Special Needs Planning
An Overview

Presented By:
Geoffrey M. Misilo
"A commitment that lasts a lifetime."

Fletcher Tilton PC
Framingham, Hyannis & Worcester

www.fletchertilton.com
Agenda

- Special Needs Planning Overview – why it’s important now more than ever
- Government Benefits Overview
- Special Needs Trust Basics
- Child Support and Special Needs Trusts
- Selected Issues
- Questions & Answers
Special Needs Planning
Creating a Legacy

PERSON CENTERED PLAN

Trust and Estate Plan ↔ Financial Plan
OBJECTIVES
Special Needs Planning

• Maximize government benefits, e.g. Medicaid, SSI, and other means tested benefits
• Promote an enjoyable standard of living
• Protect assets from waste, theft and/or misuse
• Guidance on future decisions through Letter of Intent or an Ethical Will
Government Benefits Overview

- Means-tested benefits
  (Supplemental Security Income/Medicaid)
- Entitlement benefits
  (Special Education, Survivor Benefits, Childhood Disability Benefits)
- Sliding Scale
  (Housing vouchers, some state welfare benefits)
Eligibility Criteria

<table>
<thead>
<tr>
<th>Program</th>
<th>Criteria</th>
</tr>
</thead>
<tbody>
<tr>
<td>Supplemental Security Income (SSI)</td>
<td>Needs based</td>
</tr>
<tr>
<td>Social Security Disability Income (SSDI)</td>
<td>Entitlement based on contributions paid to Social Security Administration</td>
</tr>
<tr>
<td>DAC Benefits</td>
<td>SSDI benefits to a person with a disability, onset prior to age 22, with a parent covered by Social Security who has died, retired or become disabled</td>
</tr>
</tbody>
</table>
Home and Community-Based Services Waiver

- Permanently and totally disabled
- Would be institutionalized unless receiving waiver services
- Countable income less than or equal to 300% of the federal benefit rate ($2,163 for 2014)
- Countable assets of less than $2,000 and have not transferred resources for sole purpose of attaining MassHealth
Two Types of Supplemental Needs Trusts

**Self-Settled Trusts**
- Receive irrevocable assignment of support payments
- Contains assets owned by SSI applicant or by son/daughter with a disability

**Third Party Trusts**
- Receives assets gifted by third parties
- Beneficiary of life insurance on parent(s) plan
- Inheritance at the time of parent’s death
Self-Settled Trusts under 42 USC 1396p(d)(4)(A)

- Irrevocable
- Beneficiary meets federal definition of disability
- Created by a parent, grandparent, guardian or by a court
- Assets held for the sole benefit of the beneficiary
- Beneficiary is under 65 years old
- Contains payment provisions providing for reimbursement to State Medicaid agency for benefits provided to the beneficiary upon the death of the beneficiary
Third Party Trusts

- Common law discretionary trust
- Grantor’s intention is to supplement available government benefits
- Revocable if left unfunded
- Irrevocable upon the death of parent or upon funding
- No pay back provision
Common Elements of Both Self Settled and Third Party Trusts

- Full discretion given to trustee, hence, need for Person Centered Plan
- No right of withdrawal given to beneficiary
- Identify successor trustees and method of selection of future trustees
- If state law permits, add spendthrift and creditor protection provisions
- Consideration should be given to persons who are entitled to receive annual accountings and who are entitled to object thereto
Typical Benefits Paid by Supplemental Needs Trust

- Companionship, entertainment, cultural and educational expenses
- Case manager, service providers, and advocacy services
- Birthday, holiday and special event gifts
- Exercise, health club and physical therapy
- Vacation related expenses
Trustee Selection

- Siblings, Family Members or Individuals
- Banks and Trust Companies
- Professional Advisors
- Non-Profit Corporations
- Co-Trustee Options
Assignment of Child Support for Government Benefits Planning

General Rule: A legally assignable payment that is assigned to a trust/trustee is income for SSI purposes unless the assignment is irrevocable. For example, irrevocable child support or alimony payments paid directly to a trust/trustee as a result of a court order, is not income for SSI purposes.
Questions & Answers

Geoffrey M. Misilo, Esq.

Fletcher Tilton PC

(508) 459-8031 – gmisilo@fletchertilton.com

Framingham – Hyannis – Worcester