



HELPING HAND

A Monthly Update from the
Special Needs Planning Practice Group

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Where our attorneys will be presenting in the near future. For a full list, visit www.ftwlaw.com under "Seminars & Events"

September 2

Thinking Beyond the L.E.P. - Legal Issues Which May Impact A Student's Future
Speaking: Theresa Varnet, Esq.
At: Crossroads School for Children

September 3

Guardianship and Alternatives
Speaking: Fred Misilo, Esq. & Elise Kopley, Esq.
At: Family Success Partnership

July 22 (Wednesday)

Special Needs Planning: How to Maximize Government Benefits, Trusts, Guardianships, Trust Funding & More
Speaking: Fred Misilo, Esq. & Kim Conroy of New York Life
At: Holiday Inn, Hyannis, MA

Sponsored by: Cape Organization for the Rights of the Disabled (CORD), Cape Cod Challenger Club, Fletcher, Tilton & Whipple and New York Life

JULY-AUGUST 2009



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Special Needs Planning
Medical Malpractice

School Age

Special Education Advocacy
Transition to Adult Services
Special Needs Planning
Guardianship & Alternatives

Adult

Special Needs Planning
Adult Service Advocacy
Special Needs Trust Admin.
Guardianship & Alternatives

Extended Family

Special Needs Planning
Elder Law
MassHealth Planning

Probate and Family Court Practice

Estate Planning Petitions
Adult Support Petitions
Guardianship

The Special Needs Planning Practice Group

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JULY-AUGUST 2009

A MESSAGE FROM THE PRACTICE GROUP CHAIR

By Frederick M. Misilo, Jr., Esq.



On Sunday, August 9, 2009, I will be running in the CIGNA Falmouth Road Race to raise money for Children's Hospital - Boston as a part of its Miles for Miracles Campaign. In my thirty four years of working with individuals with intellectual, developmental and other significant disabilities and their families, I can't tell you how many times I've heard incredible stories describing the dedication, expertise and compassion of the health care providers at Children's Hospital - Boston. Just this week, I spoke with a family whose son developed a rare progressive neurological disease in his early teens who has been treated over the past several years at Children's Hospital - Boston. There is no doubt that the care he has received has both enhanced this young man's quality of life and increased his life expectancy. The health care providers at Children's Hospital - Boston are true leaders - and have been for decades - in providing children with significant disabilities with compassionate, expert health care in an environment filled with support and respect for patients and their family members. I hope you will help me help Children's Hospital - Boston by donating any amount you are able. Do it today, please - by logging on to: www.childrenshospital.org/falmouth and following the "sponsor a runner" link.

The featured article in this summer edition is written by Susie Caspar who is a principal of Caspar Long Term Care Planning. Long term care insurance has developed over the last twenty years as one of the potential viable solutions in special needs planning. As many of you know, I don't believe in cookie-cutter solutions for families who need to engage in special needs planning. Every family situation is different. The needs of the family member with a disability, the net worth of the family, the ability of other family members to provide

Long term care insurance has developed over the last twenty years as one of the potential viable solutions in special needs planning.

services and supports, the current income of the family and the availability of government benefits, among other factors, all need to be analyzed in order to craft an appropriate plan. Your special needs plan should incorporate these factors to fit your current lifestyle as well as the future needs of your family member with a disability.

On July 1, 2009, the former Department of Mental Retardation gained a new name - the Department of Developmental Services. This is an achievement worthy of mention. The name change is not merely rhetoric or

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LONG TERM CARE INSURANCE AND SPECIAL NEEDS PLANNING

By Susie Caspar - Founder of Caspar Long Term Care Planning (Guest Author)

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Long Term Care Insurance can be part of a strategy for maximizing preservation of assets, especially for families who have a member with special needs, whether a child, spouse, or sibling. In addition, if a healthy family care provider becomes ill and has long term care insurance paying for Home Care providers, there may be mutual benefits for the person with a disability, allowing both to stay at home.

Take the case of Gail, a 58 year old woman who suffered a Traumatic Brain Injury when she was only 30 years old. Physically she is healthy, but is cognitively impaired such that she could not live independently without supervision. She has a disabling short term memory deficiency, and therefore is unable to properly prepare her own meals, cannot drive or work, and is at times confused as to the time or day. She is physically active, engaging in things like swimming, hiking, and cross country skiing.

Gail has limited assets, and has lived with her younger sister (age 56) and her family for the past twenty-five years. That sister and two brothers are now realizing what the consequences might be if they predecease their sister with a disability. Or worse, if the younger sister who takes care of her develops health issues, then who will take care of her? They are adamantly opposed to putting her in an institution. However, without family care providers, Gail would need as much as possible in the way of financial capability to pay for caregivers, and retain some control over her living

conditions and lifestyle.

Gail's one remaining Aunt wants to help her, and has named Gail the principal beneficiary of her estate. The only problem is that at age 83, and without her own LTC Insurance coverage, she's private paying for her own assisted living to the tune of \$45,000 per year, has signs of dementia, and might spend down her estate in its entirety if she lives several more years. Gail's Mom suffered that fate, passing away at 80 a few years back, after several years living with dementia in the same facility, and having spent down 90% of her estate on her own long term care.

Gail's siblings want to help too, and have decided to use Long Term Care Insurance as a method of planning to protect against the risk of a costly long term care scenario, which would deplete their estates, and leave little or nothing to be passed on for their sister's care. The coverage they each purchased averages about \$2,300 per person annually, and covers \$6,000 per month in benefits with an aggregate cap of \$360,000, in today's dollars, and includes 5% compound inflation protection. But that's cheap even if they don't use the policy for 25 years and then have the need for care.

In 25 years, the national average for four hours of home based care will cost approximately \$70,000 per year, if costs rise only 3% per year from today's rates. Assisted living facilities will be roughly \$150,000 per year, and Nursing Homes \$300,000 annually.

Fortunately their policy benefits will have grown to \$1,220,000 at that time, because of the inflation protection feature which increases the benefit amount each year. The insurance premiums of \$58,000 over that period are small in comparison, especially when considering that long term care claims can run for years.

Consider also that if Gail's sister eventually requires Long Term Care, and receives some home based care which includes homemaker services, Gail would benefit. Most

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policyholders choose to get their care at home when they go on claim. Long Term Care insurance policies include Care Coordination services that help the family implement their home care services efficiently. With quality care at home, they minimize the Nursing Home stay. Given a choice, wouldn't you prefer to sleep in your own bed as long as it's feasible?

Gail's family has some peace of mind knowing that they have taken an important step to protect their distributable assets, as well as reducing the burden on their loved ones from the impact of needing long term care. ●

REIMBURSEMENT FOR PRIVATE SCHOOL MAY BE ALLOWED UNDER IDEA

By Joan D. Beron, Esq.

On June 22, 2009 the United States Supreme Court decided the case of Forest Grove School District v. TA ruling. By a 6 to 3 margin the Court ruled that "the IDEA authorizes reimbursement for the cost of private special education services when a school district fails to provide a free appropriate public education and the private school placement is appropriate, regardless of whether the child previously received special education or related services through the public school." As such, unilateral placement in a private school is no longer a bar to reimbursement. However, Forest Grove is also *not* a guarantee for reimbursement of unilateral placements. Forest Grove, in reaffirming the Burlington-

Carter decisions, means that parents will only receive reimbursement for their special education costs if they can show that their children are eligible for special education and that the program that they have chosen is appropriately responsive to the child's special needs and is the least restrictive environment for the student. As such, Parents should have adequate evidence before making a unilateral placement and should proceed cautiously if a less restrictive alternative has not been tried.

If you would like to communicate with me on any special education issue, please feel free to contact me at (508) 532-3512 or jberon@ftwlaw.com. ●



He's Running AGAIN!

Falmouth Road Race August 9 to Benefit Children's Hospital in Boston

WHAT/WHEN: On Sunday, August 9, Attorney Fred Misilo will be running **all 7.2 miles** of the 37th CIGNA Falmouth Road Race to benefit Children's Hospital in Boston and he needs your support!

HOW TO HELP: Log on to www.childrenshospital.org/falmouth and follow the "sponsor a runner" link to help Fred in his quest to reach his fundraising goal! \$5, \$10 or any other amount you are able to contribute will help make a difference!

WHO BENEFITS: Children's Hospital Boston is a wonderful place, a truly unique hospital—one of the best pediatric institutions in the world, giving hope to so many kids and their families, constantly finding new ways to treat or cure an amazing variety of diseases. The doctors and nurses here never say "never" and they treat kids from all over the world. Some have families who can't afford to pay for their care. Children's takes care of them all! And it's very involved with the neighborhoods around it—helping low-income and at-risk kids.



MESSAGE *continued from page 1*

a salute to political correctness. Words matter. Words can hurt. They can also help. What we say and how we say it reflects our underlying values and beliefs. The new name reflects, in part, the belief that individuals with intellectual and developmental disabilities should be served by an agency that is focused on what a person needs to develop his or her full potential. As Senate President Therese Murray has said, "This is a significant step toward changing attitudes and perceptions about a population of people who are part of our society and deserve to be treated with the same respect and dignity as any other person." Congratulations to all who were involved in making this name change happen.

If you would like to communicate with me on any special needs planning issue, please feel free to contact me at (508) 459-8059 or fmsilo@ftwlaw.com. ●

The FTW Special Needs Planning Practice Group provides legal counseling, advocacy and innovative solutions on behalf of individuals with differing abilities and their families. We strive to serve as a reliable trusted advisor committed to providing excellent service to our clients throughout their lifetimes. We recognize the importance of treating our clients with respect and dignity.

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