

14TH ANNUAL INFORMATIONAL SEMINAR

Presented by The Arc of Illinois Family Support Network & Family Advocate Program

MARCH 25, 2026

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**Special Needs Legal
& Future Planning**

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866.TO.RUBIN

"Legal and future planning for our fellow families of individuals with special needs, including intellectual disabilities, developmental disabilities, and/or mental illness, is not one thing we do, it's the only thing we do; it's not one area of our practice, it's our only area of practice."

9:10 a.m. – 10:10 a.m.

**What you need to know about guardianship
& the alternatives to guardianship;
& an update on ABLA Accounts**



Attorney Brian Rubin

◆ **Arc of Illinois Past President**

◆ **Director 2004-2019**

Attorney Benji Rubin

◆ **Arc of Illinois Past Treasurer**

◆ **Director 2014-2023**

When someone is present in Illinois, that person is present. **STOP!** This means YOU. competent...

only **IF** a court determines otherwise, is that person competent...



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1

- Schools?
- Doctors/Hospitals
- Insurance Claims?
- Signing documents/Contracts
- Dealing with SSA /State
- Residential/Living arrangements
- Employment/Day Programs
- Agencies
- Marriage
- Driving
- Arrests – DD/ID/MI is NOT Diplomatic Immunity...

STOP! This means YOU.



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2

SO... the questions to ask...

- Can he/she fully manage his/her personal, medical, education & financial decisions?

Even **IF** can...

- Could he/she be vulnerable to, or be taken advantage of by others?

IF SO, THEN...

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BEFORE considering
 "Guardianship",
ALWAYS
 1st consider the
"ALTERNATIVES"


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What are
 the
ALTERNATIVES?

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5

OPTION #1
 Do nothing?
 Actually...
 If **NO** "CAPACITY"
 FOR **MEDICAL DECISIONS...**
 THEN 

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Illinois Health Care Surrogate Act

(IF NO decisional capacity)

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(755 ILCS 40) Health Care Surrogate Act.
(755 ILCS 40) Sec. 1. Short title. This Act may be cited as the Health Care Surrogate Act. (Source: P.A. 87-749)

(755 ILCS 40) Sec. 5. Legislative findings and purposes.

1. LACKS decisional capacity for MEDICAL/HEALTH AND
2. NO health care agent (i.e. No Health Care DPA) THEN
3. In order (1) Guardian of Person... (2) spouse... (3) any adult
children... (4) any parent... (5) any sibling.

But just MEDICAL/HEALTH!

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OPTION #2

IF DO HAVE "Decisional Capacity"

then...

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Supported Decision Making

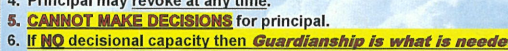


10

SUPPORTED DECISION MAKING?

ILLINOIS PUBLIC ACT 102-0614 - EFFECTIVE 2/27/2022 (755 ILCS 9/1)


1. Authorizes the creation of supported decision-making agreements
2. Allows a "supporter" to assist a "principal"...
3. **WHO HAS AN INTELLECTUAL OR DEVELOPMENTAL DISABILITY...**
4. **WHO HAS DECISIONAL CAPACITY:** "in accessing, collecting, or obtaining information that is relevant to a decision authorized under the supported decision-making agreement." *I know, "CLEAR AS MUD!"*
3. Provides a form.
4. Principal may revoke at any time.
5. **CANNOT MAKE DECISIONS** for principal.
6. If **NO** decisional capacity then *Guardianship is what is needed.*




11

OPTION #3

AGAIN, IF *DO HAVE* Decisional Capacity

then... 



12

PowerS of Attorney
(IF have decisional capacity)

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13

\$ FINANCIAL \$

1987
Print?
Mark?
Stamp?
Direct others to sign?

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Example **additional** Powers, when appropriate... **1987 to 2026**

- IRS
- Residential
- Employment matters
- Funding/establishing self settled (d4A/C) SNTs & ABL Accounts
- HIPAA release
- UID/PW
- Copies
- **AND MUCH MORE...**

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1987, 2011 & several revisions thereafter... HEALTH CARE

Print? Mark? Stamp? Direct others to sign?

1987 was 1 page
2026 Now 7 pages

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16

EDUCATION SPECIAL ED -2007

DELEGATION OF RIGHTS TO MAKE EDUCATIONAL DECISIONS
Illinois Statute 105 ILCS 5-14-6.10

Print? Mark? Stamp? Direct others to sign?

STUDENT SIGNS

PARENT SIGNS

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17

DECLARATION FOR MENTAL HEALTH TREATMENT

MENTAL HEALTH

Print? Mark? Stamp? Direct others to sign?

5 PAGE FORM

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18

SSA
REQUIRES THEIR OWN FORM
Print?
Mark?
Stamp?
Direct others to sign?

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19

THE STATE
DHS/HFS
REQUIRES THEIR OWN FORM
Print?
Mark?
Stamp?
Direct others to sign?

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20

What if he/she:


- **DOES HAVE CAPACITY** to "sign" **BUT refuses** to "sign"? OR
- **DOESN'T HAVE CAPACITY** to "sign"? OR
- **HAS CAPACITY, HOWEVER,** just can't help getting himself/herself into trouble; maybe legal, maybe criminal, maybe financial, maybe personal, maybe medical/health related? OR
- **HAS CAPACITY, HOWEVER,** is a danger to himself/herself or others?

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AND WHAT IF he/she DOES HAVE CAPACITY to "sign" BUT


- **He/She** terminates/voids the PA as soon as... when...?
- **AND...**
 - Doesn't **prohibit** him/her from...
 - Remains **vulnerable**?



22


That is, will Powers be enough?

- What if he/she is **on computer buying** things with mom's credit card.
- What if he/she refuses to have parents at IEP/504/ISP meeting, or is "**tricked**".
- What if he/she is being asked to **sign** ___ ?



23

If he/she can't, or **WON'T SIGN** DPAs...
AND/OR if you determined that SDM, DPAs, or HCSA, are simply **NOT ENOUGH** to assist and/or protect him/her...
THEN, MAYBE... JUST MAYBE, "some form" of **GUARDIANSHIP** would be appropriate to help, and to protect him/her, from himself/herself, and from others...



24

OPTION # 4

Guardianship...



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25

GUARDIANSHIP

- ↘ Independence vs. Protection?
- ↘ **Guardian Liability Concern? Stay tuned ☺...**
- ↘ Court... Law Suit... Venue – County where individual resides (**Not** where petitioners reside)...
- ↘ Report – Illinois M.D., ***IF IDD can be a clinical psychologist licensed under the Clinical Psychologist Licensing Act.***
- ↘ Summons (14 days)
- ↘ Who can be appointed (U.S. Resident)
- ↘ Required notices

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GUARDIANSHIP

- ↘ When can do it ?
- ↘ **Person vs. Estate \$\$\$\$?**
- ↘ Residential Placement ?
- ↘ Sterilization
- ↘ Annual Reports ? On Line... E-File!

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27


**NO MORE MAILING
ANNUAL REPORTS**
or even hand delivering!
**MUST NOW
E-FILE AS OF 1/1/18**



28

GUARDIANSHIP

- Move out of State
- Move out of County
- Why some parents/siblings decline due to possible liability or?
- Then what?
- State (vs County) Guardian/Private?
- DayOne Pact...



29

Co-Guardians ?

- Law ?
- Agencies ?
- M.D.s/Hospitals?




30

“When considering appointing co-guardians, the court shall consider the proposed co-guardians’ history of cooperating and working together on behalf of the person with a disability. The court shall appoint only co-guardians who agree to serve together.”

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NO DRIVER'S LICENSE IF PLENARY GUARDIANSHIP

Illinois State Law (755 ILCS 5/11a-25) requires the probate court to notify the Secretary of State's Driver Services Department when a person is adjudged to be a person with a disability and a plenary guardian is appointed, no later than 7 days after the entry of the probate court order.

32

When the Secretary of State receives the required notification from the probate court, that office is subject to the Illinois State Law at 625 ILCS 5/6-103, specifically paragraph 5 of that law, which provides that the Secretary of State shall not issue, renew, or allow the retention of any driver's license, ~~and~~ issue any permit under this Code to any person, as a driver, who has previously been adjudged to be afflicted with or suffering from any mental or physical disability or disease.

Beware, DMV does NOT follow the law!

Even if DMV, with M.D. letter, allows, **DONT!** (Liability – Insurance)

NOT IF PLENARY for sure... Limited needed!

33

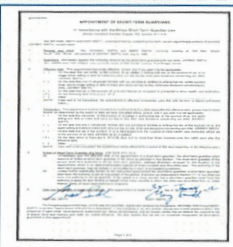
Why/When Limited Guardianship?

- ✓ Needs Guardian, **but** won't cooperate? Consider "**limited**"...
- ✓ Liability concerns of Guardian candidates? Consider "**limited**"...
- ✓ He/she will be "driving"? **MUST** only have "limited", **NOT** plenary!

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• Use Short Term Guardian Declaration to delegate to Co... or Cos to a 3rd party?



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(755 ILCS 5/11a-18.3)
Duties of short-term Guardian of a disabled person

(a) ...The short-term guardian of the person shall have authority to act... without direction of the court... **in no case shall exceed a cumulative total of 60 days in any 12 month period for all short-term guardians appointed by the guardian.**

(b) ... **not have any authority to act as guardian of the estate** ...

(Source: P. A. 90-796, eff. 12-15-98.)

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36

REQUIRED TRAINING!
ILLINOIS LAW - Public Act 100-483
Effective September 8, 2018

REQUIRED TRAINING FOR GUARDIANS... even for parents

- **Required Training**
 - outlines the duties and responsibilities of guardians...
 - outlines the rights of a person with a disability...
 - at no cost, and **MUST**
- **File with court a certificate of completion within one year**
- **The court may for "good cause" waive, upon motion...**

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GAC - Office of State Guardian
Guardianship Training

Click here to take the Guardianship training that will provide you with a certificate that you can file with the court; to obtain the certificate and take the training you will need to register with an email address: <https://onenet.illinois.gov/guardianship>

Click here if you would like to view the training without registering; you will not be provided a certificate: <https://onenet.illinois.gov/page.aspx?Item=115208&review=1>

Click here for a list of disability related resources: <https://onenet.illinois.gov/page.aspx?Item=115040>

Guardianship Training Link:
<https://www2.illinois.gov/sites/gac/OSG/Pages/Guardianship-Training.aspx>

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DOCUMENTS TO BE SENT BY EMAIL TO THE COURT:

- Report from Attorney "Special Needs Trust Checklist"
- Affidavit of Special Guardian & Conservator (Form CG-100 (June 2007))
- Report on Income & NAV Support on ESE & Medicaid
- Verify your FIDR on W-9K (with Signature) (June 2011)
- Guardianship & Conservatorship Powers of Attorney - Required Section (March)
- Special Needs Trust & Special Needs Future Planning
- Asset Listing Form & ESE-NAV information for asset listing
- Report of Guardianship or Conservator's Income
- Trust & Special Needs Trusts
- Trust & Asset (ESE) Sheet
- ESE Checklist
- Verify Person Report (2009)
- The Best Future Asset/Income Plan
- Trust and Asset to your list to ensure your beneficiaries by email

Check appropriate box and complete the needed information:

I agree to enter into and maintain custody of the information requested above.
 Email address to _____

I have entered this form, which is to be filed on "Special Guardianship".
 My time phone number (_____) _____ Email _____

I agree to enter into and maintain custody of the information requested above.
 My time phone number (_____) _____ Email _____

39

You need to write it ALL down!

**Guidance & Instructions For
Future Guardians, Agents,
Trustees, & Care Providers.**

AKA Letter of Intent...




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40

WRITE IT DOWN

- ✓ family information
- ✓ diagnoses, hospitalizations, medications, doctors, other professionals... PAST & PRESENT!
- ✓ behavior... "dos" & the "do nots"...
- ✓ "melt down" techniques...
- ✓ school concerns, suggestions...
- ✓ employment, adult activities, living situation...
- ✓ when someone dies...
- ✓ Government Benefit Information...
- ✓ Wills, Trusts, Life Insurance, Powers of Attorney, SNT, funeral desires & related info...
- ✓ executive summary



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41

In EP Magazine February 2011
Brian Rubin

In Parenting Special Needs Jan/Feb 2014
Brian Rubin

In Met Life Agent/Broker Newsletter Edition 4 2013
Brian Rubin



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42


Benji Rubin
Past-President
S.I.B.S.
Supporting Illinois Brothers & Sisters
Illinois Chapter of the national Sibling Leadership Network






43


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Sibling Leadership Network
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The Sibling Leadership Network (SLN) is a national nonprofit with state chapters that promotes a broad network of siblings who share the experience of disability and people concerned with sibling issues by connecting them to social, emotional, governmental, and professional supports across the lifespan enabling them to be effective advocates with their brother and sister, and to serve as change agents for themselves and their families. The mission of the SLN is to provide siblings of individuals with disabilities the information, support, and tools to advocate with their brothers and sisters and to promote the issues important to them and their entire families.

Join the network for free at www.siblingleadership.org
 Visit us on Facebook at The Sibling Leadership Network.



www.siblingleadership.org

44

If "NOT that much"

When to consider ABLE?

1. Excess SSI/SSDI/Earned Income... to avoid *resource/asset* issue:
 - SSI \$2,000 / AABD Medicaid \$17,500 / HBWD Medicaid \$25,000 + OBs
2. Short term savings
3. For beneficiary to be in control of "some" spending money
4. Small inheritances not correctly left to 3rd party trust
5. Court ordered divorce child support not to exceed \$20,000 (2026) in a calendar year - **MAYBE ?**
6. 2018 - Convert traditional 529 Account... up to \$20,000 limit (2026)...
7. Earned income still counts; ABLE not the answer for "too much" income!

45

WHAT WE DO... <ul style="list-style-type: none">Special Needs TrustsGovernment BenefitsGuardianshipsSupported Decision Making & Powers of AttorneyEstate/Estate Tax PlanningWills & TrustsEstate AdministrationLetters of IntentNavigating the Illinois "MAZE" of ServicesConsulting on Litigation SettlementsConsulting on Special Needs Family Divorces	NO travel needed... Consultations & document signing, ALL virtual, via Zoom, now permitted by Illinois law...	847.279.7999 or 866.to.rubin email@rubinlaw.com www.rubinlaw.com
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49
