Legal Life Planning with a Child with DMD

PRESENTED BY:
LEONA E. FILIS
THE FILIS LAW FIRM
Steps to Consider When Raising a Child with Special Needs

A. Sign up on the Interest Lists for Medicaid Waiver Programs (□ parents) and look into government benefits such as SSI and Medicaid or SSDI and Medicare (attorney)

B. Obtain a Special Needs Trust (attorney)

C. Get sufficient life insurance and disability insurance (□ parents)

D. Obtain of Update your Will, POA, and Medical POA (attorney)

E. Invest in a 529A account (□ parents)

F. If your child is close to 18 years old, consider Guardianship or the least restrictive alternative (attorney)
What are Medicaid Waiver Programs?

- Children and adults with disabilities can be eligible for programs that offer services in the home- and community-based settings rather than in institutions.
- For eligibility, factors that are considered are the disabled individual’s level of income, need, and resources. In most cases the age of the individual or the parents’ income and resources are not factors.
- Unfortunately the wait time to receive these benefits can be several years.
Texas Medicaid Waiver Programs

Six Waivers – Social Security Act §1915 (c)

1. Texas Medically Dependent Children Program (MDCP)
2. Star+Plus Home and Community-Based Services (HCS)
3. Community Living Assistance and Support Services (CLASS)
4. Texas Home Living (TXHmL)
5. Deaf Blind with Multiple Disabilities (DBMD)
6. Youth Empowerment Services (YES)
## November 2019

<table>
<thead>
<tr>
<th>Item</th>
<th>Previous Biennium Counts</th>
<th>Released/Removed from Interest List</th>
<th>Total Releases This Biennium</th>
<th>Added This Biennium</th>
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# November 2019

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<th>Years on List</th>
<th>CLASS</th>
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<tr>
<td></td>
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<td><strong>Totals</strong></td>
<td><strong>75,301</strong></td>
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<td><strong>721</strong></td>
<td><strong>100%</strong></td>
<td><strong>104,472</strong></td>
<td><strong>100%</strong></td>
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MDCP provides services to support families caring for children and young adults who are medically dependent and to encourage the de-institutionalization of children in nursing care facilities.

The applicant must be under 21.

Must be eligible for SSI or meet institutional resource-to-income limits (not considering parents’ income).
Medical Necessity Determination with a STAR Kids Screening and Assessment Instrument (SK-SAI) reviewed by a Texas Medicaid Healthcare Partnership

If initially your child is denied due to not meeting the medical necessity requirements for MDCP, you have 14 business days to submit more information. (send prescription lists, doctors’ chart notes, lab results, etc.)

MDCP services are authorized for a 12-month period.
MDCP Services include:

- Respite Care
- Adaptive Aids
- Adjunct Support Services
- Minor Home Modifications
- Transition Assistance Services
- Financial Management Services
CLASS provides home and community-based services to people with related conditions as a cost-effective alternative to placement in an intermediate care facility for persons with intellectual disability or a related condition (ICF-ID/RC). (manifested before age 22). DADS Form 8662.

Related conditions include autism, muscular dystrophy, cerebral palsy and spina bifida.

Cannot be on another Medicaid Waiver Program.

Must be Medicaid eligible for SSI. Parents’ income does not apply for a child. Talk to a lawyer about Special Needs Trusts to protect your child’s eligibility to receive benefits.
C.L.A.S.S. services include:

Adaptive aids and Medical supplies
Case management
Minor home modifications
Physical and Occupational Therapy
Speech and language pathology
Psychological and behavior support services
(BCBA to consult and design an ABA program)
Respite Care
Specialized therapies
Dental and dental sedation
Behavior Support
Specialized Therapies covered by C.L.A.S.S.

- Specialized therapies--Services to promote skills development, maintain skills, decrease inappropriate behaviors, facilitate emotional well-being, create opportunities for socialization, or improve physical and medical status that consist of the following:
  - (A) aquatic therapy;
  - (B) hippotherapy;
  - (C) massage therapy;
  - (D) music therapy;
  - (E) recreational therapy; and
  - (F) therapeutic horseback riding.
The Harris Center (713-970-7070)

- The Harris Center for Mental Health and IDD (formerly MHMRA) is the **Harris County** authority agency on mental health and intellectual disability/developmental disabilities.

- This agency coordinates and serves all county residents diagnosed with mental health, intellectual and developmental disabilities. We serve the "priority population“ meaning adults who are diagnosed with severe and persistent mental illness, children with serious emotional disturbances, and people diagnosed with moderate to severe intellectual disability.

- The Harris Center does consider income in determining rates for services; however, they will provide services to any county resident.
Get HIPP!

Once your child is on Medicaid, independently or through one of the Medicaid Waiver Programs, your employer-based insurance could be covered by the HIPP program.

Check with www.GetHIPPTexas.com for more information.
SUCCESS!

Your loved one is on the Interest Lists – now what?
The government offers support to disabled individuals with programs such as SSI (Supplemental Security Income).

Once your child is receiving SSI, do not lose the income-based benefit by receiving assets or cash from loving and well-meaning family members. Direct transfers or payments to your child on SSI can cause disqualification.

Plan ahead and get a Third-Party Special Needs Trust / Supplemental Needs Trust. Have a will drafted to meet your family’s long-term needs.

Trust funds could be used for summer camps, medical bills not covered by Medicaid, computers, and many items that enhance the quality of your child’s life.

The trust will have its own taxpayer identification number and file annual fiduciary tax returns. There is no pay back provision.
Supplemental Disbursements for SNT’s Expenses, including Quality-of-life Expenses

- Health and dental treatment and equipment for which there are not funds otherwise available, and Medical procedures, even though not medically necessary or lifesaving
- Rehabilitative and OT services
- Medical insurance premiums
- Supplemental nursing care
- Supplemental dietary needs
- Eyeglasses
- Travel and Vacations
- Entertainment
Supplemental Disbursements for SNT’s Expenses, including Quality-of-life Expenses

- Companionship
- Private case management
- Cultural experiences
- Expenses associated with bringing relatives or friends to visit with the beneficiary
- Movies, Radios, Stereos
- Telephone service,

- Television and cable equipment and services
- Training and education programs
- Reading and educational materials
- Recreation and Hobbies
Don’t forget to obtain sufficient life insurance and disability insurance for both parents.
General Estate Planning Matters for Parents with a Child with Special Needs

Hire an attorney who understands Wills, Special Needs Trusts, & eligibility for government benefits.

Protect your child’s eligibility to receive government program benefits by proper planning for your estate.

Parents of a child or children with special needs should have a valid Will in place to avoid inheritance interfering with eligibility. Without a Will, Texas Intestate Succession applies and your child could receive assets that will jeopardize your child’s benefits.
What Happens if There is No Will?  
Texas Intestate Succession

- A child with special needs will need his or her parents’ guidance, even though the parents may become incapacitated or deceased.

- When a Texas resident dies and fails to have a valid Will in place, the government’s probate answer to the devolution of the estate is Intestate Succession. The Texas Estates Code, Chapter 201, Subchapter A will determine the passage of the decedent’s estate.

- Your child may inherit from your estate. This could lead to disqualifying your child from eligibility for government benefits.
Typically a Will must be written and signed by the Testator and witnessed by two people over the age of 14.

The Testator must have legal capacity – generally this means being an adult.

The Testator must have mental capacity at the time of the execution of the Will.

The Testator must intent to dispose of his or her property.

If you have minor children, include a trust for their inheritance.

If you have a child with a disability, give their inheritance to the Trustee of their Supplemental Needs Trust.
New 529 A Bank Accounts Available in Texas

- Texans with disabilities can save money to pay certain disability expenses without fear of exceeding the Medicaid individual resource limit. Investment earnings on the contributions are tax-deferred and Qualified Withdrawals are income tax exempt.
- Friends and family can contribute to the account.
Guardianship of the Person and Lesser Restrictive Alternatives
Guardianship of the Person in Court

- A legal proceeding in which (typically) a family member asks to the court to make a determination/finding that a person is unable to make decisions about their healthcare, housing, food, clothing, and other subjects that affect the person.

  The proposed ward will be served with citation by a sheriff or other officer.

- One could also seek guardianship of the estate of the incapacitated person however if the estate is in a Special Needs Trust, there is no need.
The Court will appoint an Attorney Ad Litem to represent the proposed ward's interests. The Court may appoint a Guardian Ad Litem, who is an officer of the Court, to represent the interests of an incapacitated person.

Chapter 1103 of the Estates Code allows an applicant to file 6 months before the 18th birthday of the proposed ward. A parent can "fast track" the process if he or she was appointed conservator of a disabled child in a Decree in Family Court. Talk to an attorney about Section 1103.002 of the Estates Code to be appointed guardian without a hearing.
Less Restrictive Alternatives

- Medical Power of Attorney
- Advanced Directives
- Statutory Durable Power of Attorney
- Revocable Trusts / Management Trusts
- Representative Payee for government benefits
- Special Needs Trusts
MENTAL CAPACITY TO CONTRACT. In order to form a binding agreement, a person must have the mental capacity to create a contract.

Respite Care Vouchers

- Respite Care Program 1-877-393-1090 offers help to caregivers
- Vouchers issued by the program can be used to pay for:
  - Help in the home
  - Adult daycare services
  - Certified individuals outside the home to provide care while the caregiver is away.
Thank you for your attention!

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