



Children who have had [hypoxic-ischemic encephalopathy \(HIE\)](#) sometimes require expensive [treatments, therapies, and various types of support](#) for resulting health conditions. HIE often leads to [cerebral palsy](#) and related complications such as [orthopedic conditions](#), [seizures](#), [difficulty eating](#), [speech-language disorders](#), [intellectual disabilities](#), and [impaired hearing and vision](#).

Families can often obtain financial assistance from Medicaid, Medicare, a community health waiver, or SSI, but these sources of support will likely come nowhere near maximizing the child's well-being. Moreover, certain funding sources are dedicated specifically to children under the age of 21. Once the child reaches that age, they will have to seek assistance elsewhere. This can become especially difficult if the adult dependent has complex medical care needs - in many cases, government funding is not enough to secure a comfortable life.

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HIE is strongly associated with medical malpractice

Unfortunately, HIE often results from medical malpractice. Negligent care during pregnancy,



birth, or in the neonatal period can cause a baby to become deprived of oxygenated blood and develop HIE. Some examples of negligent actions that can cause or increase the severity of HIE include:

- Errors in [fetal heart rate monitoring](#)
- Failure to promptly and appropriately respond to [signs of fetal distress](#) (indications that a baby is being deprived of oxygen)
- Insufficient precautions taken for a [high-risk pregnancy](#)
- Mismanagement of an issue involving the fetal presentation
- Mismanagement of an issue involving the [uterus](#), placenta, or [umbilical cord](#)
- Failure to give [hypothermia therapy](#) to a newborn with HIE (this is a treatment that can minimize lasting brain damage)

Pursuing a birth injury lawsuit

If parents suspect that their child's HIE was preventable, it may be worth seeking compensation through a birth injury lawsuit. Birth injury is a type of medical malpractice law focused on harm that occurs during pregnancy, birth, or the neonatal period. A birth injury case settlement or verdict may go a long way in helping to secure the child's future needs.

Many parents worry that the decision to pursue legal action will take away too much time from the care of their child, but often, this is not the case. Parents may spend just a few hours on the case, and scheduling is done at their convenience. The attorneys spend their time consulting with medical experts, gathering information, and building the case. This means that the parents do not have to distract themselves from the care of their child in order to seek justice.



How a settlement or verdict can help your child



The sum of this settlement or verdict is usually placed into a special needs trust dedicated to the child's lifelong care. These trusts are often invested and gain interest over time, allowing the sums to grow. In many cases, these trusts are set up in such a way that they aren't counted as taxable income for the child, which means that - critically - the child's benefits (such as Medicare, Medicaid, and other governmental programs) are preserved. This allows the child to continue receiving benefits while being able to cover any needed services that these benefits won't cover.

Life care planning: an important part of birth injury lawsuits

Medical malpractice lawsuits primarily aim to do two things for children with HIE and their families. The first - and the more concrete - aim is to secure the child's future by obtaining a settlement or verdict. This allows parents to have peace of mind about how they will be able to afford their child's care. The second, less tangible aim is to be part of a system of accountability for medical practitioners by ensuring that they are held liable for their negligences.

One of the things that a medical malpractice attorney will do in the process of handling a case is work with a life care planner to help understand what kind of care your child will need



throughout their lifetime. Because a child's care needs can change as they grow, it is important to have a professional calculate what kinds of costs the family may incur. This is useful in two ways: first, it helps attorneys build a case, and second, it allows parents to get a better idea of what kind of services they will have to plan for in the future. When an attorney presents the case, they take into account the costs of the child's care. This, in turn, can help make sure that the settlement or verdict amount is fair to the child and will indeed help cover their lifelong care.

Trusts and annuities: making sure your child's birth injury settlement works for them

When there is a settlement or verdict from a medical malpractice lawsuit, the way the settlement or verdict is paid out can be complicated. Because an individual with disabilities may have trouble with finances, money usually can't be delivered straight into that child's account. Instead, the money is deposited in a special needs trust. This trust then pays out annuities to the beneficiary at certain regular time intervals, allowing the funds to be used to cover certain expenses.

These trusts are placed under the control of a supervised third party to ensure the benefits aren't being misused – this third party can be a trustee, custodian, or conservator. These trusts also offer tax advantages to the child – because the trust isn't directly in the child's name, the funds in the trust aren't counted as the child's assets. This usually means the child will be able to retain key means-tested benefits (like Medicaid or SSI) while maintaining a pool of funds to cover costs that governmental benefits will not cover.

Depending on how the trust is set up, there are certain regulations and stipulations that ensure the funds in the trust are not being misused by the person overseeing the account. One very common way to set up trust administration is to use a trustee or conservator – this individual has the ability to invest and use funds from the trust to the minor's benefit, but is also overseen (at least once a year) directly by the court system. The court system looks through the accounting records of the trust to make sure funds are being properly allocated, which protects the child from having their funds exploited.



Often, the best way to preserve a child's benefits is to set up a Supplemental Needs Trust (also known as a Special Needs Trust). This type of trust is specifically set up in a way that will preserve governmental benefits for the child. This is done by carefully stipulating what kinds of things the money in the trust can and cannot pay for. Usually, this means that funds from the trust *cannot* be used to pay for things that public benefits would *already* cover. This means, effectively, that the trust prevents 'double-dipping' or 'overlap' between what monetary sources can cover what expenses. It's worth noting that usually these kinds of trusts are very complicated to set up, and an attorney should be consulted to make sure it is settled properly.

When can a birth injury lawsuit be filed?

While medical malpractice lawsuits can be one way to make sure a child with disabilities will have their care paid for throughout their lifespan, parents should be aware that they don't have an unlimited time frame to file the suit. In law, there is a concept called a 'statute of limitations,' which says that a person has to file a suit within a certain specific time frame, or they are permanently barred from suing at all. These depend *vastly* on the state a family is in – in some cases, the statute of limitations is two or three years, while in others, the statute of limitations may be as long as 21 years. Because the laws that govern medical malpractice are so complex, it is important to talk to an attorney about filing a suit as soon as you suspect medical malpractice, or it is possible that you will be unable to pursue a case at all.

About ABC Law Centers

The HIE Help Center is run by [ABC Law Centers \(Reiter & Walsh, P.C.\)](#), a national law firm handling HIE and birth injury cases. Our lawyers focus exclusively on birth injury law and have been helping the families of children with hypoxic-ischemic encephalopathy and HIE-related disabilities since the firm's inception in 1997. Please contact us today to learn more about pursuing a case.

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