



PERSPECTIVES

on disability law

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Changes in the Federal Estate Tax Law

By: Herbert D. Hinkle, Esq. & Amy E. Duff, Esq.

There are several bills pending in Congress to extend the federal estate tax deduction of \$3.5 million, which applies in 2009 but not in 2010. In 2001, Congress liberalized the deduction for federal estate tax purposes and lowered the tax rate marginally. At that time, the deduction was \$1 million. This meant that for a person dying in 2001, everything (including life insurance) was subject to a hefty tax (in some cases over 50%) of everything over \$1 million with transfers to a spouse being exempted. In 2001, the law raised

see Federal Estate Tax Law, page 3

Service Plans Developed by DDD

By: S. Paul Prior, Esq. & Herbert D. Hinkle, Esq.

Most families are familiar with the development of Individualized Education Programs (IEPs) in the special education context. Most families are; however, unaware that the Division of Developmental Disabilities (DDD) has a similar requirement to create an Individual Habilitation Plan (IHP). Over the years, DDD has used different names for the IHP, including "Essential Lifestyle Plan" (ELP), "Self Determination Plan," "Individual Service Plan" (ISP) or simply "Service Plan." While DDD may use different names for the IHP, the minimum legal content is the same. State law requires that an IHP or similar plan be developed by a team of individuals including the person being served, if possible; DDD staff; service providers, such as day program or group home staff; parents; guardians; and other family members or other interested parties who may have knowledge of the service recipient's needs.

see DDD Service Planning, page 2



Herbert D. Hinkle, Esq. has been appointed adjunct professor at Rutgers Law School, where he will be teaching courses in Estate Planning, Trusts & Trust Administration, and Tax.

Are You Ready for Your Child's IEP Meeting?

By: Hillary D. Freeman, Esq. & Ira M. Fingles, Esq.

When preparing for your child's IEP meeting, ask yourself the following questions:

- 1 When was the last time your child was evaluated for special education? If it has been three years or more, he/she is eligible for reevaluation.
- 2 Do you agree with the program recommendations from the Child Study Team (CST)? If the CST is removing a service or changing a placement against your wishes, a Petition for Mediation and Due Process must be filed within 15 days of receiving the final IEP.
- 3 Does your child require an extended school day or extended school year program to benefit from his/her education?
- 4 Have you reviewed your child's progress? Do you agree with the progress reports? Do the goals address all areas of your child's disability? (e.g., social skills, behaviors, emotional deficits, fine and gross motor skills, reading, math, organization, etc.)
- 5 Is your child able to generalize skills into the home and community?
- 6 If your child is 14 or older, does he or she have a transition plan in the IEP? It is required by law.

If you are unsure whether the IEP is appropriate for your child, please contact our office to schedule an appointment or to learn how a free "On Site IEP Review" may help you.

DDD Service Plans continued from cover

An IHP or any similar service plan must be developed annually and may be reviewed or modified more frequently at the request of the family, guardian or individual being served. Like an IEP, an IHP is developed to establish goals and objectives to enable an individual with a disability to maximize his or her development potential in a setting least restrictive to his or her personal liberty. An IHP must state objective criteria and evaluation procedures to determine whether progress is being made, state the barriers that might interfere with the achievement of particular goals, and describe the personnel, including their qualifications, necessary for the provision of services described in the plan.

The IHP process can be used to identify and address short-term needs such as respite care, family support, summer camp stipends or financial assistance in obtaining guardianship through a private attorney.

These plans must be developed regardless of whether the individual is currently receiving specialized services from DDD, and regardless of whether the individual is receiving special education services from his local school district. By law, an individual's residential waiting list status must be reviewed during the development of the annual IHP. IHP decisions are reached by a "consensus" of the individuals participating in the development of the plan. However, federal law recognizes that families are the "primary decision makers regarding services" and the New Jersey Supreme Court has made similar findings.

The IHP process can be used to identify and address short-term needs such as respite care, family support, camp stipends or financial assistance in obtaining guardianship through a private attorney. More importantly, even if services are not immediately needed or available, the IHP can be used as a long-range planning tool to guide the family and DDD toward the services that will ultimately be required, including day, residential or self-directed services. In many cases, we have seen DDD resist developing IHPs or similar service plans until pressure is put on the agency to do so.

Federal Estate Tax Laws Changing continued from cover

the deduction in increments: the rate for 2009 is \$3.5 million; the rate for 2010 is unlimited – meaning, there would be no estate tax in 2010. The law expires in 2011, and the \$1 million exemption is slated to return.

Congress and the President appear to agree on extending the \$3.5 million deduction indefinitely. Since the legislation did not pass in 2009, Congress will most likely address the problem with retroactive

legislation, which will possibly lead to litigation.

With a credit shelter trust, a husband and wife can double the \$3.5 million deduction. A credit shelter trust can also double the New Jersey Estate Tax deduction from \$675,000 to \$1.35 million.

(See article below for more on credit shelter trusts.)

Using a Tax Shelter Trust to Save Estate Taxes

By: Herbert D. Hinkle, Esq.

Although the federal estate tax law expired in 2010, Congress is likely to renew it. Even if Congress does nothing, the tax will return automatically in 2011 at the same level that existed in 2001 – meaning that a tax that can exceed 50% will be imposed on estates in excess of \$1 million.

What appears most likely is that Congress will act to exempt the first \$3.5 million and limit the highest marginal tax rate to 40% or 45%. Transfers between spouses will be exempt unless restrictions are imposed. The federal estate tax is imposed on the entire estate, including life insurance. The exemption for a spouse appears, on its face, to be a plus; but it can actually lead to greater taxation.

A Credit Shelter Trust (CST), for example, can be valuable with smaller estates because it also gives a married couple two deductions from the New Jersey Estate Tax. Thus, instead of passing on \$675,000 tax-free, a couple can exempt \$1.35 million from the New Jersey Estate Tax. Currently, Pennsylvania does not have a tax like the aforementioned New Jersey Estate Tax.

Typically, CSTs are funded by way of a discretionary formula that allows the surviving spouse to determine the level of funding when the first spouse dies, taking

“If a Credit Shelter Trust has been established, it is important to review assets periodically with an attorney to ensure that they are properly arranged to flow into trust when the first spouse dies.”

into account the taxes that actually exist at that time. Also, because there is no way of knowing which spouse will pass away first, each spouse must have a CST even though only one actually will be used.

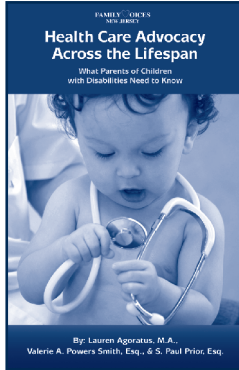
If a CST has been established, it is important to review assets periodically with an attorney to ensure that they are properly arranged to flow into trust when one spouse dies.

CSTs sometimes go by different names (bypass trusts, A/B Trusts). It is not the name that matters; but, rather, the terms of the trust and the arrangement of assets and beneficiary designations.

A full version of this article with examples is available on our website at http://www.hinkle1.com/html/col123_CST.html.

In Print: Health Care Advocacy

Collaborating with SPAN and Family Voices, Hinkle, Fingles & Prior published a new booklet for families: Health Care Advocacy Across the Lifespan – What



Parents of Children with Disabilities Need to Know.

The booklet is available on the firm's website: www.hinkle1.com. Hard copies are available at no charge. Please call 609-896-4200. Written by Lauren Agoratus, Director of Family Voices-NJ and firm staff, the booklet is designed for parents. The firm is working with SPAN to host workshops

for families this Spring. Check our calendar at www.hinkle1.com for more details.

Recent Victories

DDD Out-of-State Placement Ordered

The firm successfully argued on behalf of a woman with complex disabilities for a placement in an out-of-state residential program. The woman had aged out of her New Jersey placement, but the NJ Division of Developmental Disabilities (DDD) argued it has a policy against such placements and needed more time to develop an in-state placement. The ALJ ordered DDD to place the woman at the out-of-state program, it being the only available program capable of meeting her needs.

Accommodations in High Stakes Testing

The firm recently appealed a denial of requested accommodations on the Law School Admissions Test (LSAT). The appeal was successful, and the student will sit for the next administration of the LSAT with the requested accommodation, extended test time.

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