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SPECIAL REPORT: Checklist for Special Needs Settlement Planning

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1. Determine if plaintiff is receiving government benefits or has needs that can be addressed by government benefits.
2. Determine if a special needs trust is appropriate to assist in qualifying for government benefits.
3. Determine if there are enforceable liens to be addressed prior to settlement and, if so, are the lien amounts correct and can the amounts be compromised:
 - a. Medicare
 - i. Procurement costs;
 - ii. Medical expenses related to injury only;
 - iii. Compromise.
 - b. Medicaid
 - i. Application of *Ahlborn*;
 - ii. Medical expenses related to injury only;
 - iii. Compromise.
 - c. ERISA
 - i. Does the governing plan provide a right to recovery?
 - ii. Does the governing plan identify a specific fund?
4. In a worker's compensation case, are future medical expenses included in the settlement? If so, should there be a Medicare Set Aside and in what amount?
5. In a third party liability case, are future medical expenses included in the settlement? If so, should there be a Medicare Set Aside and in what amount?
6. Will there be a lump sum settlement, structured settlement, or combination? If so, is a special needs trust appropriate? If so, make sure that payments are directed to the special needs trust. Who will serve as trustee?
7. Determine whether court approval of settlement and special needs trust is necessary (as in the case of mentally incapacitated individuals and minors).
8. Is a guardian or conservator appropriate?

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Hook Law Center focuses its practice on estate and tax planning, planning for long-term care and aging, retirement and investment advice, trust and estate administration and probate, guardianships for those unable to make sound decisions, and the unique situations associated with special needs.

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