sisters of individuals with special needs.

### 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): \_\_\_\_\_



## Special Needs Planning

**BENJI RUBIN**  
**Attorney & Sibling**



**RUBIN**  
**LAW**

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### Special Needs Legal & Future Planning

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

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## Benji Rubin

An attorney, "little/big" brother of Mitchell, who has Autism, & a partner in Rubin Law, a firm whose practice is limited to future planning for his fellow families of individuals with special needs. Having Mitchell as a brother profoundly shaped who Benji is today, & thus the area of law he chose to practice. His personal experiences as a sibling offer a unique perspective into the responsibilities that come with caring for a sibling with special needs, a concern that he shares with all brothers & sisters of individuals with special needs.

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## Benji Rubin

- Treasurer, The Arc of Illinois
- President, S.I.B.S., Illinois Chapter of Sibling Leadership Network (National Sibling Association)
- Member of the Special Needs Alliance, the national, non-profit, membership by invitation, organization of special needs planning attorneys
- Member of the Academy of Special Needs Planners
- Clearbrook Associate Board of Directors, an agency serving over 8,000 individuals with intellectual and/or developmental disabilities, including Benji's brother, Mitchell

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## Benji Rubin

- Chairman, American Bar Association Special Needs Planning Committee
- Faculty Member of IICLE, The Illinois Institute for Continuing Legal Education, on the topic of special needs trusts, and special needs legal & future planning
- Director, The SEDOL (Special Education District of Lake County) Foundation
- Director, DayOne Pact, Former PAS/ISC for DuPage County, Kane and Kendall Counties), serves as Guardian and Trustee of Special Needs Trusts.
- Member, Encompass Advisory Council (a joint venture of Jewish Children & Family Services, Jewish United Fund, Jewish Vocational Services Chicago, Jewish Community Centers Chicago, The Center for Enriched Living, The Center for Independent Futures, & Keshet, developing a sustainable, community integrated future for people with developmental &/or intellectual disabilities)

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# JANUARY 27, 1981

# MITCH






**Best  
Worker at  
Rubin Law**








**Best Man 8/9/15**

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## Special Olympics



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866.to.rubin



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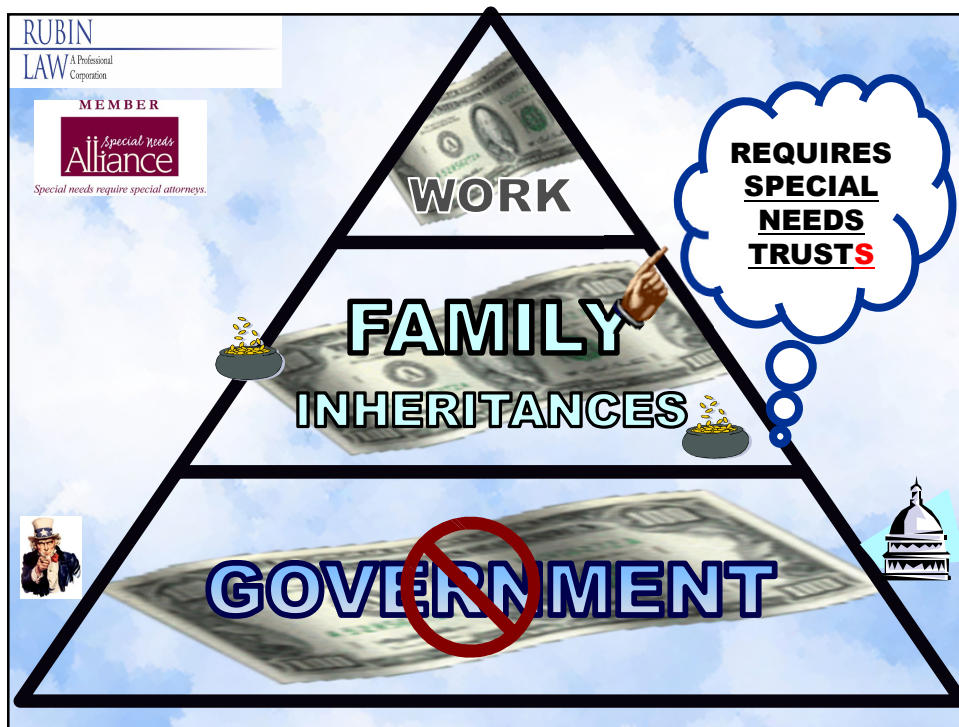
6

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

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BENEFITS 101 SSI - SSDI - MEDICAID - MEDICARE - HBWD - ETC.

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

**3rd of 3 - HBWD Medicaid**  
**BEWARE:**  
*If turned down for Medicaid on application or lose Medicaid on redetermination, the State doesn't automatically then try one of the other "types".*

**Quarters – own record:**  
 2020 \$1,410

**Before 24 – 6 quarters**

**• Retires and receiving SSA**  
 (new for 2017)  
 • Inability to Use Two Limbs

**MEDICARE TWO YEARS**

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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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# ECONOMIC IMPACT PAYMENTS





Illinois Department of Human Services  
 Division of Developmental Disabilities  
 Guidance for providers of Home & Community Based Services for application of Recovery Rebates

Information Bulletin  
DD-20-XXX DRAFT

Date: 4/15/2020

This Notice informs providers of provisions of the Coronavirus Aid, Relief, and Economic Security (CARES) Act (referred to as the "CARES Act").

The CARES Act provides a refundable tax credit for 2020 to eligible individuals. The Internal Revenue Service will provide payments in 2020 as an advance refund of credit to eligible individuals. These payments are called "Recovery Rebates".

- These payments are not counted as **income** when determining Medicaid eligibility.
- These payments are not counted as a **resource** for 12 months following receipt when determining Medicaid eligibility. However, any amount remaining after 12 months will be considered a resource and counted towards the maximum resource allowance.
- These payments are not reportable to the Department of Human Services.
- These payments do not require an income change transaction in MED.
- These payments are not to be collected by providers to be applied towards the resident's "group care credit".
- These payments are the resident's personal funds.
- For residents that have a personal fund account managed by the LTC provider, refer to [DHS Policy Manual 20-08-11.2](#).

The "CARES Act" also provides that certain individuals collecting unemployment benefits may be eligible to receive an additional \$600 as "Pandemic Unemployment Compensation" per week for weeks of unemployment ending on or before July 31, 2020. The monthly equivalent of \$2500 in Pandemic Unemployment Compensation will be disregarded when determining countable income for the purpose of Medicaid eligibility.

Effective Date: Upon Final Posting

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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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**“the attainment of the limiting age does not operate to terminate the hospital and medical care of a person who is handicapped at the time the limiting age of self-sustaining independence is reached, or other care providers for lifetime care & supervision.”**

**Request Form Item # 4**

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**State of Illinois**  
**Department of Human Services**

**#1**  
**DDD**

**#2**  
**DMH**

**#3**  
**DRS**

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**STATE OF ILLINOIS DHS DDD DEFINITION OF DD FOR WAIVER**

DHS: Chapter 500 - (DDPAS-5) Page 1 of 10

**500.20 Dete**

**A. Mental R**

Mental Retar

- Significant
- existing co
- manifeste

"Significantly standardized the reliability (Derived from (3); and Glas

**B. Related C**

A Related Co

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  - b. A
  - c. n
  - d. f
  - e. r
2. It is m
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  - a. S
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  - d. N
  - e. S
  - f. C

For all related conditions other than cerebral palsy and epilepsy, the PAS agency must take care to determine that the person's limitations are:

- Similar to those caused by mental retardation
- Due specifically to the (potential) related condition and not due to other, separately diagnosable and treatable conditions, such as substance abuse, mental illness, or personality disturbances (especially those personality disturbances that pre-dated the manifestation of the related condition).

**NOT  
SAME  
AS  
SSA**

- Before 18  
BUT NOT BEFORE 17  
(Adult Test)
- IQ 70 or  
below
- Before 22  
3 or more  
of 6 major  
life activities

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

1. 2020 is 2 x \$783 (SSI) = \$ 1,566 @ month  
or 15 hours a week & Medicaid
2. Residential

**Parental Assets**

**do not count!**

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

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**LOCAL DRS OFFICE or call 1-800-843-6154**

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*Special needs require special attorneys*

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**WRONG WAY**

**WRONG WAY**

- MEMBER
- Special Needs*  
**Alliance**
- Special needs require special attorneys*

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# Special Needs Trusts

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## Special Needs Trusts

😊 **3rd Party**  
**Private & Pooled Versions**

😞 **Self Settled**  
**aka, OBRA, 1st Party, Pay Back...**  
**Private (d4A) & Pooled (d4C)**

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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 **1<sup>st</sup> Version** HERITANCES & GIFTS



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

## ORIGINAL - GOOD

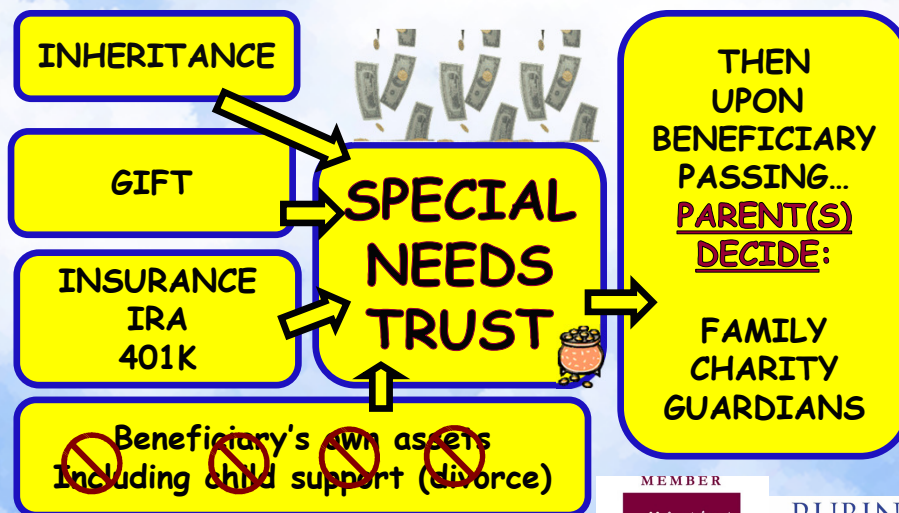
➔ by Court Decisions 1982

➔ by Statute 1991



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




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**OK... SO**

**INSIDE WILL**

**OR LIVING**

**TRUST ?**



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**WRONG WAY**

**NO! NO! NOT!**

**YOU WILL**

**OR LIVING**

**TRUST!**



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**Won't  
exist  
until...**



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**#1 So NO “Piggy Backing”**

**#2 NO “Grand Fathering”**

**#3 NO Nursing Home  
Impoverishment**

**#4 NO Place for gifts to go**



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# 3<sup>rd</sup> PARTY SPECIAL NEEDS TRUST

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## 3<sup>rd</sup> PARTY SPECIAL NEEDS TRUST

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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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# 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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## WHAT ABOUT GIFTS ?

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



3<sup>rd</sup> Party SNT



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# So far just 3<sup>rd</sup> Party But what if...


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# BENEFICIARY HAS ASSETS

*Savings Bonds* *UTMA Accounts AT 21* *Large Gift*

*IRA - 401k*  *Law Suit Settlement*

*Excess SSI/SSDI* *Inheritance*  
*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 1st!
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. NEW 2018 - Convert traditional 529 Account... up to \$15,000 limit...
8. NEW 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
    1. Doesn’t apply to all 9 Illinois Medicaid Waivers including DDD and DRS, and specifically CILA/ICFDD, SODC, HBSS
    2. Doesn’t apply to even medical Medicaid post age 55
- Tax Deduction... so what
- Child Support... Feds say NO!

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I heard that Illinois changed the Illinois ABLE account law to “get rid” of the required “pay back” on death of the beneficiary? True, **HOWEVER** it will **NOT APPLY** to most individuals with intellectual and/or developmental disabilities, as well as to many others!

Illinois Public Act 100-713 leads some to believe there is no longer a “pay-back” or “claw back” from an ABLE Account on the death of the Beneficiary. The truth is that the new law does **NOT** apply to most individuals with IDD. In accordance with the CMS (The Federal Agency governing State Medicaid programs), which stated in a letter dated 9/7/17 (see attached), that:

“pursuant to section 1917(b) of the Act, states are required to seek recovery against the estates of certain deceased

Medicaid beneficiaries who were receiving services under a Medicaid waiver at the time of their death.”

The new law does not apply to individuals who are receiving services under a Medicaid waiver at the time of their death.

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The new law does not apply to individuals who are receiving services under a Medicaid waiver at the time of their death.

**Request  
Form  
Item  
# 11**

- IL Residential Waiver for Children and Young Adults with Developmental Disabilities
- Illinois Behavioral Health Transformation - 1116

So, the truth is that any individual with IDD who has an Illinois ABLE account, who receives such services through one of the above 10 Illinois Medicaid Waivers, including children, **ARE** still subject to a **payback!**

In addition the Illinois amendment, Public Act 100-713, provides that child support and maintenance (Court ordered in a divorce) can be ordered by court directly to an ABLE Account, **unless prohibited by law**, which is contrary to the SSA position and the SSI POMS (SSI Regulations, but **NOT** law) which require it to be paid by court order to a d4A or C Special Needs Pay Back Trust and **NOT** to an ABLE Account in order for it not to impact SSI.

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

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

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# 1<sup>st</sup> Party SNT

Called... “Self Settled”... or

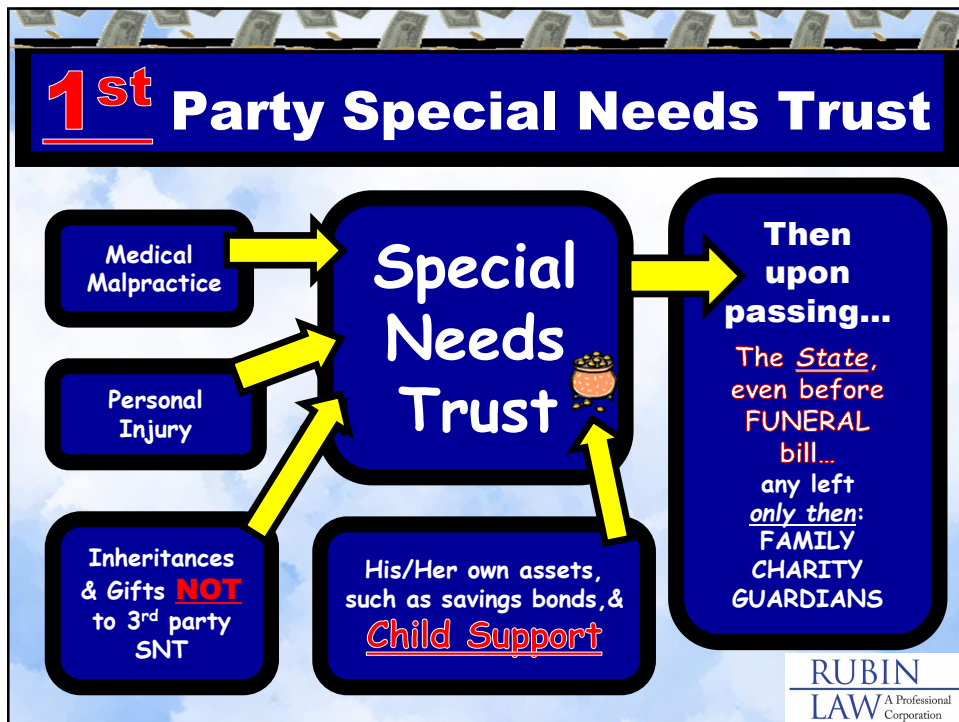
- ✓ “OBRA 93 Trust”...
- ✓ “(d)(4)(A) or (C) Trust”
- ✓ “PAY BACK Trust” (like  
an ABL account...
- ✓ because...

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# **1<sup>st</sup> 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!





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## Request Form Item # 3

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

**750 ILCS 5/513.5**  
(effective 1/1/16)

**Support for a non-minor child with a disability.**

(a) The court may award sums of money out of the property and income of either or both parties or the estate of a deceased parent, as equity may require, for the support of a child who is under the age of majority and who is mentally or physically disabled and not otherwise emancipated. The trust created by the parties for the benefit of the non-minor child established by the parties and for the sole benefit of the non-minor child or (d)(4)(c) of 42 U.S.C. 1396p, Section 15.1 of the Trusts and Trustees Administration Program Operating Manual System. An application for such award, the court shall consider all relevant factors that appear to be relevant to the child's needs, including but not limited to:

- (1) the present and future financial resources of both parties, to, savings for retirement;
- (2) the standard of living the child would have enjoyed if the parties had remained married; and
- (3) the financial resources of the child; and
- (4) any financial or other resource provided to or for the child, including but not limited to, Social Security Income, any home-based support provided pursuant to the Social Security Administration Program Operating Manual System, Disabled Adults, and any other State, federal, or local benefit.

(c) As used in this Section:

A "disabled" individual means an individual who is unable to engage in substantial gainful activity by reason of a physical or mental impairment that is expected to last for a continuous period of not less than 12 months.

"Disability" means a mental or physical impairment that prevents an individual from engaging in substantial gainful activity.


Child support payments that are required to be paid by a parent in accordance with 750 ILCS 5/513.5 by Court order, may result in a reduction or the complete elimination of a child's SSI (Supplemental Security Income) benefit as well as the child's Medicaid, which provides the child's medical coverage, therapy, employment support, and home or residential support services needed for the appropriate support for that child with special needs, and the custodial parent.

Because many programs for individuals with special needs are only available to individuals who have Medicaid eligibility, preserving this eligibility does more than just keep medical coverage in place. Therefore the child support that was awarded to benefit the child may, without proper planning, result in unintended, detrimental consequences. For a child age 18 or older, the child support payments ordered by Court, count as a reduction against SSI (Supplemental Security Income) benefit. For example, if the child support payments are \$20.00 per month, the child's SSI benefit will be reduced by \$20.00 per month (100% minus \$20.00 of the child support payments ordered by Court, count as a reduction against SSI benefit).


If the court order directs that child support payments are to be made to a sole benefit of that child, known as a self-settled special needs trust (also known as a special needs trust), support payments to such a special needs trust will not count against the child's SSI benefit. However, if the child support payments are made to the custodial parent, the parent's income will count against the child's SSI benefit. Therefore, if the child support payments are to be made to the custodial parent, the parent's income will count against the child's SSI benefit. Therefore, if the child support payments are to be made to the custodial parent, the parent's income will count against the child's SSI benefit.

750 ILCS 5/513.5.5, the court shall award sums of money out of the property and income of either or both parties or the estate of a deceased parent, as equity may require, for the support of a child who is under the age of majority and who is mentally or physically disabled and not otherwise emancipated. The trust created by the parties for the benefit of the non-minor child established by the parties and for the sole benefit of the non-minor child or (d)(4)(c) of 42 U.S.C. 1396p, Section 15.1 of the Trusts and Trustees Administration Program Operating Manual System.

See other side...




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- 
- ✓ **So NOT directly**
  - ✓ **All to 3<sup>rd</sup> Party SNT**
  - ✓ **IF no alternative then,  
& only then,**
  - ✓ **to a 1<sup>st</sup> Party SNT...**



47

**Spread the word...**

**NURSING HOME EXCEPTION**  
**BUT BEWARE...**

- **Power of Attorney/Living Trust**
  - **3<sup>rd</sup> party or 1<sup>st</sup> party SNT ?**

**AGAIN, ANOTHER REASON FOR  
SNT NOT INSIDE YOUR  
WILL OR YOUR LIVING TRUST!**



48

# COMMON ATTORNEY MISTAKES IN SPECIAL NEEDS TRUSTS



49

## COMMON ATTORNEY MISTAKES!

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



50



**COMMON ATTORNEY MISTAKES!**

**No Grand-Fathering  
Required  
Language!**



51

**COMMON ATTORNEY MISTAKES!**

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



52

**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!**



53

**COMMON ATTORNEY MISTAKES!**

**Not  
100%  
Discretionary**



54

## COMMON ATTORNEY MISTAKES!

# Permitting Pay TO...

*So SHOULD provide ability  
to distribute to ABLE!*



55

## COMMON ATTORNEY MISTAKES!

# Over Restrictive Language...



56



## **COMMON ATTORNEY MISTAKES!**

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



57

## **COMMON ATTORNEY MISTAKES!**

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



58

## **COMMON ATTORNEY MISTAKES!**

**No “Next  
Generation”  
Trustees...**



59

## **COMMON ATTORNEY MISTAKES!**

**No  
Termination  
Provision...**



60

**COMMON ATTORNEY MISTAKES!**

**No  
“Contingent”  
SNT for others**



61

**COMMON ATTORNEY MISTAKES!**

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



62

## **COMMON ATTORNEY MISTAKES!**

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



63

## **COMMON ATTORNEY MISTAKES!**

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



64



## **COMMON ATTORNEY MISTAKES!**

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



65

## **COMMON ATTORNEY MISTAKES!**

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



66

## **COMMON ATTORNEY MISTAKES!**

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



67

## **COMMON ATTORNEY MISTAKES!**

# **Other Documents**

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



68

## **COMMON ATTORNEY MISTAKES!**

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



69

**Request  
Form  
Item  
# 1  
Handbook**

**T HANDI**



Administering a  
Special Needs Trust

A Handbook For Trustees

**Request  
Form  
Item  
# 6  
Reading  
Material**

**Request  
Form Item # 9  
SNT/Taxes**



70

# Guardians are nominated in parents Wills!



71

## (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...

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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?

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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?

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**Short Term Guardian Declaration**

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guardianship

**APPOINTMENT OF SHORT-TERM GUARDIANS**

In Accordance with the Illinois Short-Term Guardians Law  
(Illinois Compiled Statutes Chapter 755, Section 5/11-5.4)


We, MICHAEL SMITH and MARY SMITH, understand that by completing this form, we are appointing guardians of our child, JOHNNY SMITH, named herein.

- Parents and Child.** We, MICHAEL SMITH and MARY SMITH, currently residing at 123 Main Street, South Town, Illinois, are parents of JOHNNY SMITH, born July 4, 1999.
- Guardians.** We hereby appoint the following persons as the short-term guardians for our child, JOHNNY SMITH, JILL JONES and TOM JONES, who currently reside at 562 Center Avenue, Port Bridge, Illinois.
- Effective Date.** This appointment becomes effective (check one if you wish it to be applicable)
  - ☐ On the date that we jointly, or the survivor of us, states in writing that we, or the survivor of us, is no longer willing or able to make and carry out day-to-day child care decisions concerning our child, JOHNNY SMITH.
  - ☐ On the date that one (1) physician familiar with our conditions certifies in writing that we, or the survivor of us, are no longer willing or able to make and carry out day-to-day child care decisions concerning our child, JOHNNY SMITH.
  - ☐ On the date that we or the survivor of us is admitted as an in-patient to a hospital or other health care institution.
  - ☒ On the following date February 2, 2012.
  - ☐ Other: \_\_\_\_\_
 (NOTE: If this item is not completed, the appointment is effective immediately upon the date the form is signed and dated below.)
- Termination.** This appointment shall terminate three hundred sixty five (365) days after the effective date, unless it terminates sooner as determined by the event or date we have indicated below (check one if you wish it to be applicable)
  - ☐ On the date that we jointly, or the survivor of us states in writing that we, or the survivor of us, are again willing and able to make and carry out day-to-day child care decisions concerning our child, JOHNNY SMITH.
  - ☐ On the date that one (1) physician familiar with our conditions certifies in writing that we, or the survivor of us, are again willing and able to make and carry out day-to-day child care decisions concerning our child, JOHNNY SMITH.
  - ☐ On the date that we or the survivor of us is discharged from the hospital or other health care institution where we or the survivor of us were admitted as an in-patient.
  - ☒ On the date which is February 9, 2012 (8) days but no more than three hundred sixty five (365) days after the effective date.
  - ☐ Other: \_\_\_\_\_
 (NOTE: If this item is not completed, the appointment will be effective for a period of 365 days beginning on the effective date.)
- Duties of Short-Term Guardian of a Minor.** (755 ILCS 5/11-10.2)
  - (a) Immediately upon the effective date of the appointment of a short-term guardian, the short-term guardian shall assume all duties as short-term guardian of the minor as provided in this Section. The short-term guardian of the person shall have authority to act as short-term guardian, without direction of court, for the duration of the appointment, which in no case shall exceed a period of three hundred sixty five (365) days. The authority of the short-term guardian may be limited or terminated by a court of competent jurisdiction.
  - (b) Unless further specifically limited by the instrument appointing the short-term guardian, a short-term guardian shall have the authority to act as a guardian of the person of a minor as prescribed in Section 11-13, but shall not have any authority to act as guardian of the estate of a minor, except that a short-term guardian shall have the authority to apply for and receive on behalf of the minor benefits to which the child may be entitled from or under federal, state, or local organizations or programs.
- Date and Signature of Appointment of Guardians.** This appointment is made this 25 day of January, 2012.  
 MICHAEL SMITH [Signature] MARY SMITH [Signature]

The foregoing appointment was, on the date above written, signed and declared by the parents, MICHAEL SMITH and MARY SMITH, to be their "Appointment of Short-Term Guardians", in the presence of us, who at their request and in their presence and in the presence of each other, have heretofore subscribed our names as witnesses, and we hereby certify that we believe the parents to be of sound mind and memory and under no undue influence. We also declare that we are not ourselves designated as short-term guardians in this appointment.

Page 1 of 2

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**You need to write it ALL down!**

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






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  **WRITE IT DOWN!**  

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

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

funeral desires & related info... SNT,  
✓ executive summary

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

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# ADULT GUARDIANSHIP & THE ALTERNATIVES...

Doing  
NOTHING  
= HCSA

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## (755 ILCS 40/) Health Care Surrogate Act.

(755 ILCS 40/1) Sec. 1. Short title. This Act may be cited as the Health Care Surrogate Act. (Source: P.A. 87-749.)

(755 ILCS 40/5) Sec. 5. Legislative findings and purposes.

(a) Findings. The legislature recognizes that all persons have a fundamental right to make decisions relating to their own medical treatment, including the right to forgo life-sustaining treatment. Lack of decisional capacity, alone, should not prevent decisions to forgo life-sustaining treatment from being made on behalf of persons who lack decisional capacity and who have no applicable living will or power of attorney for health care. Uncertainty and lack of clarity in the law concerning the making of private decisions concerning medical treatment and life-sustaining treatment, without judicial involvement, causes unnecessary emotional distress to the individuals involved and unduly impedes upon the individual right to forgo life-sustaining treatment. The enactment of statutory guidelines for private decision making will bring improved clarity and certainty to the process for implementing decisions concerning medical treatment and will substantially reduce the associated emotional distress for involved parties.

(b) Purposes. This Act is intended to define the circumstances under which private decisions by patients with decisional capacity and by surrogate decision makers on behalf of patients lacking decisional capacity to make medical treatment decisions or to terminate life-sustaining treatment may be made without judicial involvement of any kind. This Act is intended to establish a process for that private decision making. This Act is intended to clarify the rights of those involved in these private decisions by or on behalf of patients. This Act is not intended to condone, authorize, or approve mercy killing or assisted suicide. (Source: P.A. 90-246, eff. 1-1-98)

(755 ILCS 40/25) 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 authorized and available, the health care provider must make a reasonable inquiry as to the availability of possible surrogates listed in items (1) through (6) of this subsection. For purposes of this Section, a reasonable inquiry includes, but is not limited to, identifying 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 condition, 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) either parent of the patient;
- (5) any adult brother or sister of the patient;
- (6) any adult grandchild of the patient;
- (7) a close friend of the patient;
- (8) 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 life-sustaining treatment. If 2 or more surrogates who are in the same category and have equal priority indicate to the attending physician 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 control, unless the minority (or the parent without custodial rights) initiates guardianship proceedings in accordance with the Probate Act of 1975. No health care provider or other person is required to seek appointment of a guardian.

1. lacks decisional capacity and
2. no health care agent
3. then... (a) Guardian of Person... (b) spouse... (c) any adult children... (d) any parent... (e) any sibling

## But just MEDICAL/HEALTH!

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## Powers of Attorney

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

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

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

1. I, \_\_\_\_\_ (insert name and address of principal) hereby revoke all prior statutory powers of attorney for property executed by me and appoint \_\_\_\_\_ (insert name and address of agent) **(NOTE: You may not name co-agents using this form.)** 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 3-4 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 inserted 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.)**

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

W:\D\PAAs\Ippopa.mmm.blank.wpd Page 2 of 9

## \$ FINANCIAL \$

Print?  
Mark?  
Direct  
others to  
sign?

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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

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**NOTICE TO THE INDIVIDUAL SIGNING THE ILLINOIS  
STATUTORY SHORT FORM POWER OF ATTORNEY FOR HEALTH CARE**

No one can predict when a serious illness or accident might occur. When it does, you may need someone else to speak or make health care decisions for you. If you plan now, you can increase the chances that the medical treatment you get will be the treatment you want.

In Illinois, you can choose someone to be your "health care agent". Your agent is the person you trust to make health care decisions for you if you are unable or do not want to make them yourself. These decisions should be based on your personal values and wishes.

It is important to put your choice of agent in writing. The written form is often called an "advance directive". You may use this form or another form, as long as it meets the legal requirements of Illinois. There are many written and on-line resources to guide you and your loved ones in having a conversation about these issues. You may find it helpful to look at these resources while thinking about and discussing your advance directive.

**WHAT ARE THE THINGS I WANT MY HEALTH CARE AGENT TO KNOW?**

The selection of your agent should be considered carefully, as your agent will have the ultimate decision making authority once this document goes into effect, in most instances after you are no longer able to make your own decisions. While the goal is for your agent to make decisions in keeping with your preferences and in the majority of circumstances that is what happens, please know that the law does allow your agent to make decisions to direct or refuse health care interventions or withdraw treatment. Your agent will need to think about conversations you have had, your personality, and how you handled important health care issues in the past. Therefore, it is important to talk with your agent and your family about such things as:

- (i) What is most important to you in your life?
- (ii) How important is it to you to avoid pain and suffering?
- (iii) If you had to choose, is it more important to you to live as long as possible, or to avoid prolonged suffering or disability?
- (iv) Would you rather be at home or in a hospital for the last days or weeks of your life?
- (v) Do you have religious, spiritual, or cultural beliefs that you want your agent and others to consider?
- (vi) Do you wish to make a significant contribution to medical science after your death through organ or whole body donation?
- (vii) Do you have an existing advanced directive, such as a living will, that contains your specific wishes about health care that is only delaying your death? If you have another advance directive, make sure to discuss with your agent the directive and the treatment decisions contained within that outline your preferences. Make sure that your agent agrees to honor the wishes expressed in your advance directive.

**WHAT KIND OF DECISIONS CAN MY AGENT MAKE?**

If there is ever a period of time when your physician determines that you cannot make your own health care decisions, or if you do not want to make your own decisions, some of the decisions your agent could make are to:

- (i) talk with physicians and other health care providers about your condition.
- (ii) see medical records and approve who else can see them.
- (iii) give permission for medical tests, medicines, surgery, or other treatments.
- (iv) choose where you receive care and which physicians and others provide it.
- (v) decide to accept, withhold, or decline treatments designed to keep you alive if you are near death or not likely to recover.


You may choose to include guidelines and/or restrictions to your agent's authority.

- (vi) agree or decline to donate your organs or your whole body if you have not already made this decision yourself. This could include donation for transplant, research, and/or education. You should let your agent know whether you are registered as a donor in the First Person Consent registry maintained by the Illinois Secretary of State or whether you have agreed to donate your whole body for medical research and/or education.
- (vii) decide what to do with your remains after you have died, if you have not already made plans.
- (viii) talk with your other loved ones to help come to a decision (but your designated agent will have the final say over your other loved ones).

Your agent is not automatically responsible for your health care expenses.


**WHOM SHOULD I CHOOSE TO BE MY HEALTH CARE AGENT?**

You can pick a family member, but you do not have to. Your agent will have the responsibility to make medical treatment decisions, even if other people close to you might urge a different decision. The selection of your agent should be done carefully, as he or she will have ultimate decision-making authority for your treatment decisions once you are no longer able to voice your preferences. Choose a family member, friend, or other person who:



## 1/1/16 revised

# Print? Mark? Direct others to sign?



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**DECLARATION FOR MENTAL HEALTH TREATMENT**

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: \_\_\_\_\_

-1-

## MENTAL HEALTH

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Our law practice is limited to "special needs legal and future planning" for our fellow Illinois families of individuals with special needs, including, but not limited to, intellectual disabilities, developmental disabilities, and/or mental illness. (Attorney memberships include the Special Needs Alliance and the Academy of Special Needs Planners)

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

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, I, \_\_\_\_\_  
(**INSERT STUDENT'S NAME**), execute this Delegation of Rights, in express accordance with and pursuant to **Public Act 095-0372**, which amended the Illinois School Code by adding Section 14-6.10 (105 ILCS 5/14-6.10), "TRANSFER OF PARENTAL RIGHTS AT THE AGE OF MAJORITY", effective 8/23/2007.

I, \_\_\_\_\_ (**INSERT STUDENT'S NAME**), am 18 years of age or older and a student who has the right to make educational decisions for myself under State and federal law. I have not been adjudged incompetent and, as of the date of the execution of this document, I hereby delegate my right to give consent and make decisions concerning my education to \_\_\_\_\_ (**INSERT REPRESENTATIVE'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 14 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 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 discuss my education program and that I have the right to raise any issues or concerns that the school district must consider them. This delegation will be in full force and effect from the date of execution of this document, and may be renewed by me at any time. I reserve the right to terminate this Delegation of Rights at any time by written notice to the school district. I understand that I have the right to terminate this Delegation of Rights at any time by written notice to the school district immediately if I revoke this Delegation of Rights.

Student \_\_\_\_\_

Accepted by: \_\_\_\_\_

Designated Representative \_\_\_\_\_

# EDUCATION

## SPECIAL ED POWER OF ATTORNEY 2007 LAW

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

**STUDENT  
"SIGNS"**

**PARENT  
SIGNS**

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**Social Security Administration**  
**Please read the instructions before completing this form.**

Form Approved  
OMB No. 0960-0527

Name (Claimant) (Print or Type) \_\_\_\_\_ Social Security Number \_\_\_\_\_

Wage Earner (If Different) \_\_\_\_\_ Social Security Number \_\_\_\_\_

**Part I APPOINTMENT OF REPRESENTATIVE**

I appoint this person, \_\_\_\_\_ (Name and Address) \_\_\_\_\_  
to act as my representative in connection with my claim(s) or asserted right(s) under:  
☐ Title II (RSDI) ☐ Title XVI (SSI) ☐ Title XVIII (Medicare Coverage) ☐ Title VIII (SVB)

This person may, entitle in my place, make any request or give any notice, give or draw out evidence or information; get information; and receive any notice in connection with my pending claim(s) or asserted right(s).  
☐ 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, partners, and/or parties under contractual arrangements (e.g. copying services) for or with my representative.  
☐ I appoint, or I now have, more than one representative. My main representative is \_\_\_\_\_ (Name of Principal Representative)

Signature (Claimant) \_\_\_\_\_ Address \_\_\_\_\_  
Telephone Number (with Area Code) \_\_\_\_\_ Fax Number (with Area Code) \_\_\_\_\_ Date \_\_\_\_\_

**Part II ACCEPTANCE OF APPOINTMENT**

I, \_\_\_\_\_, hereby accept the above appointment. I certify that I have not been suspended or prohibited from practice before 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 will not charge or collect any fee for the representation, even if a third party will pay the fee, unless it has been approved in accordance with the laws and rules referred to on the reverse side of the 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 this requirement.)  
Check one: ☐ I am an attorney. ☐ I am a non-attorney who is participating in the direct fee payment demonstration project.

☐ I am a non-attorney. I am not participating in the direct fee payment demonstration project. I have been disbarred or suspended from a court or bar 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 statements or forms, 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 1631(d)(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 waive only my right to direct payment of a fee from the withheld past-due retirement, survivors, disability insurance or supplemental security income benefits of my client (the claimant). I do not waive my right to request fee approval and to collect a fee directly from my client or a third party.

Signature (Representative Waiving Direct Payment) \_\_\_\_\_ Date \_\_\_\_\_

Form SSA-1095-04 (05-2008) of (05-2008) TAKE OR SEND ORIGINAL TO SSA AND RETAIN A COPY FOR YOUR RECORDS  
Destroy Prior Editions (4 Copies: File, Claimant, Representative, ODAF)

# Social Security

## SSA REQUIRES THEIR OWN FORM

**STUDENT  
"SIGNS"**


**PARENT  
SIGNS**

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State of Illinois  
Department of Human Services  
**APPROVED REPRESENTATIVE CONSENT FORM**

**1 (PERMANENT)** 

---

**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 this 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: \_\_\_\_\_

---

IL 444-2988 (R-9-99) Page 1 of 1


# THE STATE

# DHS/HFS

# REQUIRES

# THEIR OWN

# FORM



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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 \_\_\_\_ ?

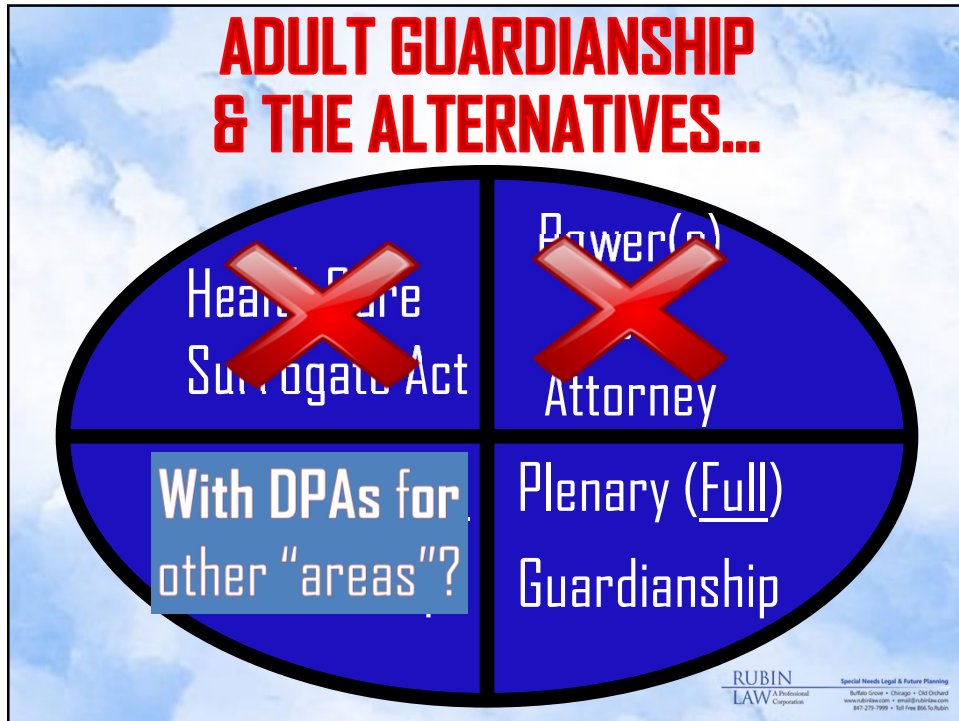


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# NO MORE MAILING ANNUAL REPORTS! MUST NOW E-FILE

BUT... Cook County ☹️

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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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Voice 847.279.7999 • Fax 847.279.0090 • Toll Free 866.to.rubin  
email@rubinelawcorp.com • www.rubinelawcorp.com  
Attorneys: Benjamin A. Rubin, Brian N. Rubin, Judith L. Smith  
Legal Assistants: Karen Muschkat, Nicole Rosenthal, Linda Rubin

Our mission is to provide appropriate legal and future planning, with compassion and understanding, for our fellow Illinois families of children and adults with intellectual disabilities, developmental disabilities, and/or mental illness.

**DMV does NOT  
follow the law!**

**(62)  
DR  
Indivi  
or I**

**Sec. 6-103. The S  
the retention of a  
Code.**

**5. To any person,  
be afflicted with,  
or disease and wh  
to competency by**

**8. To any person  
believes that the p  
would not be ab  
Highways, unless the person who submitted 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;**

...

(Source: P.A. 92-343, eff. 1-1-02.)

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

**DMV allows  
D. letter,  
DON'T!  
ability  
urance?**

**NOT  
IF PLENARY  
for sure...  
Limited ?**

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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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**ADULT  
SHORT TERM  
GUARDIAN  
DECLARATION**

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## • Use Short Term Guardian Declaration to delegate to Co.. or Cos to a 3<sup>rd</sup> party?

guardlndoc

**APPOINTMENT OF SHORT-TERM GUARDIANS**  
In Accordance with the Illinois Short-Term Guardian Law  
Illinois Compiled Statutes Chapter 755, Sections 5/11-5/4

We, MICHAEL SMITH and MARY SMITH, understand that by completing this form, we are appointing guardians of our child, JOHNNY SMITH, named herein.

- Parents and Child.** We, MICHAEL SMITH and MARY SMITH, currently residing at 123 Main Street, South Town, Illinois, are parents of JOHNNY SMITH, born July 4, 1998.
- Guardians.** We hereby appoint the following persons as the short-term guardians for our child, JOHNNY SMITH, JILL JONES and TOM JONES, who currently reside at 552 Center Avenue, Port Bridge, Illinois.
- Effective Date.** This appointment becomes effective (check one if you wish it to be applicable)  
☐ On the date that we jointly, or the survivor of us, states in writing that we, or the survivor of us, is no longer willing or able to make and carry out day-to-day child care decisions concerning our child, JOHNNY SMITH.  
☐ On the date that one (1) physician familiar with our conditions certifies in writing that we, or the survivor of us, are no longer willing or able to make and carry out day-to-day child care decisions concerning our child, JOHNNY SMITH.  
☐ On the date that we or the survivor of us is admitted as an in-patient to a hospital or other health care institution;  
☒ On the following date February 2, 2012.  
☐ Other \_\_\_\_\_  
 (NOTE: If this item is not completed, the appointment is effective immediately upon the date the form is signed and dated below.)
- Termination.** This appointment shall terminate three hundred sixty five (365) days after the effective date, unless it terminates sooner as determined by the event or date we have indicated below. (check one if you wish it to be applicable)  
☐ On the date that we jointly, or the survivor of us states in writing that we, or the survivor of us, are again willing and able to make and carry out day-to-day child care decisions concerning our child, JOHNNY SMITH.  
☐ On the date that one (1) physician familiar with our conditions certifies in writing that we, or the survivor of us, are again willing and able to make and carry out day-to-day child care decisions concerning our child, JOHNNY SMITH.  
☐ On the date that we or the survivor of us is discharged from the hospital or other health care institution where we or the survivor of us were admitted as an in-patient.  
☒ On the date which is February 9, 2012 (8) days but no more than three hundred sixty five (365) days after the effective date.  
☐ Other \_\_\_\_\_  
 (NOTE: If this item is not completed, the appointment will be effective for a period of 365 days beginning on the effective date.)
- Duties of Short-Term Guardian of a Minor.** (755 ILCS 5/11-13.2)  
 (a) Immediately upon the effective date of the appointment of a short-term guardian, the short-term guardian shall assume all duties as short-term guardian of the minor as provided in this Section. The short-term guardian of the person shall have authority to act as short-term guardian, without direction of court, for the duration of the appointment, which in no case shall exceed a period of three hundred sixty five (365) days. The authority of the short-term guardian may be ended or terminated by a court of competent jurisdiction.  
 (b) Unless further specifically limited by the instrument appointing the short-term guardian, a short-term guardian shall have the authority to act as guardian of the person of a minor as provided in Section 11-1.3, but shall not have any authority to act as guardian of the estate of a minor, except that a short-term guardian shall have the authority to apply for and receive on behalf of the minor benefits to which the child may be entitled from or under federal, state, or local organizations or programs.
- Date and Signatures of Appointing Parents.** This appointment is made this 30 day of January, 2012.  
 MICHAEL SMITH \_\_\_\_\_ MARY SMITH \_\_\_\_\_

The foregoing appointment was, on the date above written, signed and declared by the parents, MICHAEL SMITH and MARY SMITH, to be their "Appointment of Short-Term Guardians", in the presence of us, who at their request and in their presence and in the presence of each other, have heretofore subscribed our names as witnesses, and we hereby certify that we believe the parents to be of sound mind and memory and under no undue influence. We also declare that we are not ourselves designated as short-term guardians in this appointment.

Page 1 of 2

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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 god 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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GAC » Office of State Guardian

## Guardianship Training

Click here to take the Guardianship training that will provide you with a certificate that you can file with the court; to obtain the certificate and take the training you will need to register with an email address: <https://onenet.illinois.gov/guardianship>

Click here if you would like to view the training without registering; you will not be provided a certificate: <https://onenet.illinois.gov/page.aspx?item=115288&review=1>

Click here for a list of disability related resources: <https://onenet.illinois.gov/page.aspx?item=116040>

---

**OFFICE OF STATE GUARDIAN**

- OSG Regional Offices
- OSG Service Profile
- DNR
- Practitioners 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 Law
- OSG Links
- Volunteer guardianship advocate program information and tools

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## Guardianship Training Link:

<https://www2.illinois.gov/sites/gac/OSG/Pages/Guardianship-Training.aspx>

**Barry G. Lowy**  
**Director, Office of State Guardian**  
**Guardianship and Advocacy Commission**  
**401 S. Spring Street, Suite 521**  
**Springfield, IL 62706**  
**(217) 785-0333**

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Buffalo Grove, Illinois 60089-1007  
Please fax to 847.279.0090

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): \_\_\_\_\_

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# Special Needs Planning


- Not just special needs trusts, not just documents
- Not just special provisions in Wills, Living Trusts, and Powers of Attorney
- Not just extended family instructions and forms
- Not just Probate avoidance
- Not just estate tax (death tax) avoidance or minimization
- Not just at 18 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 and planning of litigation settlements on government benefits and planning
- 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 government 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"...**

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**Brian Rubin — Mitchell Rubin — Benjamin 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.”*

Brian N. Rubin, Parent  
Benjamin A. Rubin, Sibling