

Information of interest to people with disabilities and other special needs and their families.

A Health Strategy? It's Just What the Doctor (and Privacy Laws) Ordered

"In our studies to become qualified to serve individuals and families with special needs, we learn that a health strategy is just as important as a wealth strategy," says T. Patrick Hammeke, who's a Special Care Planner with The Washington Group in Fairfax, Virginia, a general agency of Massachusetts Mutual Life Insurance Company (MassMutual). He's referring to putting measures in place to help you manage your ability to receive the medical attention you want, even when you aren't able to make the decisions.

"In our studies to become qualified to serve individuals and families with special needs, we learn that a *health* strategy is just as important as a *wealth* strategy," says T. Patrick Hammeke, who's a Special Care Planner with The Washington Group in Fairfax, Virginia, a general agency of Massachusetts Mutual Life Insurance Company (MassMutual). He's referring to putting measures in place to help you manage your ability to receive the medical attention you want, even when you aren't able to make the decisions.

"It might be an emergency situation where you're unconscious or otherwise unable to understand your situation and convey your wishes," Hammeke explains. "Or your child, who is eighteen years old or older, is hospitalized, and privacy laws prohibit you from obtaining any medical information or making any decisions about your child's care."

While *it's important to put measures in place for yourself and all family members*, the focus of this article is on creating a health strategy for your adult child with special needs. This is vital when your child becomes a legally-recognized adult, an event that can end your right to make decisions on your child's behalf.

Take action, divert trouble

"Unfortunately, creating a health care strategy often parallels how we ultimately decide to create a financial strategy – when we're scared into doing it because an emergency situation has occurred," explains Hammeke. He suggests taking time now to think ahead. "If an emergency should arise, what might the hospital ask of you? Will you have the documents – the authority – they require to allow you to be involved in your child's care?"

Why would the hospital prevent your involvement? Because since 1996, the Health Insurance Portability and Accountability Act (HIPAA), among other things, ensures the privacy and security of individuals' medical records.* When your child becomes an adult, you are no longer legally allowed to make health care decisions for him or her. In fact, if you arrive at a medical facility after your child is admitted, the facility may not even disclose if your child is a patient.

Often, medical facilities and providers will lean toward patient care over patient privacy, but it isn't something you can fully count on. It's best to be prepared.

Get the paperwork done

"There are a number of documents that can help," says Hammeke. "Generally, they're referred to as advance medical directives. Depending on which you use, you could have limited or full authority to make health care decision for another person."

It's best to work with professionals, such as a special care planner and attorney, who are familiar with the documents and have experience serving individuals with special needs. Also, if you've created any of these documents prior to 1996, it's your right to make decisions for another person (or have someone make decisions for you), but *if the wording isn't HIPAA compliant, you may not have access to information to make those decisions.*

SpecialCareSM

Financial Planning Update Supported by MassMutual Life Insurance Company



Documents may vary by state in how they work or what they're called. The descriptions here are brief and general. Consult experts in your state for details.

Health care proxy – This is available in all states and Washington, DC. It allows you (the agent) to make medical decisions on behalf of your child only after a physician has declared your child to be unable to make his or her own decisions. It may also name an alternate agent (your spouse, for example). When your child becomes able to make his or her own decisions again, your rights as agent ends. Your child may specify certain decisions he or she has made in advance, such as not wanting to be resuscitated or be on feeding tubes. Making these specifications ensures his or her wishes are

met, even if you disagree with them. Your child may also state his or her wishes regarding tissue or organ donations. The document must be signed by your child, the agent(s), and two witnesses.

Living Will –Used on its own or in conjunction with a health care proxy, this document allows your child to state certain health care and medical wishes, but not appoint an agent (which is why it's good to use it with a health care proxy). Be sure the two documents work in unison, not contradicting one another.

Durable (or Medical) Power of Attorney – Most powers of attorney give a person authority to make decisions for another person as soon as the document is approved in court and end when the person becomes

incapacitated. This type, however, has more flexibility. It remains in effect *beyond* incapacity OR it may be written to become effective *only after* incapacity. The power to handle certain financial matters is included, while others (creating or changing a will, for example) are specifically prohibited. Your child may also specify other activities he or she will allow you to handle, such as changing residency to a state where Medicaid eligibility rules are more favorable, signing tax returns, or managing health or long term care needs.

continued on page 22

Guardianships – A guardian is a person who has authority to make decisions, medical or otherwise, for another person who is deemed in court to be incompetent to provide for his or her own care and make decisions. It may seem harsh to declare your child incompetent, but it isn't if it ultimately means your child receives the most appropriate care. When you become guardian, your child relinquishes the right to legally enter into contracts (such as marriage or getting a driver's license) without first getting your approval. It also allows you to make decisions regarding your child's health care. "A guardianship that works in conjunction with a health care proxy and living will, with language that's HIPAA compliant," explains Hammeke, "ensures that your child's wishes are included in the care you'll have the legal right to provide."

Additional suggestions

"Again, I urge you to plan ahead," says Hammeke. "Talk with a patient advocate at your local hospital, as I did. Find out how strictly they adhere to privacy rules. Ask which documents they might require to prove you have decision-making authority. Ask if you might provide copies for them to keep on file for future reference."

Keep your original documents safe, and make copies to give to health care providers, individuals named as agents, yourself (keep it in your wallet or purse for emergencies), and others you think should have it, such as a spouse, family members, or close friends.

"As a parent, I keep copies in the car," says Hammeke. "I also scanned them and put them on a thumb drive I'll always have with me, along with other pertinent medical information, such as a list of my daughter's allergies, which can be critical information if she's hospitalized."

As with your financial strategy, review these documents periodically to be sure they continue to represent your wishes and meet your needs. For example, a person named to make decisions on your behalf may die, move away, or become unable to serve your needs competently. Or you may change your mind about instructions you specified.

Be prepared. Plan ahead, not only now, but over time. Not only for your child with special needs, but for yourself and other family members.

**For more information about HIPAA, read "HIPAA Privacy Rules Revealed," (Exceptional Parent magazine, August 2007), archived at www.eparent.com.*

This article is provided for your general information. Please rely on the facts you receive directly from the SSA's website or its representatives as your most accurate source.

* The Special Care Planner received advanced training and information in estate and tax planning concepts, special needs trusts, government programs, and the emotional dynamics of working with people with disabilities and other special needs and their families. The certificate program was offered by The American College in Bryn Mawr, PA, exclusively for MassMutual financial professionals. State insurance departments recognize that the Special Care Planner certificate program provides essential information on the profession of special care by granting continuing education (CE) credits (varies by state).

A Special Care Planner through MassMutual's SpecialCareSM program can assist parents in drafting Letters of Intent and can help make a difference in the quality of life for an individual with special needs, their caregiver and other family members. Through SpecialCare you will learn valuable financial strategies, identify financial strategy solutions, access vital information, and meet certified specialists who will work with you and your professional advisors – your banker, accountant or financial planner, lawyer, social workers and health care providers – to review your financial picture and offer options to fit the needs of each situation. For more details, visit MassMutual's website at <http://www.MassMutual.com/specialcare>, or call 1-(800)-272-2216.

About MassMutual

Built on more than a century-and-a-half of financial strength and customer service, Massachusetts Mutual Life Insurance Company (MassMutual) is a leading mutual life insurance company headquartered in Springfield, MA. We operate for the benefit of our members and participating policyholders¹ and offer a range of quality financial products and solutions, including life insurance, disability income insurance, long-term care insurance, annuities and retirement/401(k) plan services. Our family of companies in the MassMutual Financial Group includes: Babson Capital Management LLC and its subsidiary Cornerstone Real Estate Advisers LLC, Baring Asset Management Limited, First Mercantile Trust Company, MassMutual International LLC, MML Investors Services, LLC, The MassMutual Trust Company, fsb and OppenheimerFunds, Inc.