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Disabled Students’ Rights Under Anti-Bullying Laws
By: Arla D. Cahill, Esq., Co-Chair, Special Needs Practice Group

A 2009 study by the U.S. Departments of Justice and Education, “Indicators of School Crime and Safety,” reported that 32% of students aged 12 through 18 were bullied in the previous school year. The study reported that 25% of the responding public schools indicated that bullying was a daily or weekly problem. In the same year, a study by the Centers for Disease Control and Prevention, “Youth Risk Behavior Surveillance,” reported that the percentage of students bullied in New Jersey is 1% higher than the national median.

New Jersey’s Anti-Bullying Bill of Rights Act (the Act) requires each public school district to adopt a policy prohibiting “harassment, intimidation and bullying” (known as HIB) of a student on school property, at school-sponsored functions and on the school bus. The school district’s policy must include a definition of HIB conforming to the Act, a procedure for reporting and investigating an act of HIB, as well as the consequences and appropriate remedial action for a person who commits an act of HIB, among several other basic policy requirements. Notably, the Act not only prohibits acts of HIB committed by students, but also by adults, including teachers and school administrators.

HIB is defined by the Act to mean “any gesture, any written, verbal, or physical act, or any electronic communication, whether it be a single incident or a series of incidents, that is reasonably perceived as being motivated either by any actual or perceived characteristic, such as race, color, religion, ancestry, national origin, gender, sexual orientation, gender identity and expression, or a mental, physical or sensory disability, or by any other distinguishing characteristic . . . , that substantially disrupts or interferes with the orderly operation of the school or the rights of other students and that a reasonable person should know, under the circumstances, will have the effect of physically or emotionally harming a student or damaging the student’s property or placing a student in reasonable fear of physical or emotional harm to his or her person or damage to his or her property; has the effect of insulting or demeaning any student or group of students; or creates a hostile educational environment for a student by interfering with the student’s education or by severely or pervasively causing physical or emotional harm to the student.”

Bullying not only has a serious impact on the psychological well-being of a bullied student, it profoundly interferes with a student’s ability to learn, which, in turn, undermines a student’s civil right to receive from the public school a “free, appropriate public education” (FAPE). According to the National Bullying Prevention Center, students with disabilities are 2 to 3 times more likely to be bullied than their non-disabled peers. Factors that may have an impact on bullying are that a disabled student may be more socially isolated in a school setting due to disability-related behaviors, poor ability to understand social cues and respond accordingly, and pull-outs from the mainstream learning environment to participate in special services required by the student’s in-
Disabled Students’ Rights under Anti-Bullying Laws (continued)

dividualized education program (IEP). These circumstances can limit non-disabled students from getting to know and forming friendships with disabled students, and developing tolerance for disabled peers’ differences. Further complicating the matter is that bullying of a disabled student may go undetected by adults for a prolonged period of time if the student has limited or no speech ability, cognitive impairment, and/or has difficulty understanding what bullying conduct is and that it should be reported promptly to a parent, teacher or administrator.

In addition to the Act, New Jersey’s Law Against Discrimination and federal laws like Section 504 of the Rehabilitation Act, Title II of the Americans with Disabilities Act of 1990, and the Individuals with Disabilities Education Act, protect disabled students from bullying. However, having strong anti-discrimination and HIB laws, policies and procedures in place is not enough to protect children with special needs if parents do not know about or understand their child’s rights. Therefore, it is essential that parents take a proactive approach by following these suggested measures:

• Obtain a copy of the school district’s HIB Policy and Regulation (sometimes called By-Laws) to become familiar with the definition of HIB, the procedures for reporting HIB to school officials, and the investigation process that the school is required to follow. Districts typically post this information on their websites, but if you cannot locate it, request a copy from the school principal.

• Even if no acts of HIB have occurred, it may be beneficial to a disabled student who has difficulty socializing with peers and processing his environment effectively for his parents to request that the child study team prepare goals and objectives for the IEP or 504 plan that address socialization and self-advocacy skills development.

• Discuss with the student different examples of HIB (remember HIB can take the form of abusive and threatening instant messages, texts, and social media posts) and encourage him to come to his parents, teachers or other adult to report bullying. Assure him that no one deserves to be bullied and that adults are available to help him.

• Ask school administrators what measures, policies and programs it implements to teach non-disabled students tolerance for others with differences and disabilities, including instruction about the district’s anti-HIB policy.

• Immediately report any acts of HIB to the principal in writing with as much detail as possible to enable the district to promptly and thoroughly investigate the alleged acts of HIB. Parents should let the school know that they are aware that disabled students are also protected from HIB by state and federal civil rights laws. The school must take prompt action reasonably calculated to stop the HIB.

• The IEP or 504 plan can be modified to specifically address the negative effects of the bullying and include interventions to prevent the bullying from occurring in the future.

• A disabled student has a legal right to be educated in the least restrictive environment with non-disabled peers to the maximum extent appropriate as specified by the student’s IEP or 504 plan. Therefore, parents should not agree to have the disabled student removed from his learning environment or be precluded from participating in school activities as a solution to the HIB.

• Consider discussing with an attorney any concerns about the district’s compliance with the anti-discrimination and HIB laws.

What is a Special Needs Trust?

Special Needs Trusts (SNTs) are a type of trust that preserves the SNT beneficiary’s eligibility for needs-based government benefits such as Medicaid and Supplemental Security Income (SSI). These trusts may also be called a supplemental needs trusts, or “(d)(4)(A)” trusts after the federal law that authorized them, 42 U.S.C. § 1396p(d)(4)(A).

Any individual under 65, who is disabled under the Social Security Administration standard, may place assets in an SNT to establish or maintain Medicaid eligibility. As a general rule, because the SNT beneficiary does not own the assets in the trust, he or she can remain eligible for benefit programs that have an asset limit. Additionally the federal law exempts transfers of assets into an SNT from a penalty.

However, in order to use the SNT to obtain or retain Medicaid benefits, both the trust document and annual SNT accountings must be disclosed and reviewed. There are several requirements in order to establish an SNT. Some of those requirements include but are not limited to:

• SNT beneficiary has been determined disabled under 42 USC 1382(a)(3)(A).
• SNT is irrevocable.

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Five Considerations in Choosing a Special Needs Trustee
By: Richard I. Miller, Esq., Co-Chair, Special Needs Practice Group

Choosing the right person to serve as trustee of a special needs trust is one of the most important and difficult issues in creating the trust. A trustee typically manages the day-to-day operations of the trust, often making distributions to the trust’s beneficiary, investing the trust’s assets, and paying the trust’s bills – all while maintaining the beneficiary’s eligibility for public benefits programs.

The law isn’t very strict about who may serve as trustee, as long as the person is over 18 years of age and is capable of managing his or her own affairs. A trustee can be the child’s parent or other relative, a trusted friend, or a professional such as a lawyer, accountant, trust company, bank or private professional fiduciary. Here are five considerations to help in the choice of who should serve.

**Familiarity with public benefit programs.** To ensure that your beneficiary’s eligibility is never compromised, a trustee’s knowledge of public benefit programs is crucial. Many government benefits like Medicaid, Supplemental Security Income (SSI) and Section 8 housing have very complicated and contradictory rules governing special needs trusts. The trustee of a special needs trust must know these rules well, or, at the very least, work closely with a special needs planner who can explain the ramifications of his actions as trustee.

**Does the trustee have time to do the job?** Serving as the trustee of an active special needs trust can seem like a full-time job. Depending on a beneficiary’s needs, the trustee could spend a good deal of time paying bills, monitoring government benefits, helping to secure housing, paying for medical care and serving as a link between the beneficiary and a variety of service providers. If a trustee finds that she can’t perform all of these tasks when needed, or if she is sacrificing her family life or other professional obligations in order to work as a trustee, then it may be time to look for a professional trustee.

**Consider a professional trustee.** This could be an attorney, accountant, trust company, investment firm, bank or private professional fiduciary. A professional allows you to take advantage of that individual’s or institution’s experience with public benefits, investments, money management and tax planning. Another advantage is emotional distance. Sometimes, the strains of a beneficiary’s demands for trust distributions can cause significant problems for family members. These intra-family complications can be avoided through the use of a professional trustee.

**How comfortable are you giving trust control to an outsider?** For those who are uncomfortable with the idea of an outsider managing a loved one’s trust, it is possible to appoint a family member and an independent trustee as co-trustees. By doing so, you can rest assured that there is a person who is familiar with the beneficiary and has her best interests at heart and that the public benefit programs’ requirements are being met. Another option is to simultaneously appoint a trust “protector,” who has the powers to review accounts and to hire and fire trustees, and a trust “advisor,” who instructs the trustee on the beneficiary’s needs.

**Is a pooled trust an option?** A pooled trust, which is administered by a non-profit corporation, may be a good option for some families. Such trusts pool the resources of many beneficiaries, and those resources are managed by a non-profit association. Pooling trust resources can reduce administrative fees, increase the total funds available for investment, and permit access to better investment opportunities. Because a pooled trust accepts contributions from many beneficiaries, the trust is able to make more stable investments and provide additional management services that a conventional special needs trust might not be able to afford. If the trust is modest in size, it may benefit from the low costs of a pooled trust. Others appreciate the fact that their funds will be used to help others with special needs.

Make sure that whomever you choose as trustee is financially savvy, well-organized, and, most important, ethical.
More people than ever live with a developmental, psychiatric and/or physical disability. New Jersey reports the highest rates of autism in the country, for example; this number is up 12% in just two years. The numbers are growing, and the need is great for individuals with disabilities to receive compassionate, comprehensive and person-centered care.

For nearly 30 years, Planned Lifetime Assistance Network of New Jersey, Inc. (PLAN/NJ) has provided care coordination, life planning and financial services. Now serving nearly 1,000 adults with disabilities, PLAN/NJ helps people with disabilities thrive, and protects clients from abuse, neglect, exploitation and homelessness, securing opportunities for them to live to their fullest potential.

“Planning ahead is essential” explains Ellen Nalven, Executive Director. “Each person’s quality life, safety, coordinated care, public benefits, and financial stability must continue uninterrupted throughout the entirety of his lifetime, even after his family members are no longer able to provide for his care.”

Leading the Way
PLAN/NJ’s mission is to help families of people with disabilities answer the question they worry about most: “Who will care for my loved one when I’m gone?” Service areas include fiduciary support (Special Needs Trust administration, legal guardianship and representative payee services); future life planning and family support; care coordination; and a pro bono services program, which supports older adults who have aged out of their special needs trusts or who lack the ability to pay the customary fees. In all endeavors, PLAN/NJ follows a ‘whole person’ approach to ensure that their clients are never without the care, comfort, enjoyment, and engagement in life, which is every individual’s right.

PLAN/NJ is a recognized leader in the effective coordination of person-centered planning and implementation of services for individuals living with disabilities in New Jersey. Knowing that people living with disabilities may rise to their fullest potential when they can rely on the support of an unwavering system of fiscal, legal and care coordination, PLAN/NJ helps families secure and maintain every available protection for their loved ones. Whether individuals are able to live independently or whether they need a maximum amount of support, PLAN/NJ provides its clients and families with peace of mind and with the assurance that they employ best practices in financial services, care coordination and life planning.

Future Life Planning and Family Support
When families face the reality that they will not always be around to advocate for their relative who is living with a disability or mental illness, many questions and concerns arise. PLAN/NJ works closely with families to design a comprehensive LifePLAN that addresses all aspects of the individual’s life. This planning process defines roles and responsibilities for independent living, as well as necessary legal and financial supports. During the collaborative development of a LifePLAN document, several crucial questions asked by families are answered in-depth with a goal of uninterrupted support. Once a LifePLAN is in place, PLAN/NJ’s role is to coordinate and implement that plan according to the family’s wishes, all the while keeping the loved one’s needs and preferences at the forefront.

Pro Bono Services
As adults with disabilities grow older, they can become more vulnerable and in need of new and greater supports. The laws that were designed to protect them and their interests can be quite complicated and difficult to navigate for all concerned. Older individuals may be left without family members to oversee their care, and may have depleted Special Needs Trusts established in earlier years. With no available resources to fund vital services such as Guardianship, Home Visit Monitoring, Advocacy and/or Representative Payee services, they may fall prey to abuse, neglect and homelessness. PLAN/NJ has established a Scholarship Fund to support pro bono services to individuals who lack the means to pay for these services. Donations to PLAN/NJ that are earmarked for this program help ensure that more of the thousands of the individuals living with disabilities in NJ can benefit from the independent living planning services that truly make a difference in their lives, both now and in the years to come.

For more information on how your loved one can live beyond their disability with the guided oversight and support of PLAN/NJ, visit www.plannj.org or call 908-575-8300.
What’s NEWS In the Special Needs Community

By: Arla D. Cahill, Esq.

New Special Education
Legal Decisions Website

New Jersey enacted a new law (N.J.S.A. 18A:46-1.2) that requires the State Department of Education to maintain an electronic database of legal decisions concerning special education in New Jersey. The purpose of this law is to empower the special education community so that parents, school districts, child study team members and other interested members of the public can navigate a more user-friendly database of legal decisions easily when needed. The law will take effect on February 13, 2018.

Guardianship, Mental Incapacity and the Right to Vote in NJ

All U.S. citizens have a federally guaranteed right to vote, but those under guardianship may not have that right in all states. New Jersey is one of 25 states where the fundamental right to vote is not automatically removed by guardianship. The NJ Constitution in Art. 2, § 1, ¶6 was amended in 2007 and includes the following language: “No person shall have the right of suffrage who has been adjudicated by a court of competent jurisdiction to lack the capacity to understand the act of voting.” This means that to remove the right of suffrage from a person who is determined to be incapacitated, a court must conduct an inquiry specifically into the alleged incapacitated person’s ability to “understand the act of voting,” and must place that specific finding in the guardianship judgment.

Additionally, State and federal laws require that polling places and voting machines be accessible to people with disabilities. In particular, the “Help America Vote Act” requires that the voting process “be accessible for individuals with disabilities, including nonvisual accessibility for the blind and visually impaired, in a manner that provides the same opportunity for access and participation (including privacy and independence) as other voters.” Persons with disabilities have a right to bring someone of their choice into the voting booth to assist them with voting and can also request special assistance from a poll worker.

NJ Special Needs Registry for Disasters

2017 has brought particularly severe, wide-spread and devastating natural disasters, including hurricanes, floods and wildfires, throughout the United States. While property damage is most visible impact of natural disasters, it is important to keep in mind that every major natural disaster disproportionately harms society’s most vulnerable populations, particularly people with disabilities whose access to medications, shelter, assisted living devices and other necessities can become severely limited or non-existent during such disasters.

Individuals can sign up with the Special Needs Registry for Disasters at https://www13.state.nj.us/SpecialNeeds/ so that first responders and community providers have an up-to-date list of where to find them in the case of an emergency. By registering on the website, NJ residents with disabilities and their families, friends and caregivers get an opportunity to provide information to emergency response agencies so that responders can better formulate evacuation plans, identify people who will need accessible shelter or transportation, and improve accessible notification or alert systems for such citizens. The information collected is kept confidential and secure; it is only used for emergency response and planning.
Employment Horizons, a local not-for-profit that serves individuals with disabilities by empowering them to earn a paycheck and live as productive citizens in the greater Morris County area, recently acquired a new MV-1 vehicle that will help transport individuals that the 60 year-old organization serves. Purchase of the vehicle was made possible by a generous grant from the Stephen and Beverly Rubenstein Foundation.

It is critically important to Employment Horizons’ programs to transport individuals by vehicle. The program participants are brought to job interviews and job samples daily. Employment Horizons also transports their clients for their “Discover Your Community Opportunities.” This is a highly regarded program which allows participants from the fulfillment center to take guided tours of local businesses, and to learn more about job opportunities available in the community.

Employment Horizons selected the MV-1 because it is a vehicle designed and built specifically to transport individuals with mobility barriers (rather than a modified van), and is the safest vehicle on the market for such transport. In addition, it can be driven by any licensed driver as it does not require a commercial license. “We don’t just give funding to projects from the bottom of our hearts, but to projects that will better life and society as a whole,” said Andrew Rubenstein, a Trustee of the Rubenstein Foundation.

“As an organization that has prided itself on removing barriers for individuals with disabilities, we believe removing this transportation barrier for individuals with mobility impairments is of paramount importance to our mission,” said Matthew Putts, Executive Director of Employment Horizons. This gift will enhance opportunities and provide greater access for everyone at Employment Horizons and we are deeply indebted to the Rubenstein Foundation for this extremely generous gift.

For more information, contact Maria Florio, Director of Community Relations at 973-538-8822 ext. 240 or at mari aflorio@ehorizons.org.

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Spectrum360 Unconventional Gift Giving Approach

This holiday season, Spectrum360 invites you to join it in an unconventional approach to gift giving. In the spirit of traditional holiday gifts and cards, purchasing holiday cards designed by Spectrum360 students will directly support programs that provide vocational, social and life skills training to individuals with autism spectrum disorder and related disabilities. Each purchase allows it to provide options across a lifetime for children and adults and are tax deductible to the fullest extent of the law.

Mailing one of these cards is a heartfelt gesture that will demonstrate to business colleagues, families and friends, and to the students and young adults in its programs at Spectrum360, that disability does not define the person. Let your card recipients know that you are making a donation in lieu of gifts with personalized card copy written by you! You can even include your company’s logo for orders over 100. Learn more at www.spectrum360.org or by contacting Corinne Frankenfield at 973.509.3050 ext 285.
Making decisions with regard to educational and medical issues involving a special needs child can be challenging for parents under ordinary circumstances, but is further complicated when parents who are divorced or in the midst of a divorce action are unable to agree on such important issues. Most judgments of divorce that contain joint legal custody language typically require that the parties must confer with one another about decisions involving the child’s health, education and welfare. Divorced parents who disagree about such decision making can be left at an impasse to the potential detriment of their special needs child.

Parents of special needs children have several options to address this potential problem in advance of a disagreement arising. First, one option is to have the judgment designate one of the parents with final authority to make education or medical decisions when there is a disagreement. The party so authorized can rely upon the expertise of school personnel, such as the child study team case manager, a teacher, or therapist, or, where applicable, a medical care giver, to help reach a decision. The opinion of such a person could be given great weight by the parties or a court.

Second, the parties can agree to utilize a parent coordinator, who could be an attorney or mental health professional, who would work with the family to assist them in resolving minor, and sometimes major, decision-making. The exact role of the parent coordinator should be clearly set forth in an agreement executed by the parties or set forth in a court order. For example, a therapist can be utilized to assist the parties with communication and decision making, and can either be a specialist in areas that concern the child’s special needs, or, to reduce costs, the parties can agree to utilize a therapist covered by medical insurance who is in-network. Usually parent coordinators have the authority to report to a court about issues that need to be addressed. If the parent coordinator thinks that additional therapists or other experts are appropriate, they can make that recommendation to the court.

Third, another option is mediation whereby the parties would utilize a mediator, with or without counsel, to assist them in resolving any disputed issues.

Fourth, another option is to put in place, in advance, a procedure to avoid potential delay in decision making which could negatively impact the child. For example, a default provision can be included in an agreement providing that, if a party fails to attend parent/teacher conferences, IEP meetings, medical appointments, on presentation of such proof to the court, the party loses his or her ability to provide input. With this option, each party must be able to demonstrate their active and continued involvement in the issues concerning the child as a condition for participating in the decision making process.

Regardless of the approach taken by the parties, it is essential that the language in any agreement or court order be as specific and clear as possible so there are no questions later on as to how to proceed and how to reach decisions. For example, the agreement could provide that, if emergency medical care is required for a child, the parent who is caring for the child at the time should immediately make arrangements to provide the care and reach out to the other parent immediately by text, email, calling, etc. If the parents cannot agree, then an emergency the treating doctor’s recommendation should be followed. If it is not a dire emergency, open issues need to be decided in a timely way so that the child can move forward.

An experienced family law attorney will be able to draft appropriate language that will include possible protections for their client and establish a protocol comfortable for the client and efficient enough to deal with whatever circumstances arise and resolve the issue within a reasonable time frame. The clearer that the agreement or court order spells out how decision making will be conducted, the better off the child will be. If the agreement that exists currently is

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Decision Making in Divorce Cases Involving Children With Special Needs (continued)

not specific enough, the parties can apply to the court for the entry of an order that provides more specificity and clarity for the parties. Alternatively, the parties can always enter into a consent order to clarify the existing language in a judgment of divorce or court order to assist the parties in more effectively and expeditiously resolve their conflict resolution.

Special Needs Developments Across the US: ABLE Accounts

Millions of individuals with disabilities and their families are often relegated to a life of poverty as a result of not being allowed to build even the most modest levels of resources. Individuals receiving supports through Social Security, Medicaid and other publicly-funded programs are often disqualified from those supports if they have more than $2,000 worth of resources or assets.

New York and Colorado became the 27th and 28th states, respectively, to launch ABLE programs allowing people with disabilities in those states to open tax-advantaged savings accounts without affecting their eligibility for federal benefits such as Medicaid and Supplemental Security Income (SSI). These programs are authorized by the Achieving a Better Life Experience (ABLE) Act, a 2014 federal law that amends the IRS Code of 1986. After the federal law was passed, states began setting up their own programs. ABLE accounts are designed to be simpler and less expensive to set up than special needs trusts, the other primary savings vehicle for people with disabilities. Also, unlike a special needs trust, an ABLE account is owned by the person with a disability and can be directly accessed by them.

In addition to New York and Colorado, there are 26 other states that have launched ABLE programs: Alabama, Alaska, District of Columbia, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, North Carolina, Ohio, Oregon, Pennsylvania, Rhode Island, Tennessee, Vermont, Virginia. Most of these ABLE programs are open to eligible individuals nationwide.

NY ABLE Accounts

The NY ABLE program, launched in August 2017, is administered by the state Comptroller’s Office, managed by Ascensus Broker Dealer Services, Inc. and backed by Vanguard, Sallie Mae and Fifth Third Bank. NY ABLE accounts are available to eligible New York residents with disabilities. NY ABLE allows qualified individuals with disabilities to save up to $14,000 a year in an ABLE account without jeopardizing their eligibility for federally-funded means tested benefits. The funds in the account can be used for disability-related expenses that assist the beneficiary in increasing and/or maintaining his or her health, independence or quality of life. ABLE accounts can be set up by a person with a disability, their parent or legal guardian, or someone with power of attorney. To qualify, a person must have been disabled by the age of 26. Only one account is allowed per beneficiary. The maximum account limit for a NY ABLE account is $100,000.

Additionally, anyone can contribute to a person’s ABLE account, and the funds can be invested. There are four investment options, ranging from conservative to aggressive. There’s also a checking option, which earns interest and allows the account holder to write checks or use a debit card. ABLE accounts grow tax-free and withdrawals are not taxable, as long as they are used for “qualified disability expenses” which maintain health, independence or quality of life.

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Special Needs Developments Across the US (Continued)

Qualified disability expenses include housing, education, transportation, job training and support, health and wellness, assistive technology, personal support services, financial management and legal assistance.

Like the other ABLE programs across the country, the NY ABLE program focuses efforts to ensure minimal costs associated with establishing and maintaining an ABLE account (which can be done online). There is a nominal annual fee payable quarterly. The NY ABLE program has a monthly maintenance fee of $2, which can be waived if the average daily balance is over $250 or by electing electronic statements at Fifth Third Bank. The annual investment fee is 0.40%.

Disabilities Fund Executive Cautions Proper Use of ABLE Accounts in Colorado
By: Megan Brand, Executive Director, Colorado Fund for People with Disabilities

Colorado has now become the 28th state to launch an ABLE program. Like other states’ ABLE laws, the Colorado ABLE will allow individuals with disabilities to save thousands of dollars in an ABLE account without threat of losing their eligibility for benefits from the federal government.

Megan Brand, Executive Director of the non-profit organization ‘Colorado Fund for People With Disabilities,’ administers the state’s largest locally managed pooled trust and oversees a wide range of fiduciary services that protect the finances and benefits for individuals with disabilities.

In an interview with Catherine Strode, she cautions individuals and families to be well-informed about ABLE account usage. She says using the funds improperly can permanently jeopardize their public-funded support.

What are the general challenges of keeping people eligible for their benefits?
“I think the first challenge is working with individuals to understand all the limitations of their benefits. When you get approved for benefits you don't get a handbook that explains all the things you can and can't use funds for, be it an ABLE account, trust, or even Social Security dollars. Education is one of the first challenges we face. Also, the challenge as a fiduciary is working within the changing rules and regulations of Social Security and Medicaid. Just when we have things lined up the way they are supposed to work, then something changes. You don't get a memo or bulletin saying this is the new rule. We do, because we tend to be connected with the community, but individual beneficiaries don't. Being a fiduciary, you have to be very creative in problem solving, not only to distribute funds in a way that maintains eligibility, but also in a creative way to logistically get the job done."

How are you working with clients on their ABLE accounts?
“In Colorado, CollegeInvest has ABLE accounts under their oversight. CollegeInvest will be joining with National Able Alliance, a consortium of over 18 states that have come together to provide ABLE accounts. CFPD has been working with CollegeInvest to see how we might partner with them in either administering these accounts or advising on these accounts. After months of discussion, CFPD has decided to provide add on services. We’re not serving as the accounts administrator. We are providing the support to help people with: what types of distributions they should use their ABLE account for, how to set it up, and any problems they might encounter along the way. The actual account administrator is Ascensus, a financial services firm. They will be responsible for all the reporting to Social Security and the IRS. CFPD has two different types of services, one is a membership service in which we will work with people to understand how the ABLE account works with their particular government benefit. The second service we offer is serving as a limited Power of Attorney specific to ABLE accounts. In that case, we will actually be in charge of making the disbursements from the account, and making the investment decisions on that account. We will also continue to offer our fee for services on the ABLE accounts which would include serving as a case manager or as conservator."

What are you cautioning individuals about ABLE?
“I think ABLE is a great tool in the tool box. I think it is one of many things people can use in their entire financial picture and in all of their services. I just caution people that ABLE accounts are at the owner's discretion. That could mean an opening for exploitation. That gives me pause because we need to be aware of these accounts and that people could be vulnerable. They could easily make

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Special Needs Developments Across the US (Continued)

mistakes. They are given a debit card with the ABLE account. They could easily make a mistake that could have repercussions with their Medicaid benefits from then on.”

What else may your clients not be aware of in protecting their benefits?

“New to CFPD in the last year and a half is the scrutiny on the Medicaid accounts, specifically on the disability trusts, where there is a Medicaid payback at the time of the person’s death. We have seen a heightened scrutiny of those accounts in requests for information, receipts, and documentation on how funds were spent. That's something that has been a new challenge to us. Not that we didn't have the information but in the time it takes to respond to those requests. Then also in explaining to our beneficiaries why we're asking for all the information that we do. We know we are going to be responsible to Medicaid for that accounting. I believe this is directly related to the fact that Medicaid is providing services to more individuals. They have more of a burden on their budget so they have to really pay attention to anything they might get for a state recovery. One of those ways is on disability trusts.”

What is a Special Needs Trust? (Continued from Page 2)

- SNT is for the sole benefit of the SNT beneficiary.
- Only specific individuals can establish the SNT (parent, grandparent, guardian, court).
- On the death of the SNT beneficiary, the State of New Jersey is the first remainder beneficiary and will receive all amounts remaining in the trust up to an amount equal to the total amount of Medicaid benefits provided, minus any reimbursement or recovery of Medicaid payments previously received by the State.
- Transfers to the trust after the SNT beneficiary reaches age 65 are prohibited.
- Cash distributions from the trust to the SNT beneficiary must be counted as unearned income.
- Annual accountings are required to be sent to the eligibility-determination agency, and to the New Jersey Department of Medical Assistance and Health Services (DMAHS) Beneficiary Administrative Action Unit (BAAU).
- In the case of a personal injury lawsuit recovery funding an SNT, the Medicaid agency must first be repaid for the Medicaid payments related to the tort before the SNT can be established.

Further information can be found at www.state.nj.us/humanservices/dmahs/clients/snt.html

Mandelbaum Salsburg In The Community

Members of the Firm’s Special Needs Practice Group participated in the Park Avenue Foundation's “Friendsgiving” 5K Run on November 19th to benefit the organization's many charities.

Special Needs Practice Group Co-Chair Richard I. Miller is now admitted in the State of Colorado and will begin providing Special Needs Planning Advice in this jurisdiction as well as in the New York/New Jersey region.

Disclaimer: This publication is intended for informational purposes only and should not be considered legal advice.

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