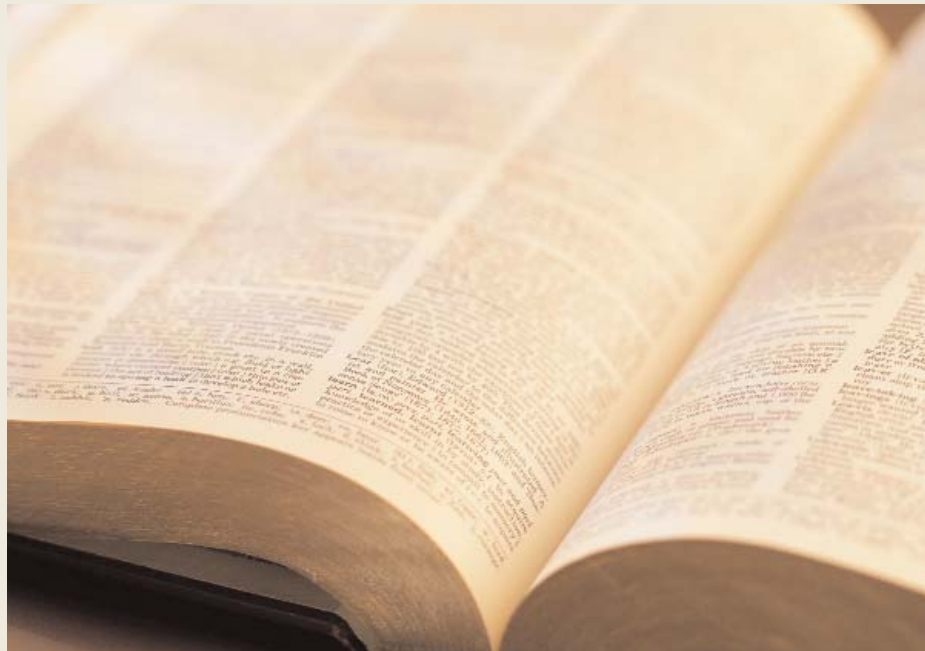


A Basic Glossary: Legal Terms for People with Brain Injury

Living with Brain Injury



Brain Injury Association
of America

The logo for the Brain Injury Association of America, featuring a stylized graphic of three interlocking loops or rings.

*This brochure
was developed
for persons with
brain injury,
family members,
caregivers, and
friends to suggest
ways to deal
with the problems
one may face
when living with
brain injury.*

*A Basic Glossary:
Legal Terms
for People with
Brain Injury*

**A Basic Glossary: Legal Terms for
People with Brain Injury**

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A Basic Glossary: Legal Terms for People with Brain Injury

This glossary gives the basic meaning of some of the laws and legal terms that may be used in resources for people with traumatic brain injury (TBI). This glossary should not replace advice from a lawyer. The terms are written simply to provide common meanings. This glossary does not provide all meanings of each term.



Another source for legal and disability-related terms is “The Glossary of Disability and Aging Terms” by the U.S. Department of Health and Human Services. It can be found on the Web at: <http://aspe.hhs.gov/daltcp/diction.shtml#DME>.



Acquired Brain Injury (ABI)

Harm to the brain that occurs after birth. Usually it means harm caused by pressure on the brain from inside the body. Examples are harm to the brain as a result of: heart attacks, strokes, illness, and near drowning.

Activities of Daily Living (ADL)

Things people must do everyday or very often, such as, bathing, dressing, eating, preparing meals, shopping, washing clothes and dishes, and cleaning house.

Administrative Law Judge (ALJ)

A judge who makes decisions about federal programs, such as, Social Security, Medicaid, Medicare, housing, education, and tax laws. When you appear before an ALJ, it is called a hearing.

Advance Directive

A document people create to explain what type of health care they would accept and would not accept if they were to get sick. The Directive is only used if the person gets so sick that they cannot think clearly or tell people what health care they want. Advance Directives often include things like: 1) medications the person is allergic to and don't want to be given; 2) treatments that the person doesn't want; and 3) treatments that have worked in the past.

Affidavit

A written statement that a person makes under oath and promises is true.



Americans with Disabilities Act of 1990 (ADA)

A federal law that says you cannot discriminate against people with disabilities. The law only bans certain types of discrimination. These include discrimination related to employment, transportation, access to government services, access to public places, and businesses. The law requires that employers, business owners, and the government make reasonable changes to stop discriminating against people with disabilities.

ADA Integration Mandate \ The Olmstead Mandate

A requirement of the ADA that says states must provide services to individuals with disabilities in the most integrated setting appropriate to their needs. In 1999, The United States Supreme Court ruled in *Olmstead v. L.C.* that, because of this requirement, states must provide supports to individuals with disabilities in the community rather than institutions, under certain circumstances.

Appeal

To ask for a review of an agency or court decision.

Assistive Technology Device (AT)

Equipment used by people with disabilities to help them function better. Examples include: crutches, wheelchairs, hearing aids, flashing doorbells, computers, and memory aids, such as, post-it notes, alarm clocks, or tape recorders.

Class Action

A lawsuit brought by one or more people on behalf of a much larger group of people who share the same legal problem. Class actions are used in cases where so many people have the same legal problem, it would take too long for a judge to hear and decide on each person's case separately. Instead, a judge will look at the evidence of the few people who brought the case to court. Based on their experiences, the judge will make a decision that will apply to the larger group, which is called a "class."

COBRA

A federal program that allows people who lose or leave their jobs to pay for and keep their employee health insurance for up to 18 months. People who become disabled soon after they lose their job can pay for and keep their employee health insurance for up to 29 months after leaving their job.

Comparative Negligence

A state law requiring a judge or jury to reduce the amount of money a person injured or killed in an accident is awarded in damages by the percentage the person was at fault compared to the fault of the person who caused the accident. Not all states have this law.

Competency or Capacity

A decision only a judge can make about whether a person is able to make informed choices about their living situation, finances, or health care. A judge must hold a hearing and be given convincing evidence that the person cannot make informed choices. People who lack the ability to make these choices are called “incompetent” or “incapacitated”.

Consumer Directed Services

A way of funding and delivering health care and community supports that allows people to make choices about: what services they want, who should provide them, and where they are provided. When a private health insurance company uses the term it usually means that people may go to a doctor not in the insurance plan or network by paying an additional fee.

Co-payment

A payment toward the cost of care to a doctor, hospital or other care provider that is made by a person who has health insurance.

Custodial Care

Services and supports that can be provided by most people and do not require special training. The opposite of custodial care is often called skilled nursing care.

D

Damages

Money or property a court or jury gives to an injured person.

Deductible

An amount of money a person must pay for their health care costs before their health insurance company will begin to pay for any other health care costs. Generally, a person must pay a deductible every year.

Defendant

The person who is being sued in court for wrong-doing.

Developmental Disability

A severe mental or physical disability that starts before the age of 22 and is life long. Severe means that the disability limits at least 3 major life functions, such as, thinking, eating, bathing, and walking. Examples may include severe mental retardation, cerebral palsy, or autism.

Discriminate

To treat similar people differently. The Americans with Disabilities Act (ADA) makes it against the law to discriminate against people with disabilities as a direct result of their having a disability.

Drug Plan Formularies

A listing of prescription medications which are approved for use and/or coverage by the plan and which will be available through participating pharmacies to people enrolled in the plan. To obtain drugs not on the plan formulary, individuals have to file an appeal asking for an exception.

Durable Power of Attorney

A legal document that appoints a person or agency to use your money to pay your bills and make medical decisions. Nursing homes or service providers are often appointed durable power of attorney to handle money and other decisions for the people with disabilities whom they serve.

E

Early Periodic Screening Diagnosis and Treatment (EPSDT)

A federal program that requires the state to look for and provide needed health care to all children from birth to 21 years of age who qualify for Medicaid.

Estate Plan

A plan for how a person's property should be handled after the person dies or becomes unable to make informed decisions about their property because of a disability. A will is part of an estate plan.

Estate Recovery

A federal law requiring the state to take money or property from certain people after they die in order to pay for the Medicaid services the state spent on the person while they were living.

F

Family and Medical Leave Act

A 1993 federal law requiring employers with more than 50 employees to provide eligible workers up to 12 weeks of unpaid leave for births, adoptions, foster care placement, and illnesses of employees and their families.

Family Support Services

Services designed to help a family stay together and cope when a family member has a disability. Examples include: special classes, nurses to help at home, family counseling, support in a crisis, and respite care.

Federal Law

Laws that apply equally to all Americans no matter where they live in the United States. Federal laws are different from state laws, as these laws apply only to individuals who live in a particular state.



Fee-for-Service

The type of health insurance most people had before the rise of Health Maintenance Organization (HMO) and managed care. Under fee-for-service plans patients can go to any provider. The provider sets the price for each service it offers and sends the full bill for the care to the patient. The patient then would file a claim with the insurance company asking them to pay their portion of the health care costs.

Free Appropriate Public Education (FAPE)

A term used in the Individuals with Disabilities Education Act that means special education services that a school provides to help a student with a disability learn and participate in school.

Fundamental Alteration Defense

A term used in the Americans with Disabilities Act (ADA). It means that the ADA only requires states to make reasonable changes to allow a person with a disability to participate in a program or service. If a state can show a change would be too expensive or too hard, it is not required.

Health Maintenance Organization (HMO)

A health care payment and delivery system. It offers members a range of health care services for an annual fee (often with co-payments or deductibles). An HMO requires members to see only doctors and health care providers who contract with them. Patients must first go to a primary care doctor or nurse, who will determine whether a patient can be referred to a specialist. HMO's are also called Managed Care Organizations.

Health Insurance Portability and Accountability Act (HIPAA)

A federal law passed in 1996 to help people buy and keep health insurance, even when they have serious health conditions. The law sets basic requirements that health insurance plans must meet, including keeping a person's medical information private.



Guardian or Conservator

A person or agency who has a judge's permission to make health care, financial and housing decisions for another person.



Impairment-related Work Expenses

Disability-related items and services (such as special transportation or adaptive devices) needed for an individual to work. Social Security recognizes the cost of these items and subtracts them from a person's gross income when figuring countable earned income.

Inclusion

Ensuring that individuals get the supports they need to participate in their schools and communities by providing services to people with disabilities in their neighborhood schools and communities.

Independent Living Services

Services that help a person with disabilities live on their own. Services may include advocacy, independent living skills training, information and referral and peer counseling. Help for people to find housing and personal care assistance may also be available.

For more information, go to <http://www.ilru.org>.

Individualized Education Plan (IEP)

A plan a student must have in order to get free special education services from a school. The IEP must include annual goals for the individual and a description of any special services a student needs to participate in school. The plan must be agreed upon by the child's teacher, parents and professionals who have tested or worked with the child.

Individualized Transition Plan (ITP)

A part of a person's IEP that lists the long range goals of a person with a disability after they graduate or leave school. The plan should say what services the school, Medicaid, the state, and vocational rehabilitation will provide, so that when a person graduates or leaves school they can get a job or achieve their goals. Transition services may include: more education, job training, help getting a job, help getting along with others and computer classes.

Incapacity or Incompetency

A legal decision made by a judge that a person lacks the ability to take action or make informed choices about their property, health, or living situation.

Individuals with Disabilities Education Act (IDEA)

Requires public schools to make available to all eligible children with disabilities a free appropriate public education in the least restrictive environment appropriate to their individual needs. In order to make this possible, the school must offer special education and related services to meet the individual needs of each student.

Intermediate Care Facility (ICF)

An institution that provides a bed, meals, and skilled nursing care for people who have disabilities, but do not need the level of care offered in a hospital.

L

Life Care Plan

A plan that looks at how a person will pay for medical and non-medical needs and goals in the future. The plan includes personal choices about where the person wants to live in the future, what health care he or she is willing to accept, and who the person wants to provide needed health care and other supports.

Long Term Care

A range of health and personal assistance services provided either at home, in the community, or in skilled nursing facilities for individuals with long term disabilities.

M

Managed Care Organization

A managed care organization offers its members a range of health care services for a set monthly fee (often with co-payments or deductibles).

Mediation

Voluntarily asking a neutral third party known as a “mediator” to resolve a dispute. The mediator will make a decision and resolve the dispute. People usually go to mediators to avoid the cost, time and hassle of going to court. A big difference between court and mediation is that it is usually voluntary to follow the decision of a mediator, while the decision of a court must be followed.

Medicaid or Medical Assistance

A joint federal and state program that provides health care for people with very limited income and resources. Every state has different rules about who qualifies for Medicaid and what they can receive. In many states people who qualify for Supplemental Security Income (SSI) automatically qualify for Medicaid.

For information about your state’s Medicaid program go to:

www.cms.hhs.gov/medicaid

Medicaid Waiver or Home and Community-based Services Waiver, (also called a 1915c(b) waiver)

An optional Medicaid program that allows the state to fund services in the community for a limited group of people who would normally have to go to an institution to get these services covered. Generally, when Medicaid covers a service, it must cover the service on an equal basis for everyone in the state with similar needs.

A waiver allows the state to make an exception. For example, states can cover a service only for people with certain disabilities, limit coverage to certain cities or regions of the state, limit coverage to only 10 people even if 50 people need the service, limit the amount of money it will spend on any one person receiving waiver services, and waive income rules to allow more people to be eligible.

For information on your state’s Medicaid waivers go to:

www.cms.hhs.gov/medicaid/waivers or www.hcbs.org

Medicaid Buy-in

A program that allows working people with disabilities who make too much money to qualify for Medicaid, but have high medical expenses, to buy Medicaid coverage. Not all states allow a Medicaid buy-in and each state sets its own rules for eligibility.

For information on whether your state offers this go to:

<http://www.cms.hhs.gov/twwiia/eligible.asp>

Medicare

The national health insurance program to which all Social Security recipients who are either over 65 years of age or permanently disabled are entitled. Medicare benefits should be the same no matter what state you live in. Coverage under Medicare is similar to that provided by private insurance companies. It pays a portion of the cost of medical care and usually charges a co-payment or deductible. Part of the program is paid for with payroll taxes paid into Social Security by employers and employees. Another part of the Medicare program is paid for by monthly payments paid by people receiving.

More information on Medicare is available at: <http://www.cms.hhs.gov/medicare>.

Medicare Prescription Drug Program (Part D)

A new Medicare prescription drug benefit that begins on January 1, 2006. To receive Medicare drug coverage, individuals who receive Medicare must enroll in one of several private Medicare prescription drug plans available in their state. For most people who receive Medicare, enrollment in a prescription drug plan is voluntary. For individuals who receive both Medicaid and Medicare (dual eligibles) enrollment is required and is done automatically by Medicare.

For more information on the Medicare prescription drug program go to:

www.medicare.gov/medicarerreform/drugbenefit



N

National Disability Rights Network

A voluntary association of protection and advocacy systems and client assistance programs that promote vigorous enforcement of laws protecting the civil and human rights of persons with disabilities including those with TBI.

For more information, go to www.ndrn.org or call (202) 408-9514 or (202) 408-9521 (TTY).

The New Freedom Initiative

A program started by the President in 2001 that says that federal agencies should do certain things to make it easier for people with disabilities to live and work in the community. For example, federal agencies are asked to: 1) help people to move out of institutions and into the community when it is appropriate; 2) help people with disabilities get jobs through the Ticket to Work program; and 3) develop a plan for other ways federal agencies can promote community integration of elders and people with disabilities.

Additional information is available at: www.cms.hhs.gov/newfreedom.



Olmstead v. L.C. and E.W. or Olmstead Mandate

A 1999 U.S. Supreme Court decision in which the Court ruled that when appropriate, states must provide services to people with disabilities in the community rather than in institutions. The Court said it violates the Americans with Disabilities Act (ADA) to segregate people into hospitals, large care facilities, and nursing facilities to receive supports when the state could provide supports in the community. The Court ordered states to move people out of institutions who could be supported in the community. The Court also ordered states to avoid putting people in institutions who could receive services in the community.

For information about your state's efforts to comply with the Olmstead decision go to: <http://www.ncsl.org/programs/health/forum/olmsreport.htm>.

P

Plaintiff

A person who brings a lawsuit against another person.

Post-acute care (Also called sub-acute care or transitional care)

Type of short-term care provided by many hospitals to help patients prepare to go back to their home or community. Examples include rehabilitation services and assistance finding health care and housing in the community.

Power of Attorney

A document used to appoint a person or an agency to make certain decisions for you. The power of attorney spells out exactly what decisions the person or agency can make for you. The term “durable” is used if the power of attorney appoints a person or agency to act on behalf of someone who is unable to act because of a disability.

Protection & Advocacy TBI Program (PATBI)

Free legal programs available in every state that provide individuals with TBI information, legal representation, and self-advocacy assistance.

For information on the PATBI program in your state, go to: www.ndrn.org.

Q

Qualified Individual with a Disability

This is a term used in several laws that make discrimination against people with disabilities unlawful, including Section 504 of the Rehabilitation Act and the Americans with Disabilities Act (ADA). It generally refers to an individual with a disability who can do the major job activities or meet program requirements with or without reasonable accommodations.

R

Reasonable Accommodation

In general, a reasonable accommodation is a change that enables a person with a disability to have equal opportunities with people who do not have a disability. Examples of reasonable accommodations are: adding a ramp so people using wheelchairs can get into a building, changing work schedules, and providing interpreters.

Representative Payees

A person or agency allowed to accept Social Security payments for another person. If a person's disability makes them unable to manage their Social Security benefits, a judge can appoint a representative payee. Children under 18 must receive their benefits through a representative payee. A representative payee must make decisions that are in the best interest of the person with the disability. Representative payees also must make sure the person has enough food, clothing, shelter, medical care and personal comfort items.

Respite Services

Services provided for a person with a disability while the primary caregiver is engaged in some other activity.



Section 504 of the Rehabilitation Act

Requires the state and federal government to make their programs and buildings accessible to people with disabilities. Governments must also make sure that people with disabilities have equal access to government jobs. For example, governments must provide devices or extra assistance to help people with disabilities do their jobs or apply for a job.

Section 508 of the Rehabilitation Act

Requires all federal agencies and agencies getting federal funds to make websites, telephone services, videos, and other electronic information accessible to people with disabilities.

Section 8 Housing Program (HCVP)

A federal housing program that helps poor families, elderly people, and people with disabilities rent decent, low-cost housing. The program gives people and families a voucher that can be used to help pay rent for housing that the state has approved as safe and low-cost.

*For more information go to: **Section 8 Made Simple at: www.tacinc.org or www.hud.gov.***

Self-determination

The idea that people should be able to make choices and have control over their actions. For people with disabilities, this can mean making decisions about where they want to live, as well as, what health care and job supports they want.

Settlement

When both the person who brings a lawsuit and the person who is sued in a lawsuit agree to resolve their dispute without going through a court trial.

Skilled Nursing Care

Daily nursing and rehabilitative care that can be performed only by or under the supervision of skilled health care providers.

Subrogation

When an insurance company pays the claim of a policy holder, the policy holder then gives the insurance company the right to seek money back from the person or manufacturer who caused the accident or damage. This is called subrogating the claim.

Substituted Judgment

Standards used by courts and health care providers to make decisions for a person whose disability or illness makes them incapable of making decisions. The standard explains that health care providers and courts should make decisions based on what they think the person would have wanted. This standard is different from the "best interest" standard. The "best interest" standard allows the court and health care providers to do what they think is best for the person with the disability, not what the person would have wanted.

Supported Employment

Programs for people who have had trouble getting a job because of their disability. The program provides job training, help for people applying for a job, and assistance in finding paying jobs in the community. Once a person gets a job, the program provides on-site coaching and other assistance to help the person do the job and keep the job.

Supplemental Security Income (SSI)

A federal program that provides money to people with low incomes who are age 65 and older and to people with low incomes and who have severe disabilities. The money helps pay for food, clothing, and shelter.

For more information go to:

<http://www.ssa.gov/notices/supplemental-security-income/>.

Social Security Disability Income (SSDI)

A federal program for people who have worked for several years and who become severely disabled and unable to return to work for at least a year. In order to qualify, a person must have almost no resources or money saved. The program gives the person money every month to pay for food, clothing, and shelter.

For more information go to:

<http://www.ssa.gov/disability>.



Ticket to Work and Work Force Investment Act

A federal law passed in 1999 to help people who receive Social Security disability benefits get the supports they need to be able to return to work. For example, the law gives states the option to allow people with disabilities who return to work and make too much money to qualify for Medicaid to be able to buy Medicaid coverage. The law also helps people receiving SSDI to get free job training and help finding a job.

For more information go to:
http://www.ssa.gov/work/Ticket/ticket_info.html.

TRICARE

A health care program for active duty and retired uniformed services members and their families.

For more information about TRICARE go to:
www.tricare.osd.mil.

Traumatic Brain Injury (TBI)

An injury caused by a blow or jolt to the head, penetrating head injury, or by being violently shaken that disrupts the function of the brain. A TBI can change how a person acts, moves, communicates, and thinks. The term TBI is not used for brain injuries that happen during birth; those are called developmental disabilities.

Traumatic Brain Injury Act

A federal law passed in 1996 that creates programs to assist people with TBI and to help prevent TBI. For example, the TBI Act helps to provide 1) grants to states to provide services for people with TBI; 2) money to the National Institutes of Health to do TBI research and prevention; 3) money to the Centers for Disease Control and Prevention to collect data on TBI; and 4) grants to state protection and advocacy programs to provide free legal services and information to people with TBI.

For more information on the programs funded under the TBI Act go to:
www.biausa.org and click on **Government Relations** or <http://www.tbitac.nashia.org>.

Traumatic Brain Injury Advisory Council

Almost all states have TBI Advisory Boards or Councils that advise the state on what TBI services are needed, how to improve them, and how to pay for them. Most councils also help the state develop a plan for meeting the needs of people with TBI.

Traumatic Brain Injury Trust Fund

Laws in many states require money to be set aside in a fund to pay for services and supports for people with TBI. Many states get money for the fund from fines people pay if they break laws and could have caused accidents resulting in a TBI, for example, driving when drunk or speeding.

U

Undue Hardship

Undue hardship means a big difficulty or huge expense for employers, businesses, and states compared to their overall budget. The Americans with Disabilities Act (ADA) only requires employers, businesses, and states to make reasonable accommodation for people with disabilities. An employer, business or state can try to argue that an accommodation requested is an “undue hardship” and not reasonable; however, they must try to get funding from other places before they claim they can’t afford the accommodation. Employers, businesses, and states must try to get funding from other places before they claim they can’t afford the accommodation. They can also try to show that another less costly change can be made that would work just as well.

V

Vocational Rehabilitation (VR)

Services and supports that help a person with disabilities get a job, go to school, or get a volunteer position. For example: job counseling, computer training, and help finding a job. All states receive federal funding to run vocational rehabilitation programs. These are places people with disabilities can go to and request free VR services and speak to job counselors.

For more information go to:

<http://www.ed.gov/programs/rsabvrs/index.html>.

W

Workers' Compensation

A state program that requires employees to pay the cost of medical treatment and some lost pay for employees who are injured on the job. The employer pays regardless of who was at fault. In return, employees give up the right to sue employers even if the injury was the employer’s fault.

For more information, go to

www.dol.gov/esa/owcp.

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A Basic Glossary: Legal Terms for People with Brain Injury is one in a series of brochures on "Living with Brain Injury."



Overcoming Loneliness



Preparing for Life after High School



A Basic Legal Glossary



Employment



Substance Abuse



Depression

To order any of these booklets, please contact the Brain Injury Association of America at

**1.800.444.6443 or
www.biausa.org**