



PERSPECTIVES

on disability law

A publication of Hinkle, Fingles & Prior, Attorneys at Law

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Partner Profile



S. Paul Prior, Esq.

has spent his legal career representing people with disabilities. As the younger brother of a man with autism,

he understands the needs and concerns of siblings. After working for several years at Disability Rights of New Jersey, Paul joined the firm and was soon named partner. His legal work focuses on special education, guardianship, financial entitlements, and access to appropriate services. A substantial part of his practice is devoted to assisting families in estate and trust matters. He has successfully argued leading cases before the New Jersey Supreme Court, Third Circuit Court of Appeals, and other state and federal courts. An advocate for community-based living, he served as a federal monitor overseeing conditions at state-operated institutions. Paul holds a JD from Seton Hall University School of Law, and serves on the board of directors of for the Arc of New Jersey, Autism New Jersey (formerly COSAC), Special Olympics New Jersey and the Eden Foundation. He is a member of the Elder Law Section of the New Jersey Bar Association. He writes and lectures frequently on topics concerning the law and disability as well as issues affecting siblings. He and his wife Wendy and their two sons live in Middlesex County.

Eligibility for Special Education and Related Services: It's Not Just About Grades!

Students may be eligible for special education and related services if they have a disability that adversely impacts their learning – not just in academics, but in other areas as well. In making an eligibility determination, the local school district must use a variety of assessment tools and gather relevant information, including that provided by the child's parent. A district cannot use any single procedure or measure, including a student's grades, as the sole criterion for determining whether a student has a disability.

see Not Just Grades, page 3

Medicaid/Medicare Update

It can be difficult to understand Medicare and Medicaid and which covers what. The fact that the two programs sound alike makes it even more confusing. However, understanding the differences between the two, at least in a nutshell, is crucial for the proper and timely planning of your future and for the future of a child with a developmental disability.

Medicare is a federal healthcare program that is based on the age of the person, without regard to need.

The following groups are eligible for Medicare:

- 1) people who are at least 65 and eligible for Social Security;
- 2) those receiving Social Security benefits because of a disability;
- 3) people collecting Social Security Disability benefits; and
- 4) permanently disabled adult children of people collecting Social Security benefits.

see Medicaid/Medicare Update, page 2

Workshops available at no charge:

- Recent Court Decisions on Special Ed
 - IEP Preparation
 - Guardianship and Estate Planning
 - Accessing Adult Services
- ...and more. Call 609-896-4200.

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www.hinkle1.com

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Medicaid/Medicare Update *continued from cover*

With some co-pays, Medicare covers hospital stays, limited stays in a skilled nursing facility, a hospice, or post-hospital home health services. If a person decides to pay premiums, Medicare may also cover physician's services.

Medicaid is a joint federal and state program (federally and state funded and state administered) that is based solely on need, regardless of age. If a person qualifies, this program will cover, among other things, long-term nursing home care and in some cases a residential placement for a permanently disabled individual. Medicare does not cover long-term care.

To qualify, the person must be essentially poor. Resources owned or available to the Medicaid applicant or his/her spouse will be considered to determine eligibility. The person can transfer assets to others to make him/herself eligible for Medicaid, but such transfers must be done properly and, more importantly, timely.

If a transfer of assets occurs within a specified period of time prior to the person's Medicaid application (called a 'look-back period'), the transferred resources will be considered as available for Medicaid purposes and

Understanding Medicaid and Medicare is crucial for the proper and timely planning of your future and for the future of a child with a developmental disability.

could make that person ineligible for the program. In 2005, Congress passed a law that gradually changed the federal look-back period from 36 to 60 months and imposed penalty (or ineligibility) periods for transfers that occurred within five years of the application for the program.

This is the case in Pennsylvania, but New Jersey has not caught up yet. Under current New Jersey regulations, the look-back period is still 36 months, except for a 60-month look-back in case of transfers to a trust. In April 2011, however, the New Jersey Division of Medical Assistance and Health Services proposed to change the look-back period in New Jersey from 36 to 60 months for all transfers. That means that the assets transferred within five years of the Medicaid application, while not at the moment, will probably soon be considered as available to determine the person's eligibility for the program.

Tips for Working with Your State's Disabilities Services Agency

- 1 Start early! New Jersey (through the Department of Human Services' Division of Developmental Disabilities, and Pennsylvania (through MH/MR Office) have long waiting lists for all kinds of services and supports. Start asking for services years in advance of the actual need for them.
- 2 Be persistent. Case managers are generally overwhelmed by their caseload. They receive hundreds of calls and requests. It may take several attempts before you gain the case manager's attention.
- 3 Be polite, but firm. The state will often decline to respond to a request for services or support favorably. The agency will also try to get you
- 4 Know your rights. There are a number of opportunities to appeal the state's decisions. Visit our website for more information, www.hinkle1.com.
- 5 Always put things in writing. This is critical because case managers change and memories fade. Requests for services and supports should be made in a letter. Don't forget to keep a copy for your records.

Not Just Grades continued from cover

It is often wrongly assumed that students with good grades cannot be eligible for special education. In fact, many students have “invisible disabilities” that manifest in ways that are not related to grades at all, but still impact their ability to make meaningful progress socially, emotionally, developmentally and functionally. For example, some students with Asperger’s syndrome may earn high grades, but have difficulty participating in group activities due to poor social and communication skills. Students with emotional or behavioral disabilities, such as depression or bipolar disorder may get good grades, but struggle with life skills, self-regulation, organizational skills or coping skills. Others may have difficulty sustaining attention for extended periods of time, have school refusal issues, and/or disruptive or oppositional behaviors.

If a student is unable to learn these non-academic skills in the general education program, the student may be eligible for special education and related services under the Individuals with Disabilities Education Act (“IDEA”).

If a student is suspected of having a disability, a teacher or parent can request that he or she be referred to the Child Study Team (CST) to be evaluated for special education services. Once the parent provides consent, the CST has 60 days to complete the evaluations and must hold an eligibility conference within 30 days thereafter. A student who is deemed eligible for special education and related services is entitled to an individualized education plan (IEP) that provides specially-designed instruction, including modifications and accommodations, and related services, such as counseling and social skills instruction, designed to address the student’s unique needs and enable him or her to make meaningful progress in the curriculum.

Last December, the New Jersey Department of Education issued a memo to School Superintendents regarding students whose disabilities do not impact on learning in every subject.

The Department emphasized that, for such students, goals and objectives must address “...other skill areas, including but not limited to social skills, communication skills, organizational skills, study skills, self-regulatory skills, transition skills, etc. in response to the individual student’s needs.”

It is important to note that student with “invisible disabilities” and disabilities which do not affect grades are eligible for the same range of placement options - including inclusive settings, private special education schools and residential placement - as all other students with disabilities. The placement is determined by a team, which includes the parents and the student if he or she is age 16 or over.

If there is a dispute about the eligibility determination or whether the IEP, including placement, is appropriate, special education laws provide parents with due process procedures. If parents are successful, they may be entitled to reimbursement of attorney’s fees.

Need a Speaker for Your Parents’ Group or Back to School Event?

Hinkle, Fingles & Prior donates time to speak to parent groups across New Jersey and Pennsylvania. We can tailor presentations to meet the needs and interests of your group. There is never a charge, and printed materials are provided. For a list of popular topics, please visit our website: www.hinkle1.com. To arrange a speaking event for your group, please call the law office at 609-896-4200, or 215-860-2100.

On-Site Guardianship and Estate Planning

Through a unique program, Hinkle, Fingles & Prior makes it easier for families to attend to critical issues by bringing professional services directly to them. On-Site Planning Events are designed to benefit both families and local provider agencies. To arrange an on-site planning day for families affiliated with your program, please call (609) 896-4200 or (215) 860-2100. For more information, visit our website at www.hinkle1.com.

Giving Back to the Community

- Through an on-going partnership with SPAN, the Statewide Parent Advocacy Network, and Family Voices, the firm has donated more than 5,000 booklets for families on the topic of health care advocacy across the lifespan. SPAN makes the booklets available to families free of charge.
- Through a program of planned giving, the law firm has lent financial and technical support to scores of community-based organizations, including ASCEND, United Cerebral Palsy Association – Greater Philadelphia and Vicinity, Autism Society of America – Greater Philadelphia Chapter; Autism New Jersey; The Arc of New Jersey; ASAH, Special Olympics; and POAC, to name a few.

Recent Victories

- The firm successfully secured an emergency residential placement for a woman with aggressive behavior. Although both of the woman's parents have serious health problems and were unable to manage her behavior, DDD refused to provide residential placement. After the firm's intervention, DDD reversed their decision and agreed to make a residential placement for the woman.
- As a result of the firm's intervention, a client who had been living at home with his family was placed into a group home on an emergency basis. This case is significant in that DDD often tells clients – wrongly – that emergency placements are limited to skill development homes.
- The firm was successful in obtaining continued residential placements for 7 individuals whose educational entitlements had ended, most in their current programs.

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