SPINA BIFIDA COALITION

PLANNING FOR THE FUTURE

PRESENTED BY DEREK L. GRAHAM

RESCH, ROOT, PHILIPPS & GRAHAM, LLC
ATTORNEYS AND COUNSELORS AT LAW

ESTATE PLANNING

Why Plan?

IF YOU FAIL TO PLAN, YOU ARE PLANNING TO FAIL


LOST
CONFUSED
UNSURE
UNCLEAR
PERPLEXED
DISORIENTED
BEWILDERED

BENEFITS MATRIX

		Eligibility tied to:
SSI	**Medicaid / Medicaid Waivers**	Individual
SSD	**Medicare**	Individual or Parents

MEDICAID / SSI

- Medicaid
  - Funds approximately 60% of state/county programs
  - Standard asset limit of $2,000
  - Eligibility now tied to SSI eligibility

- Supplemental Security Income (SSI)
  - Supports for Aged, Blind and Disabled

ESTATE PLAN

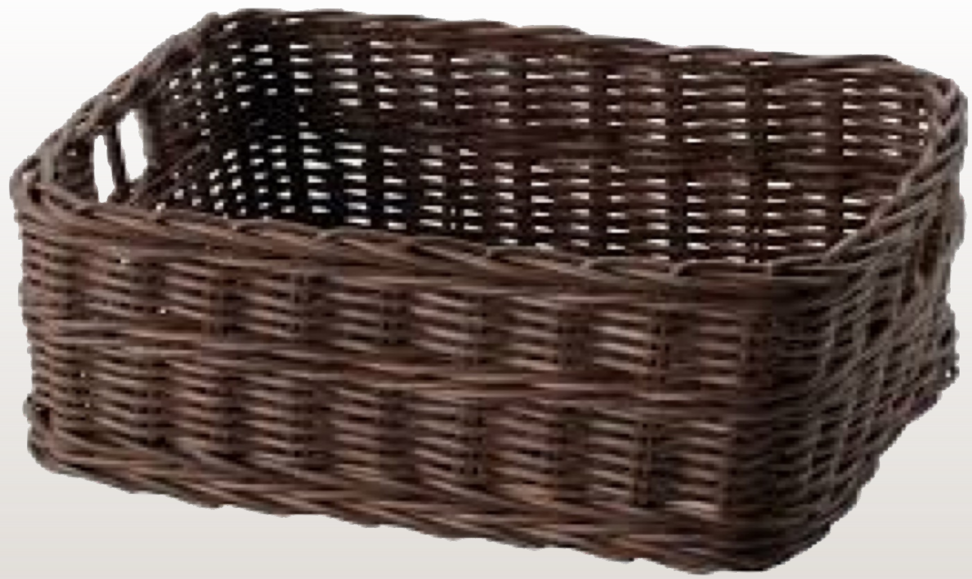
- Everyone has an Estate Plan!
  - Ohio's plan for you - DOES NOT WORK
- Planning prevents disruption of benefits for loved ones
- Planning allows you to exert and exercise control

PLANNING OPTIONS FOR A LOVED ONE WITH A DISABILITY

- Disinherit (Risky)
- Last Will & Testament (Will disqualify loved one from benefits)
- Beneficiary Designation (Will disqualify loved one from benefits)
- Trust (Wholly Discretionary Trust) – Best Estate Planning Option for Parents

TRUST

- WHAT IS A TRUST?



REVOCABLE LIVING TRUST

- Provides for control and disposition of assets
- Designates a Trustee (and successor Trustee)
- Creator (Grantor or Trustmaker) has control and ability to plan
- DOES NOT WORK FOR PRESERVING MOST BENEFITS

THIRD PARTY DISCRETIONARY TRUST

- Third Party Discretionary Trust
  - Designates a Trustee (and successor Trustee)
  - Provides for a remainder beneficiary to inherit upon beneficiary's death
- Best mechanism for Inheritance
- <u>Protects Medicaid/SSI Eligibility</u>
- Should be disclosed upon funding

ROADMAP

- Roadmap
    - ➢Include Details
    - ➢Specific to Child(ren)
- Roadmap for financial affairs/details
- Legacy Video

PAYBACK TRUST ("SPECIAL NEEDS TRUST") FIRST PARTY MONEY

- Can be created by an Individual, Parent, Grandparent, Legal Guardian or Court
- First Party Trust—meaning it only holds assets belonging to individual with disability
- Limitations on how the funds can be used
- Assets in this trust are not countable resources for Medicaid or SSI
- Medicaid Payback Provision Required

ABLE ACT
STABLE ACCOUNTS

- Eligibility
  - SSI / SSDI / Certification of Disability
- Contributions
  - Not ideal for estate planning
  - $17,000.00 annually (anything more will be returned)
  - Lifetime limit of appx $400,000.00 / SSI limit of $100,000.00
- Subject to Medicaid Payback
- Create online at www.stableaccount.com

ADULTHOOD FOR PEOPLE WITH DEVELOPMENTAL DISABILITIES

- Adulthood at age 18 (and all the fun responsibility)
- Decisions for Individuals/Families
  - Stay in School / Leave School
  - Day Programming / Employment
  - Social Security Benefits (more later)
  - Medicaid / Waivers
  - Decision-Making

"You need to go get guardianship." – A phrase you will most likely hear.

Reality: Some do, many don't.

DECISION-MAKING COMMON TERMS

- Supported Decision-Making
- Guardianship
- Incompetent
- Capacity
- Power of Attorney

GUARDIANSHIP IS LAST RESORT

- Must understand two key terms: "Capacity" & "Incompetent"

Capacity = ability to understand and make a specific decision

Incompetent = ⬇

Any person who is so mentally impaired as a result of a mental or physical illness or disability, as a result of intellectual disability, or as a result of chronic substance abuse, that the person is incapable of taking proper care of the person's self or property

SUPPORTED DECISION-MAKING

- Natural Supported Decision-Making = no documents / no legal relationship

- Structured Supported Decision-Making
  - Supporters have legal documents that grant access to information.
  - Supporters have legal authority to make decisions the individual or will not make.

STRUCTURED SUPPORTED DECISION-MAKING

- Hinges upon person having ”Capacity” to sign legal documents.
- Legal documents include:
  - HIPAA Waiver
  - Healthcare Power of Attorney
  - Designation of Assisted Decision-Maker
  - Financial Power of Attorney
  - Education Power of Attorney
  - General Privacy Waiver

OTHER ALTERNATIVES TO GUARDIANSHIP

Informal Supports

Releases and Authorized Representatives

Health Care Power of Attorney

Conservatorship

GUARDIANSHIP

- Changes legal decision-maker
- Absolutely necessary for some families
- Court process is necessary to appoint a legal guardian

TYPES OF GUARDIANSHIP

GUARDIAN OF PERSON

- Responsible for day-to-day decision-making
- Medical Decisions
- Residential Placement
- Review/Sign ISP

GUARDIAN OF ESTATE

- Responsible for managing assets
- Often Unnecessary in DD Cases
  - Representative payee
  - Less than $25k in assets

GUARDIANSHIP PROCESS

- Established through County Probate Court
- Forms: Obtain from county probate court website or alternatively from Ohio Supreme Court website.
- Court Investigator visit
- Statement of Expert Evaluation:

  Medical Doctor or Licensed Clinical Psychologist

GUARDIANSHIP APPOINTMENT HEARING

- Burden of proof on applicant to prove:

  (1) No less restrictive alternatives;

  (2) Individual is incompetent (see definition on previous slides); and

  (3) Suitability of applicant

- Letter of Guardianship

AFTER GUARDIANSHIP ESTABLISHED

- Probate Judge is Superior Guardian
- Education (sorry)
- Annual Filings
  - Guardian's Report / Annual Plan / Statement of Expert Evaluation
- Periodic Filings
  - Change of Address (Guardian or person under guardianship)
  - Conflict of Interest (more later)
  - Incident of Abuse, Neglect or Exploitation

RIGHTS OF PERSON UNDER GUARDIANSHIP

- Dignity of Risk
- Bubble Effect
- Administration of Medication

BEST INTEREST

- "Best Interest" means the course of action that maximizes what is best for a ward, including consideration of the **least intrusive**, **most normalizing**, and **least restrictive course of action** possible given the needs of the ward.

DECISION-MAKING PROCESS

- **Due Diligence**: "…communicating with the ward and being fully informed…"

- **Least Restrictive Alternative**: "…imposing the least limitations on the ward's rights, freedom or ability to control the ward's environment."

- **Person-Centered Planning**: "A guardian shall strive to balance a ward's maximum independence and self-reliance with the ward's best interest."

OTHER CONSIDERATIONS

- **Restoration**
- Complex medical decisions
- Guardian as a paid provider
- **Least Restrictive Alternative**: "…imposing the least limitations on the ward's rights, freedom or ability to control the ward's environment."
- **Person-Centered Planning**: "A guardian shall strive to balance a ward's maximum independence and self-reliance with the ward's best interest."

COMMON FEARS / MYTHS

- Guardianship is necessary to avoid exploitation.
- Guardianship gives me the ability to control behavior.
- The Probate Court will micro-manage day to day decisions.
- Guardianship can not be terminated.

KEY TAKEAWAYS

Guardianship is not mandatory

The right solution depends on many factors

Guardianship does not solve or prevent every problem

Probate Court appointment is required for guardianship

There are gray areas in guardianship

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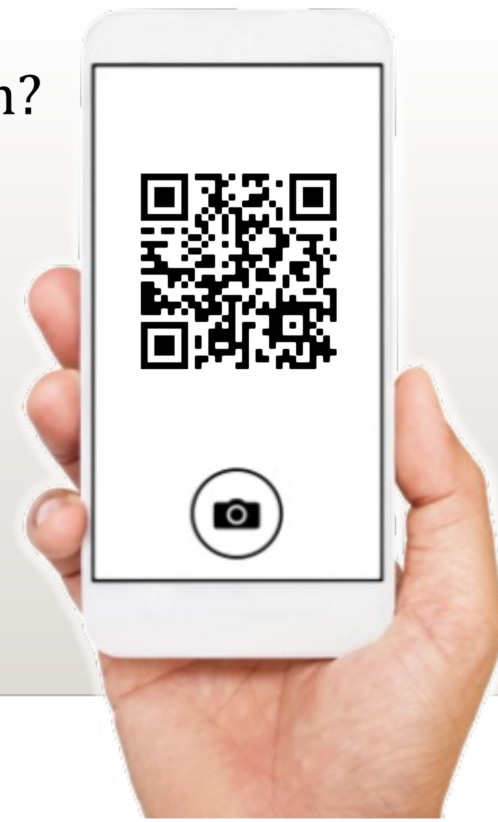
CONSULTATION

Would you like someone from Derek's office to contact you to schedule a personal consultation?

- Visit rrpg-law.com/consultation OR
- Open the camera on your smart phone, hover over the QR code and tap to open.



Complete the contact request form on our site.
We will be in touch with you soon.

QUESTIONS?

Derek L. Graham

RESCH, ROOT, PHILIPPS & GRAHAM, LLC
ATTORNEYS AND COUNSELORS AT LAW

5115 Parkcenter Ave., Suite 275 | Dublin, Ohio 43017

Email: derek@rrpg-law.com