SPAIN, SPAIN & VARNET P.C.
ATTORNEYS AT LAW
SUITE 2220
33 NORTH DEARBORN STREET
CHICAGO, ILLINOIS 60602

TELEPHONE (312) 220-9112
FACSIMILE (312) 220-9261
www.ssvlegal.com

RICHARD C. SPAIN[1,3]
NANCY M. SPAIN[1]

SHERI L. WILLARD
KEVIN P. MITRICK
PRISCILLA SINGER
ANDREW D. BELL[4]
MAUREEN E. LOUGHRAN

OF COUNSEL
THERESA M. VARNET[2]

SUBURBAN OFFICE
(BY APPOINTMENT ONLY)

KENILWORTH, ILLINOIS
ROLLING MEADOWS, ILLINOIS

REAL ESTATE PARALEGALS
ALICIA MOSBY
ELIZABETH ZINANNI

[1]ALSO ADMITTED IN OHIO
[2]ALSO LICENSED IN MASSACHUSETTS
[3]ALSO ADMITTED IN MASSACHUSETTS
[4]ALSO LICENSED IN MICHIGAN

GOVERNMENT BENEFITS FOR PERSONS WHO ARE DISABLED

The purpose of this presentation is to provide you with the information about government benefits that will be helpful to you and your lawyer in planning for your child's future. In addition to trust and estate planning skills, your lawyer needs to have an understanding of the problems of disabling conditions, the interests of the person with a disability, and a familiarity with state and federal entitlement programs upon which the person may depend for lifetime care.

The estate planner needs to develop an estate plan that is flexible and able to respond to future changes in the family member's condition as well as changes in federal and state entitlement and reimbursement regulations.

Nowhere is this analysis regarding future impact more important than in the actual selection of the method used in one's estate plan. For example, the selection of an outright gift as opposed to an absolute discretionary spendthrift trust may have a lifetime effect on the person's welfare. This is due to his or her need to remain eligible for government benefits. The primary goal of estate planning is usually to avoid federal and local estate taxes. This goal becomes secondary when planning the estate of a family with a dependent who is disabled who will need state and federal benefits for their lifetime care. The need to avoid the loss of state and federal benefits and the need to protect the family's assets from state reimbursement claims for providing services to the person are the primary goals for estate planning for families with members who are disabled.

It is likely that at some point in their life, a person with a disability will need government benefits such as SSI, Medicaid, residential, training or support services. Parents need to plan their estate so that their child does not become ineligible for government benefits that have minimum income and resources eligibility requirements. Parents need to realize that without careful planning, an inheritance may make their child ineligible for disability benefits which can be far more valuable than the inheritance. In some cases, the more a person inherits, the worse off they may be! Government benefits are important because it is seldom possible for the average family to leave sufficient funds to care for their dependent's lifetime care. The cost of care will vary tremendously depending on the area in which the individual lives and the nature and degree of the individual's disability. It is difficult to predict what the costs of care will be twenty or thirty years from now. To ensure that the beneficiary will not risk his or her eligibility for government benefits should he or she need them, it is important for the estate planner to become familiar with and understand the various means tests and reimbursement requirements for services in their state. These eligibility requirements are discussed in the following sections.

Government Benefit Programs

There are basically three categories of governmental benefits which should concern the estate planner.

1. Benefits Not Based On Financial Need

The first category includes insurance programs which are not based on financial need. The major insurance programs in this category are Social Security Disability Income (SSDI) and Medicare. A child of a person who is retired, disabled or deceased can collect monthly cash benefits based on the parent's earnings provided that their disability began before the age of 22, they are unmarried, and is dependent on the parent for support who is retired, disabled or deceased. Disability is defined as "the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than twelve months." Your child need not have worked under Social Security to be eligible. A person who receives Social Security disability benefits for two years is entitled to Medicare hospital and medical coverage. The advantage of Social Security benefits is that they are not reduced or affected by the person's assets.

2. Programs Based on Financial Need

The second category of programs is based upon the individual's financial need. The two most important programs in this category are Supplemental Security Income (SSI) for the aged, the blind, and persons with disabilities and Medical Assistance, also known as Medicaid.

It is important for parents to realize that eligibility for SSI and Medicaid may be critical to an individual who is disabled because SSI and Medicaid eligibility is often necessary to be entitled for other services. For example, group homes and community residences are funded in several states by SSI benefits or by Medicaid benefits. Some parents may feel that they do not have to be concerned with federal medical assistance because their adult child is covered with a private health insurance policy. Often the coverage in programs that insure persons who are disabled is minimal and the cost for private medical coverage may be prohibitive in the future. In some cases, the child presently has medical insurance, but upon the death or retirement of the parent, his or her medical coverage may terminate.

Many parents are not aware that they can continue their group plan health care coverage for their dependent adult child after their child graduates or leaves school. You will need to check with your personnel department to see if your company health insurance plan has this option available. Most companies require that you notify them within 3 months of your child's 19th birthday that they are disabled and dependent on you for care. If you do not notify your health insurance carrier of your child's special needs, they may drop your child from coverage.

Medicaid is used to fund group homes and some rehabilitation services. In 1971, Congress added Intermediate Care Facilities (ICFs) to the list of optional services that states could offer under their Medicaid programs. Other benefits covered include independent case management, individual and family support services including respite and attendant care, specialized vocational services, protection and advocacy services, and residential services. Given the range of services that are presently available through SSI and Medicaid and those which may be available in the future, it is important for the estate planner to be aware of the financial need criteria to qualify an individual for these two programs.

Eligibility for SSI requires that the person be aged, blind or disabled and that the individual have limited income and resources according to the guidelines of the program. All assets, not just earnings, as with Social Security benefits, count against the amount of SSI an individual receives. Income is defined as "the receipt by an individual of any property or service which he can apply, either directly or by sale or conversion, to meet his basic needs for food and shelter." The SSI regulations specifically include inheritance and gifts as income. SSI regulations further state that property is considered a resource if the claimant has the right, authority or power to liquidate the property. An individual is allowed up to $2,000 of nonexcludable resources before they are disqualified from receiving benefits. The recipient is also allowed to own the home they are living in, one car, regardless of its value if it is used to transport the recipient or a member of the recipient's household, reasonable household goods and personal effects, and a life insurance policy if the total face value does not exceed $1,500. Resource is defined as cash, liquid assets or any real or personal property that the individual owns and could convert to cash to use for their support. Property which cannot be liquidated by the SSI recipient will not be considered a resource.

In some states, individuals who qualify for SSI will automatically qualify for Medicaid. This is not the case in Illinois, where a separate application must be made for Medicaid through the Department of Healthcare and Family Services. States are allowed to have stricter restrictions on assets and income for Medicaid which may disqualify the SSI recipient from receiving Medicaid funds. In states that do not follow the SSI eligibility requirements for Medicaid, the parent should be extremely cautious that their estate plan be constructed in such a manner that funds left to the child are not considered a resource for purposes of either SSI or of Medicaid eligibility. The method to protect a child's inheritance will be discussed later.

Other financial need based benefits which the parent may want to protect in the estate plan include food stamps, public housing, and legal aid. Eligibility requirements for these benefits vary from state to state.

A program which is of great assistance to parents of children with disabilities and not well known is Services for Children with Special Health Needs. This program provides medical treatment to children who are disabled up to age 21. Services include transportation to clinics, testing for health problems, diagnosis, evaluation and full treatment of those problems. All developmentally disabled children are eligible for the diagnostic services. The evaluation and treatment services are only available to families who meet certain income guidelines. These guidelines vary depending on the state you live in. To apply for these services, contact your local health department or the social worker in the hospital your child is treated.

3. **Fee for Service Programs**

The third type of program that estate planners need to be familiar with is the ”fee for service” program. These include state institutions for persons who are developmentally disabled or mentally ill, outpatient psychiatric centers, homemaker services, vocational rehabilitation services, and community outpatient services. Fees are based upon the individual's ability to pay and are charged to the parent of the minor child or to the disabled adult who is receiving services. Some states even have a responsible relative liability for adult children and will charge the parents.

The above information is a brief introductory summary of government benefits. Do not assume that your lawyer is familiar with these benefit programs. The training received by most lawyers rarely provides the requisite background for estate planning for families with a dependent who has special needs. Parents with a disabled child often find it difficult to locate an attorney who is experienced and knowledgeable in both estate planning and in the special problems and laws and government benefits concerning persons with disabilities. Be sure that the lawyer you select is familiar not only with basic estate planning techniques, but is knowledgeable of the methods used to prevent the state from taking your child's inheritance upon your death.