

Legal & Future Planning

for children & adults with special needs...

BRIAN RUBIN

Attorney & Parent

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

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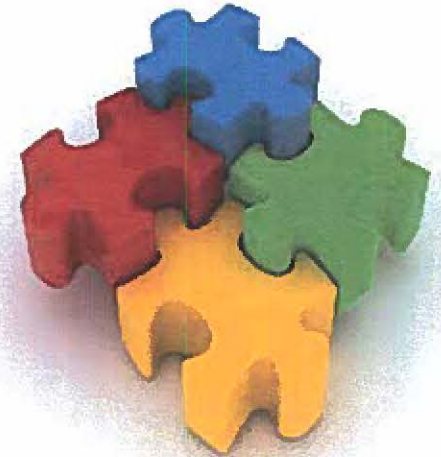
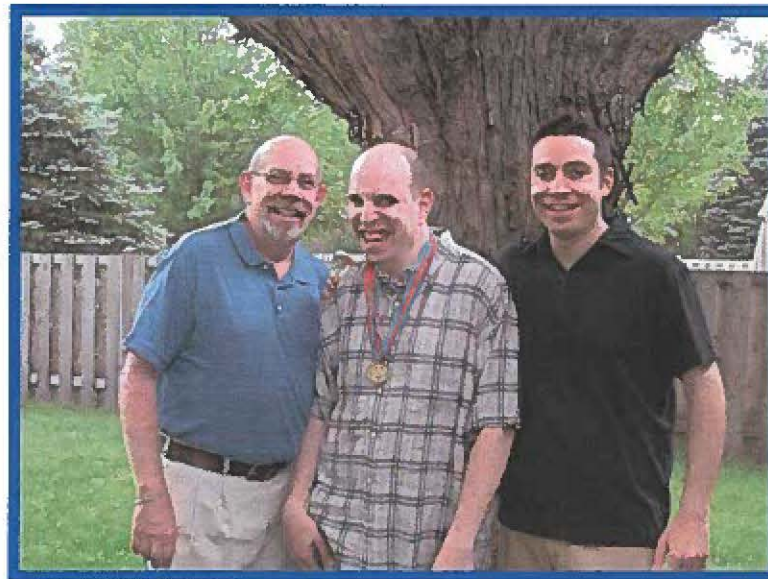
LAW A Professional
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www.rubinlaw.com ■ email@rubinlaw.com

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Special Needs Legal & Future Planning

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

**Attorney, Brian Rubin, fellow parent
Attorney, Benji Rubin, fellow sibling**



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BRIAN RUBIN, a former IRS Agent and former IRS Attorney, has been a practicing attorney since 1976, is the parent of three children, one of whom, Mitchell, has Autism. Brian's law practice, for nearly four decades, since 1982, when Mitchell was one year old, has been dedicated to serving the legal and future planning needs of his fellow Illinois families of children and adults with intellectual disabilities, developmental disabilities, and/or mental illness.

Brian is the Immediate Past President (2017-2018) of the Special Needs Alliance, the national, non-profit, association of experienced special needs planning attorneys (membership is by invitation only), served on the Special Needs Law Section Steering Committee of the National Academy of Elder Law Attorneys, was a Charter Member of the Academy of Special Needs Planners, and is a Faculty Member and Text Book Author for the Illinois Institute for Continuing Legal Education (IICLE) on the topic of special needs legal and future planning, as well as a Speaker for the American Bar Association and the Illinois State Bar Association on those topics. Brian has been elected as a Fellow of the American College of Trust and Estate Counsel (ACTEC) and has received the highest attorney rating from Martindale-Hubbell, AV® Preeminent™, and AVVO's highest attorney rating of Top Attorney.

Brian is Past President of The Arc of Illinois (2011-2015), and served on The Arc of Illinois Board 2004-2019. He is Past Chairman of the State of Illinois Statewide Advisory Council on Developmental Disabilities (2002-2004), is Past Chairman of the State of Illinois Autism Task Force (2005-2015) established by the Illinois Legislature in 2005, serves as a member of the State of Illinois Guardianship & Advocacy Commission since 2013, served on the State of Illinois Department of Human Services Office of Inspector General Quality Care Board for six years, among many other State of Illinois Committees and Commissions.




Brian has been a member of the Board of Directors of Clearbrook (an organization serving more than 8,000 individuals with intellectual and/or developmental disabilities, including his son, Mitchell) for three decades, since 1989, is a member of the Board of Trustees of Life's Plan, Inc. (subsidiary of Ray Graham Association) which serves as Trustee of both Pooled Special Needs Trust and individual Special Needs Trusts, is a member (Immediate Past Chairman) of the Board of Directors of the Special Leisure Services Foundation, the foundation supporting the Northwest Suburban Special Recreation Association (NWSRA), served as the founding Chairman of the Board of Directors of the Foundation of The Special Education District of Lake County (SEDOL Foundation), served on the Board of Directors of KESHET (Jewish Parents of Children with Special Needs), 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), served for seven years on the Board of Directors of DayOne Pact, the Independent Service Coordination Agent for individuals with intellectual and/or developmental disabilities living in DuPage, Kane and Kendall Counties Illinois, as well as serves as Trustee of Special Needs Trusts, and serves as Guardian, and served on the Board of Directors of Northpointe Resources, also an agency serving individuals with intellectual and/or developmental disabilities.

Brian feels the tremendous responsibility of not only being the parent of a child with special needs, but also as an attorney with the knowledge and ability to assist others in special needs future planning... needed to secure the future of children and adults with special needs. While Brian wishes for Mitchell to have a long, healthy and enjoyable life, he often admits that he prays that he lives at least one moment longer than Mitchell... for that ultimately is the "Parent's Prayer"... the desire not to ask anyone else to, or to have anyone else have to "take over" the enormous responsibility of caring for their child with special needs... as only a fellow parent could understand.

RUBIN LAW A Professional Corporation
 www.rubincor.com | info@rubincor.com
 101 West 10th Street, Suite 210, Denver, CO 80202
 Special Needs Legal & Estate Planning

Our ability to provide special needs legal & estate planning, with compassion & understanding, for our fellow citizens has been a priority with special needs, including intellectual disabilities, developmental disabilities, and/or medical illness.

Attorney: David Rubin, Fellow Partner
 Attorney: Heidi Rubin, Fellow Attorney






**SO...
 who are
YOU?**







**That's ME,
 MUCH
 thinner,
 with HAIR
 & with
 CONTACTS!**











3/13/1977
Yes, 42 years!

- **1978 Nicole**
- **1985 Benji**
- **But in the middle...**








JANUARY 27, 1981
MITCH

PERSPECTIVE

What's important...

PRIORITIES

Don't forget the "OTHER" kids!

Big Sister Heidi 41
Middle Sister Beth 34
Mitch 38

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Brian's youngest son, Benji, joined the firm after Law School in 2010

Benji Rubin
President
S.I.B.S.
Supporting Illinois Brothers & Sisters
Illinois Chapter of the national Sibling Leadership Network

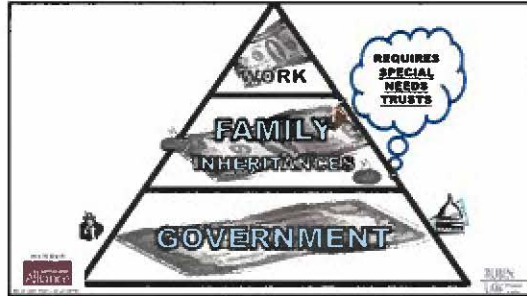


www.sibsnetwork.org



www.siblingleadership.org





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




HOW MUCH?

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WHERE FROM ?

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

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The
"GREAT" STATE OF
ILLINOIS
NOT!

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BENEFITS 101: SSI - SSDI - MEDICAID - MEDICARE - RPO - ETC

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

BEWARE
If earned money for disability and you apply again or lose Medicaid or Medicare/Medicare, the 3 year "look back" rule applies. There are rules of the other "rules".

SSDI Medicare TWO YEARS

JUST Income Test

RUBIN ALANCO RUBIN LAW

BENEFITS 101: SSI - SSDI - MEDICAID - MEDICARE - RPO - ETC

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

SSDI Medicare

Medicaid
CO-PAYS (residential) \$0

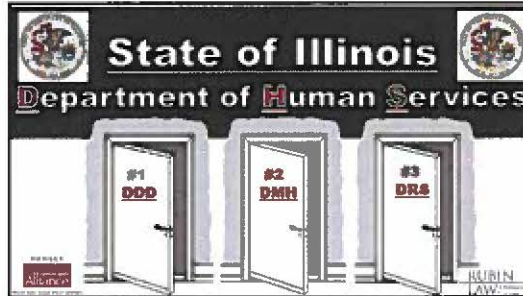
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⚡ PARENTS' HEALTH INSURANCE!

- 👉 **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 coverage of a person who, because of a handicapped condition that occurred before attainment of the limiting age, is incapable of self-sustaining employment & is dependent on his or her parents, or other care providers for lifetime care & supervision."



STATE OF ILLINOIS DHS DDD DEFINITION OF DD FOR WAIVER

Page 1 of 1

2018 Update (12/2017) 2017

DD → **DD - DD (Developmental Disability) (Part 1 of DDMP-1)**

Related Subsections:

- **DD - DD (Developmental Disability) (Part 1 of DDMP-1)**
- **DD - DD (Developmental Disability) (Part 2 of DDMP-1)**
- **DD - DD (Developmental Disability) (Part 3 of DDMP-1)**

Related Conditions:

- **DD - DD (Developmental Disability) (Part 1 of DDMP-1)**
- **DD - DD (Developmental Disability) (Part 2 of DDMP-1)**
- **DD - DD (Developmental Disability) (Part 3 of DDMP-1)**

REMARKS:

- **DD - DD (Developmental Disability) (Part 1 of DDMP-1)**
- **DD - DD (Developmental Disability) (Part 2 of DDMP-1)**
- **DD - DD (Developmental Disability) (Part 3 of DDMP-1)**

**• Before 18
BUT MUST BE BEFORE 19
(Adult Test)
• IQ 70 or
below**

**• Before 22
3 or more
of 6 major
life activities**

ADULTS - if not "DD"
(or can "try" even if...)

**DHS - DRS
HOME SERVICES
WAIVER**



PUNS for DDD

**PRIORITIZATION OF URGENCY
OF NEED FOR SERVICES**

REQUIRED

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



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)



WHERE DO YOU BEGIN?

• The ISC (Independent Service Coordination) 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.



ISC AGENT PHONE NUMBERS

Region	Agency Name	Phone Number
Northwest	ADDC - Agency for Developmental Disabilities	848-2244
	ADDC - Agency for Developmental Disabilities	317-122-1191
	ADDC - Agency for Developmental Disabilities	417-282-2222
	ADDC - Agency for Developmental Disabilities	781-282-2222
North Central	ADDC - Agency for Developmental Disabilities	781-282-2222
	ADDC - Agency for Developmental Disabilities	781-282-2222
	ADDC - Agency for Developmental Disabilities	781-282-2222
	ADDC - Agency for Developmental Disabilities	781-282-2222
Central	ADDC - Agency for Developmental Disabilities	781-282-2222
	ADDC - Agency for Developmental Disabilities	781-282-2222
	ADDC - Agency for Developmental Disabilities	781-282-2222
	ADDC - Agency for Developmental Disabilities	781-282-2222
South Central	ADDC - Agency for Developmental Disabilities	781-282-2222
	ADDC - Agency for Developmental Disabilities	781-282-2222
	ADDC - Agency for Developmental Disabilities	781-282-2222
	ADDC - Agency for Developmental Disabilities	781-282-2222
South	ADDC - Agency for Developmental Disabilities	781-282-2222
	ADDC - Agency for Developmental Disabilities	781-282-2222
	ADDC - Agency for Developmental Disabilities	781-282-2222
	ADDC - Agency for Developmental Disabilities	781-282-2222
Southwest	ADDC - Agency for Developmental Disabilities	781-282-2222
	ADDC - Agency for Developmental Disabilities	781-282-2222
	ADDC - Agency for Developmental Disabilities	781-282-2222
	ADDC - Agency for Developmental Disabilities	781-282-2222



July 1, 2019

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7/1/19 SUBJECT TO Lawsuits/Resolution/Bills



Service of WIS, Grundy, Kansas Counties	A
Community Alternative Services	B
Community Service Options	C
Suburban Access	D
Service of WIS, Grundy, Kansas Counties	E
Service of WIS, Grundy, Kansas Counties	F
Practitioner Service Coordination	G
Chambers County Regional Planning Commission	H
Central Illinois Service Access	I
Practitioner Service Coordination	J
Practitioner Service Coordination	K
Southern Illinois Case Coordination Services	L

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FYI as of November 2018

The State has changed to just 3 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

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CHILDREN'S DD WAIVER(S) ?

1. 2019 is 2 x \$771 (SSI) = \$ 1,542 @ month or 15 hours a week & Medicaid
2. Residential

ADULT DD WAIVER ?

1. 18-21: 2019 is 2 x \$771 (SSI) = \$ 1,542 @ month or 15 hours a week
2. 22+: 2019 is 3 x \$771 (SSI) = \$ 2,313 @ month or 15 hours a week
3. Residential, Supported Employment, Sheltered Employment/Workshops ("Regular Work"), Day Programs ("Community Day Services")

ADULT ICFDD ?






CHILDREN WAIVER

As of now...

only if in CRISIS!

NOT part of LIGAS Class action lawsuit!

Under 18 Crisis



Department of Human Services (DHS) Division of Developmental Disabilities (DDD)
 Children Crisis Clinics for Funding - 8/28/2018 April 18, 2019

The other criteria for minimum risk of abuse, neglect, or homelessness are no longer being pursued for the Division of Developmental Disabilities (DDD) for children who are 1 to 17 years old. **Qualifying** program will meet the criteria for **CRISIS** (defined in the **CRISIS** document) in obtaining the request for new information, via the Information Request/Action/Response, Level 1 (L1) inquiry case files in working with the program plans that were being managed under the current implementation, it is expected that services will be implemented generally within a 30 to 60 day period. The term **CRISIS** inquiry will mean all requests for immediate, ongoing, or other interventions to be implemented or adjusted for appropriate crisis support, safety, home care, child protection, and justice.

The other criteria under the Request called Children's Developmental Services (CDS) and Children's Support Services (CSS) - Program 1725. The operational areas within this scope in reference to Child Care Incentives (CCI) - Program 1703. These criteria do not apply to private and limited sharing Facilities Program (L1) (L1) Children who are under 18 years old and are eligible for funding pursuant to the OIG.

The Division's decision regarding the type of service to deliver will be based on the specific needs of the child. By meeting criteria it will be able to provide the most effective, but may not meet the criteria for the following reasons:

- The program is unable to help the child.
- The program is unable to meet the child's support needs. The child's situation is a complex situation and the program is unable to provide the support needed for the child's situation.
- The child's situation is a complex situation and the program is unable to provide the support needed for the child's situation.

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 announced just under 1,000 – already notified...
3. Last week just announced:
 - 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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FOR DRS, NOT PUNS – RATHER DETERMINATION OF NEED - "DON" SCORE

LOCAL DRS OFFICE or call 1-800-843-8154

- 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

- “Directly”
- No Will

- “Disinherit” & leave to others (“moral Obligation”)
- “Traditional Trust”



Special Needs Trusts



Special Needs Trusts

☺ 3rd Party

☹ Self Settled



2 Versions, both...

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



3RD PARTY TRUSTS

ORIGINAL - GOOD

→ by Court Decisions **1982**

→ by Statute (760 ILCS 5/15.1) **1991**



3RD PARTY TRUST




OK... SO
INSIDE WILL
OR LIVING
TRUST ?


MEMBER OF


MEMBER OF



MEMBER OF


MEMBER OF


NO! NO! NOT!
“INSIDE”
YOUR WILL
OR LIVING
TRUST!

MEMBER OF


MEMBER OF


MEMBER OF


Won't
exist
until...

MEMBER OF


MEMBER OF


- #1 So **NO** "Piggy Backing"
- #2 **NO** "Grand Fathering"
- #3 **NO** Nursing Home Impoverishment
- #4 **NO** Place for gifts to go



**BUT I STILL
DON'T GET IT ?**



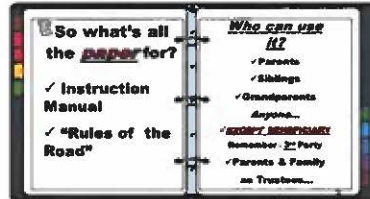
**Just what
IS a Trust?**



**Just another way
of holding “title”
to, or “ownership”
of, assets,
investments or
accounts...**



**3rd PARTY
SPECIAL NEEDS TRUST**



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



EXTENDED FAMILY & FRIENDS



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





But... 
Beware of
absentee 
parents &
grandparents





EX-SPOUSE
LETTER



 **So...**
1st set up SNT
2nd reference in
Wills/Trusts
3rd extended family too



But... But...

 **Change**
Beneficiaries

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

So far just
3rd Party
But
what if...

BENEFICIARY HAS ASSETS

Savings Bonds UTMA Accounts Large Gift

IRA - 401k 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... 6 working, consider IRWD list!
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 3rd 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 6 \$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 ODD and DRS, and specifically CILA/CFDD, SODG, HBSS
 2. Doesn't apply to even medical Medicaid post age 55
 - Tax Deduction... so what
 - Child Support... Feds say NO!



**Otherwise
1st Party
Special
Needs
Trust**

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

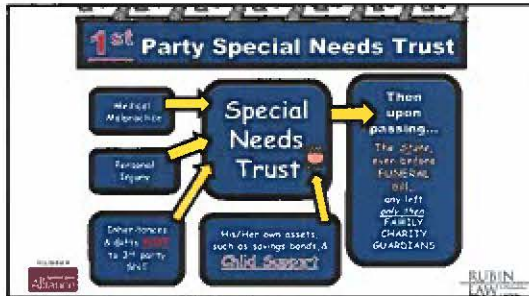


1st Party SNT

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

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





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!

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Important Child Support for Non-Mother Child (MIA/PAAL)

Important Information:



The state will not pay child support for a child who is not the biological child of the mother. The state will pay child support for a child who is the biological child of the mother, even if the father is not the biological father.

Important Information:



If you are the biological father of a child who is not the biological child of the mother, you may be eligible for child support. You must file a petition with the court to establish paternity and to request child support.

Important Information:

If you are the biological father of a child who is not the biological child of the mother, you may be eligible for child support. You must file a petition with the court to establish paternity and to request child support.



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




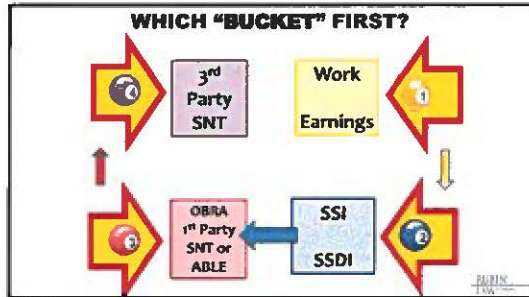
Spread the word...

NURSING HOME EXCEPTION BUT BEWARE...

- Power of Attorney/Living Trust
- 3rd party or 1st party SNT ?

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





- ★ 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)?
- RUBIN LAW

COMMON ATTORNEY MISTAKES!

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

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COMMON ATTORNEY MISTAKES!

No Grand-Fathering Required Language!



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COMMON ATTORNEY MISTAKES!

NO prohibition of 1st Party money in 3rd Party Trust!



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COMMON ATTORNEY MISTAKES!

NO requirement to use 1st Party Trust money or ABLE money prior to 3rd Party Trust money!



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COMMON ATTORNEY MISTAKES!

**Not
100%
Discretionary**



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COMMON ATTORNEY MISTAKES!

**Permitting
Pay TO...
{So... SHOULD
provide ability to
distribute to ABLE}**



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COMMON ATTORNEY MISTAKES!

**Over
Restrictive
Language...**



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COMMON ATTORNEY MISTAKES!

“No Trustee powers to correct” or terms not “broad” enough



**RUBIN
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COMMON ATTORNEY MISTAKES!

No “Band Aid” or retro Language



**RUBIN
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COMMON ATTORNEY MISTAKES!

No “Next Generation” Trustees...



**RUBIN
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COMMON ATTORNEY MISTAKES!

**No "Contribution"
or
Gift Language
3rd Party**



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COMMON ATTORNEY MISTAKES!

**No
"Contingent"
SNT for others**



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COMMON ATTORNEY MISTAKES!

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



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COMMON ATTORNEY MISTAKES!

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



COMMON ATTORNEY MISTAKES!

**NO Trustee(s)
or Guardian
Power to change
corporate trustee...**



COMMON ATTORNEY MISTAKES!

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



Request Form Item # 6 SNTs	Request Form Item # 6 SNTs & Taxes	Request Form Item # 1 SNA Trustee Handbook
----------------------------	------------------------------------	--

COMMON ATTORNEY MISTAKES!

Other Documents

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

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Guardians are nominated in parents Wills!




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(795 ILCS 5/110-16)
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?

- 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?

- Can they understand?
 - Job will outlast them?
 - Other Children?
 - Spouse?
 - Friends?
 - Friends of Guardians?
 - School District of Guardians?
 - Any other qualified person?
 - Same as Trustees?
- Who is going to fill our shoes?

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**Short
Term
Guardian
Declaration**

ALLIANCE
Alliance

RUBIN
LAW

ALLIANCE
Alliance

RUBIN
LAW

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...

ALLIANCE
Alliance

RUBIN
LAW

- 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...



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?



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



TOOLS

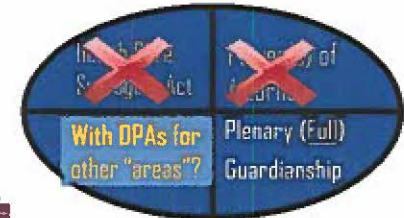
- ✓ Health Care Surrogate Act
- ✓ Supported Decision Making
- ✓ Powers of Attorney
 - Financial/Property
 - Health Care/Medical/Living Will
 - Mental Health Treatment
 - Education
 - SSA/State
- ✓ Representative Payee/JT



- No Capacity
- Refuses
- just can't help **getting into trouble**; maybe legal, maybe criminal, maybe financial, maybe personal, maybe medical/health related?
- Vulnerable? Tricked?
- Is a danger to himself/herself or others?



ADULT GUARDIANSHIP



GUARDIANSHIP

- Independence vs. Protection?
- Court... Law Suit... Venue
- M.D. Report – Illinois M.D.
- Sheriff Summons (14 days)
- Required notices

ALBANY
Alliance

ALBANY
LAW

GUARDIANSHIP

- ✓ Guardian ad Litem (Depends on County)
- ✓ Parents as “Co”
- ✓ Siblings, others, as “Co”
- ✓ Agencies’ positions ?
(*Short Term Guardian Declaration*)

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Alliance

ALBANY
LAW

- Use Short Term Guardian Declaration to delegate to Co... or Cos to a 3rd party?



ALBANY
Alliance

ALBANY
LAW

GUARDIANSHIP

- When can do it ?
- Person vs. Estate ?
- Residential Placement ?
- Sterilization
- Annual Reports ? Depends on County...

Now On Line... E-File (1/1/18)

County Specific Instructions Provided To Clients

RUBIN LAW

Subsequent to the County of Cook...

(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)

Back to Court For "residential" placement!

Need to educate agencies!

GUARDIANSHIP

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



DMV does NOT follow the law!
 Even if DMV, with M.D. letter, allows, **DON'T!**

1. Liability
2. Insurance?

NOT IF PLENARY
 for sure... Limited ?

What if:

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



... then **try** "Limited" Guardian?

**Limited Guardianship
Appointment of a
Limited Guardian
DOES NOT
constitute a finding of
legal incompetence!**




Why/When Limited Guardianship?

- ✓ Needs Guardian, **BUT** won't cooperate?
Suggest "**limited**"...
- ✓ **Liability** concerns of Guardian candidates?
Consider "**limited**"...
- ✓ Will be "driving"? **MUST** only have
"limited", **NOT** plenary! It's "the law"...
BUT BEWARE... DMV may allow... but **don't**
do it!

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???? Don't ask...




OSJ - Office of State Justice
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: jsa@osj.ny.gov

Click here if you would like to view the training without registering, you will not be provided a certificate: <https://onenet.its.nys.gov/page.aspx?cstid=115288&revision=1>



Click here for a list of disability related resources: <http://www.nybar.org/nybar/nybar110000>

Guardianship Training Link:
<https://onenet.its.nys.gov/page.aspx?cstid=115288&revision=1>




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

You need to write it ALL down!
**Guidance & Instructions For
 Future Guardians,
 Trustees, & Care Providers**


WRITE IT DOWN!

- ✓ identify information
- ✓ diagnoses, hospitalizations, medications, doctors, other professionals... **PAST & PRESENT!**
- ✓ behavior... "dos" & the "do nots" ...
- ✓ "melt down" techniques...
- ✓ school concerns, suggestions...
- ✓ employment, adult activities, living situation...
- ✓ when someone dies
- ✓ Government Benefit Information
- ✓ Wills, Trusts, Life Insurance, Powers of Attorney, SMT, funeral desires & related info
- ✓ executive summary




Request Form Item # 2 Letters of Intent

<https://21stcenturydads.org/special-fathers-network/>



The Special Fathers Network is a dad to dad mentoring program for fathers raising kids with special needs

To become a SFN Mentor Father or find an SFN Mentor Father go to mfn.21stCenturyDads.org




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Mail it, or email it, or hand it...

QUESTIONS?

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2. Email us at info@rubinlaw.com
3. Visit our website at www.rubinlaw.com
4. Contact us through our Facebook page
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8. Contact us through our RSS feed
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RUBIN LAW

QUESTIONS?

Target and Kmart planning for our future? Don't let them. At Rubin Law, we'll help you understand the risks and opportunities of our future. We'll help you understand the risks and opportunities of our future. We'll help you understand the risks and opportunities of our future.

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RUBIN

LAW A Professional
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Special Needs Legal & Future Planning

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Attorneys & Staff

Attorney, BRIAN RUBIN, A former IRS Agent and former IRS Attorney, has been a practicing attorney since 1976, is the parent of three children, one of whom, Mitchell, has Autism. Brian's law practice, for nearly four decades, since 1982, when Mitchell was one year old, has been dedicated to serving the legal and future planning needs of his fellow Illinois families of children and adults with intellectual disabilities, developmental disabilities, and/or mental illness.

Brian is the Immediate Past President (2017-2018) of the Special Needs Alliance, the national, non-profit, association of experienced special needs planning attorneys (membership is by invitation only), served on the Special Needs Law Section Steering Committee of the National Academy of Elder Law Attorneys, was a Charter Member of the Academy of Special Needs Planners, and is a Faculty Member and Text Book Author for the Illinois Institute for Continuing Legal Education (IICLE) on the topic of special needs legal and future planning, as well as a Speaker for the American Bar Association and the Illinois State Bar Association on those topics. Brian has been elected as a Fellow of the American College of Trust and Estate Counsel (ACTEC) and has received the highest attorney rating from Martindale-Hubbell, AV® Preeminent™, and AVVO's highest attorney rating of Top Attorney.

Brian is Past President of The Arc of Illinois (2011-2015), served on The Arc of Illinois Board 2004-2019, is Past Chairman of the State of Illinois Statewide Advisory Council on Developmental Disabilities (2002-2004), is Past Chairman of the State of Illinois Autism Task Force (2005-2015) established by the Illinois Legislature in 2005, serves as a member of the State of Illinois Guardianship & Advocacy Commission since 2013, served on the State of Illinois Department of Human Services Office of Inspector General Quality Care Board for six years, among many other State of Illinois Committees and Commissions.

Brian has been a member of the Board of Directors of Clearbrook (an organization serving more than 8,000 individuals with intellectual and/or developmental disabilities, including his son, Mitchell) for three decades, since 1989, is a member of the Board of Trustees of Life's Plan, Inc. which serves as Trustee of both Pooled Special Needs Trust and individual Special Needs Trusts, is a member (Immediate Past Chairman) of the Board of Directors of the Special Leisure Services Foundation, the foundation supporting the Northwest Suburban Special Recreation Association (NWSRA), served as the founding Chairman of the Board of Directors of the Foundation of The Special Education District of Lake County (SEDOL Foundation), served on the Board of Directors of KESHET (Jewish Parents of Children with Special Needs), 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), served for seven years on the Board of Directors of Pact, Inc., now known as DayOne Pact, the Independent Service Coordination Agent for individuals with intellectual and/or developmental disabilities living in DuPage, Kane and Kendall Counties Illinois, as well as serves as Trustee of Special Needs Trusts, and serves as Guardian, and served on the Board of Directors of Northpointe Resources, also an agency serving individuals with intellectual and/or developmental disabilities.

Brian feels the tremendous responsibility of not only being the parent of a child with special needs, but also as an attorney with the knowledge and ability to assist others in special needs future planning... needed to secure the future of children and adults with special needs. While Brian wishes for Mitchell to have a long, healthy and enjoyable life, he often admits that he prays that he lives at least one moment longer than Mitchell... for that ultimately is the "Parent's Prayer"... the desire not to ask anyone else to, or to have anyone else have to "take over" the enormous responsibility of caring for their child with special needs... as only a fellow parent could understand.

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 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, the Independent Service Coordination Agent for individuals with intellectual and/or developmental disabilities living in DuPage, Kane and Kendall Counties Illinois, as well as serves as Trustee of Special Needs Trusts, and serves as Guardian, 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.

Attorney Judith (Judie) Smith, has been licensed to practice law in the State of Illinois since 1985. She has been associated with Brian Rubin since 1996. Judie's practice, since 1996, has been limited to special needs estate planning and administration for families of individuals with special needs. Judie has handled countless adult guardianship matters for clients in Cook, Lake, McHenry, DuPage and Kane Counties. Her courtroom experience includes preparation and court approval of Medicaid "Pay Back" Trusts (also referred to as "OBRA '93 Trusts" and/or "d4A Trusts", preparation and court approval of trust and estate budgets, as well as preparation and approval of trust and estate annual accountings and annual reports. Judie is a member of the Special Needs Alliance. Judie is also a Faculty Member for the Illinois Institute for Continuing Legal Education (IICLE).

Attorney Melanie Hoffman, has been licensed to practice law in the State of Illinois since 1993. She began her career with the Office of the Cook County Public Guardian, working on behalf of abused and neglected children, and subsequently working in the Disabled Adult Division, responsible for estate administration and guardianship matters. Melanie has been associated with Brian Rubin since 1995. Melanie's practice was limited to estate planning, estate administration and guardianship for families of individuals with special needs. Melanie is an affiliate member of the Special Needs Alliance. Melanie is also a Faculty Member for the Illinois Institute for Continuing Legal Education (IICLE).

Office Manager and Legal Assistant Nicole Rosenthal, Brian Rubin's daughter, and Benjamin's and Mitchell's "big sister" (and assistant mother) joined Rubin Law as office manager and legal assistant in 2001. Nicole's undergraduate degree is in nursing and is a Registered Nurse (RN/BSN). Nicole, as an older sibling, brings an unparalleled understanding of the day-to-day obstacles, and successes that her fellow families of individuals with special needs endure.

Legal Assistant Karen Muschkat, joined Rubin Law as a legal assistant in 2007. Karen has more than 25 years of extensive experience in the areas of estate planning & estate administration.

Legal Assistant Linda Rubin, Brian Rubin's wife, joined Rubin Law as a legal assistant in 2001. Linda, as Mitch's Mom, offers an experienced point of view as someone who has lived through all the trials & tribulations that fellow families of individuals with special needs weather.

Legal Assistant Carmen Cuzmanko, joined Rubin Law in 2015 as a legal assistant. Carmen is a parent of child with autism.

Paralegal Jill Yonover, joined Rubin Law in 2017. Jill has an undergraduate degree from Northwestern University and a graduate degree from New York University.

Mitchell Rubin, Brian Rubin's son, who has autism among other diagnosed special needs, also works at Rubin Law on Mondays, shredding documents and greeting clients, among other assigned tasks.

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): _____