Special Needs Planning

The Arc of MA Transition Training

November 4, 2017 | College of the Holy Cross

Presented By:

Theresa M. Varnet

Fletcher Tilton PC
Attorneys at law

WORCESTER | FRAMINGHAM | CAPE COD | MEDFIELD | NEW BEDFORD | PROVIDENCE

FletcherTilton.com
Navigating the Maze: Government Benefits
Importance of SNT Administration

• Properly-Held Assets + SSI and Medicaid Eligibility
• Improperly Administered?
  • Loss of Gov’t. Benefits
  • Loss of Quality of Life
The Trustee’s Balancing Act

Don’t Violate Income and Resource Rules!

vs.

Provide Quality of Life for Beneficiary
SNT Trustee Duties

• Public Benefit Rules and SNT Administration
• Administration and Different Types of SNTs
• Best Practices for Distributions
Knowing Beneficiary’s Public Benefits

Government Benefits Effect On:

- Medicaid
- Medicare
- Social Security Administration (USA)
Navigating Government Benefits Maze

• Needs-Based Benefits
• Entitlement Benefits
• Sliding Scale Fee Benefits
Eligibility Criteria

• Supplemental Security Income (SSI)
  — Needs-Based
  — US Resident
  — Countable vs. Non-Countable Assets

• $735 Monthly in 2017
  — 1/3 reduction amount: $245
Eligibility Criteria

- Social Security Disability Income (SSDI)
- Benefit Based On:
  - Contributions paid to SSA
Eligibility Criteria

Childhood Disability Benefits (CDB)*

- Eligibility:
  - Person With a Disability,
  - Onset Prior to Age 22

AND

- Parent Covered by Social Security Who has Died, Retired, or Become Disabled

- NOT Need-Based

*Also known as Disabled Adult Child (DAC) Benefits
Types of Public Benefit Programs

Needs-Based Public Benefits
- SSI
- Medicaid
- Expanded Medicaid

Entitlement Public Benefits
- SSDI
- Medicare

Sliding Scale Fee Benefit Programs
- Section 8
- Veteran Benefits
- SNAP
- Fuel Assistance
- Vocational Rehabilitation Services
Trustee Must Know:

- Will this Resource Affect Countable Resources?
- Food/Shelter May Be Income
- Disqualifying Gift?
- Distribution Could Eliminate/Reduce SSI Eligibility
2017 SSI Calculation – Unearned Income

Unearned Income* $400
Disregard First $20 ($ 20)
$380

Unearned income deducted $ for $

* SSDI, gifts, dividends, interest, distributions from trust, child support
2017 SSI Calculation — Unearned Income

Full SSI amount in 2017: $735
Unearned income: ($380)

SSI check = $355
2017 SSI Calculation – Earned Income

Earned income $400
Disregard first $20 ($20)
Disregard first $65 of Earned Income ($65)
Impairment-Related Job Expenses ($250)
  - Job Coach, Special Transportation, Medication, Equipment, etc.

Countable $65

Earned income deducted $.50 on the dollar so $32.50 countable
2017 SSI Calculation – Earned Income

Full SSI amount in 2017  $735.00
½ countable  ($32.50)
SSI check  =  $702.50
2017 SSDI Calculation

Unearned Income from SSDI \( \$760 \)
(DAC benefit)
Disregard first $20 \( \text{($20)} \)
\[ \begin{align*}
\$740 \\
\$735 \\
\text{($740)}
\end{align*} \]
SSI = \( \$0 \)

Child Loses Medicaid!

EXCEPTION = Pickle Amendment
PICKLE AMENDMENT

• Continue to have the benefits of Medicaid coverage
• **EVEN IF** SSDI goes over the SSI maximum
Importance of Supplemental Needs Trusts

Deficit Reduction Act
- State Cutbacks
- Home Exemption

Removal of Federal “Floor” Minimums
- Medicaid Waiting List

Private Funds
SSI/MEDICAID ELIGIBILITY

• Look back period – Federal/State – DRA
  - SSI = 5 Year Look-Back

• Eliminate Crummey Powers (Older Trusts)

• May Need to Redraft OBRA Trusts
  - Especially Drafted 1993 to 2006
SSA Rules on OBRA Trusts

• Initial Funding
  - Seed Money

• Rules Prior to Reimbursement
  - No Funeral – MA Medicaid Enforcing
  - Wrap Up = Taxes and Administration
  - NOTE: Early Termination Rules
Self-Settled Trusts After 1/1/2000

- Early Termination Issue
- Required Seed Money
- Credit Cards and Gift Certificates
Self-Settled Trusts After 1/1/2000

- Purchase of Exempt Assets by Trust
- Judicial Action REQUIRED
- Court Authorization For:
  - Transfer of Assets to Trust
Affordable Care Act
Affordable Care Act

• Obamacare
• Focus: Prevention
• Larger Pool Spreads Risk
• Non-Compliance Penalties
Affordable Care Act

• Effect on Medicaid
• Self-Insurance Better Option?
• Effect on OBRA Trusts
ABLE Act
Understanding the ABLE Act

- Passed December 16, 2014
- Implementation
- Adoption By States
- IRS Regulations, June 2015
ABLE Act

- SSI Eligibility Lost at $100k
- Medicaid Eligibility at 529 Limit ($400k MA)
- One Account Per Person
ABLE Act

- Disability Prior to 26
- Annual Contribution Limit: $14,000
- State 529 Cap (MA = $400k)
Eligible Expense Examples

- Housing
- Transportation
- Employment Training
- Assistive Technology

- Administrative Services
- Legal Fees
- Funeral/Burial Expenses
Eligible Individual

- Under 18 years old –
  - Establish Disability Under SSA Definition or Act Criteria

- Over 18 years old –
  - Establish Disability Under SSA Definition Before 26 years old

- One ABLE Act Account with Maximum of $14,000 Gifted Per Year
Contributions to ABLE Account

• Any “Person” Can Contribute
  - “Person” includes Trust or Corporation

• Beneficiary’s Own Income is Countable for SSI
Medicaid Payback

- ABLE Account MUST Require Repayment for Medicaid Funded Services
- Costs of Medical Assistance
ABLE Account Mechanics

- Contribution Rules
  - Cash OR In-Kind Rollover
- Annual Contribution Limit of $14k
- No Tax Deduction
- Growth and Tax Exemption
- Unpermitted Distribution
  - LOSE ABLE account status
- 10% Penalty
Distributions for Housing

- Housing is QDE = NO 1/3 Loss of SSI
- Income from Account NOT Treated as Income
- QDE Distributions v. Non-QDE Distributions
ABLE Account Mechanics

• SSI Eligibility Suspended at $100K
• State 529 Cap Applies
  - MA Cap: $400k
• Expenses Related to Individual’s Disability
Additional Requirements

- Qualified ABLE Program (QAP)
- QAP MUST –
  - Keep Separate Accounting Per Person
  - Provide Adequate Safeguards to Prevent Excess Contributions
- Monthly Reports of Distributions/Account Balances to SSA Required
Potential Uses of an ABLE Account

- Small Amount of Money
- Control for Competent Beneficiaries
- Allows Accumulation of Wages Over Time
- Alternative to Spend Down
- Avoids 1/3 Reduction Rule for Housing Expenses
Practical Concerns of ABLE Accounts

- Payback Requirement
- Only 1 Account
- Potential for Overfunding
- Payments for Qualified Expenses
- Protection From:
  - Fraud
  - Undue Influence
  - Exploitation
Planning Strategies

• Can Help Eliminate Unnecessary Expenses
• Permits Transfers From UTMA
• Can be Used to Address Issue of Staying Below $2,000 in Representative Payee Account
• Strategies for Housing-Related Expenses
Disabled Military Child Protection Act
History and Overview

• Survivor Benefit Plans (SBP)
  - 55% of Pension Paid to Benefit Disabled Child
  - Previous: Benefits to Child = Loss of Medicaid
  - Six Years to Pass
  - Passed on December 15, 2014
Effect on SSI and Medicaid Eligibility

- SSI Benefits Lost if Pension Paid to Child
- Excess Income MAY Result in Medicaid Loss
- TriCare Can Compensate for Medical Coverage of Medicaid
Effect on SSI and Medicaid Eligibility

• TriCare CANNOT compensate for Loss of Medicaid Waiver or Residential/In-Home Supports

• Pension to OBRA =
  1. Child Gains Value of the Pension
  2. Retains SSI & Medicaid
Secretary of Defense Memo 12/31/15

- Establishes Policy Required to Transfer SBP to SNT
- Member/Retiree Can Designate SNT to Receive SBP
- After death of retiree/member:
  - DAC’s surviving guardian may Elect to have SBP made to SNT
Requirements for Qualifying SNT Designation

• Submit “Statement of Decision” to Defense Finance and Accounting Service

• Request MUST Include Attorney Affidavit Form
  Certifies that Trust:
  - Is an SNT created for benefit of disabled dependent child
  - Complies with all Federal/State laws and regulations

• Funds Go to the OBRA Trust

• If SNT Fails, Payments Revert Directly Back to Child
Steps to Take Next

• Contact Veterans Affairs Office/Department of Finance and Accounting
  - To Change SBP Beneficiary to 1st Party SNT

• Meet With Attorney Familiar with SNT Drafting
  - In Place at Time of Military Parent’s Death