



COMING OF AGE

*A Legal Guide for Individuals
With Developmental Disabilities
And Their Families On
Transitioning to Adult Services*

A stylized tree with brown branches and dark brown leaves is the central focus of a decorative graphic. The tree is surrounded by intricate teal and white floral and swirl patterns. Several teal circles of varying sizes are scattered throughout the design. The entire graphic is set against a light teal background with a subtle pattern of dots and swirls.

**A LEGAL
RESOURCE GUIDE**

Acknowledgements



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For her inspiration and leadership with individuals with disabilities and their families in special needs planning and advocacy.



Frederick M. Misilo, Jr.

October, 2007

This material is intended to offer general information to clients, and potential clients, of the firm, which information is current to the best of our knowledge on the date indicated below. The information is general and should not be treated as specific legal advice applicable to a particular situation. Fletcher, Tilton & Whipple, P.C. assumes no responsibility for any individual's reliance on the information disseminated unless, of course, that reliance is as a result of the firm's specific recommendation made to a client as part of our representation of the client. Please note that changes in the law occur and that information contained herein may need to be reverified from time to time to ensure it is still current. This information was last updated September 2007.

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Overview & Welcome

Planning is a key ingredient in any successful journey. The journey from special education to adult services inevitably occurs due to the mere passage of time. Making that journey as smoothly and successfully as possible requires a knowledge of what to expect and being prepared to make important planning decisions.

The purpose of this legal guide is to provide you with information about the journey. Hopefully you will find it helpful whether you are years away from adult services or if the transition is imminent.

In the following pages, you will find information about the legal consequences of turning eighteen years old, important benefits from the state and federal governments, options to assist in responsible personal and financial decision-making and the importance of special needs planning by parents and other family members.



Legal Emancipation Turning Eighteen



When a person turns eighteen years of age, in the eyes of the law, that person is presumed to have the capacity to make informed legal, financial and health care decisions. In other words, when a person reaches the age of eighteen years, parents are no longer able to make decisions on their son or daughter's behalf. This also means that, in most circumstances, parents are not entitled to receive personal information about their son or daughter from health care providers, human service professionals, educational services and others.

Of course, not everyone is able to make the best decisions immediately upon turning 18 years old. In fact, most people can use some help in making informed decisions. In some cases, some individuals may need protection from making really bad decisions that could result in financial loss, serious injury or worse.

In the next section, you will read about options that need to be considered when a person with a developmental disability needs some help in personal, financial and/or health care decision-making.



Options for Personal, Financial & Health Care Decision-Making

1. Special Bank Accounts

Joint bank accounts can be created to prevent rash expenditures. Arrangements can be made with most banks for a person's benefit check, such as SSDI or SSI, to be sent directly to the bank for deposit. Additionally, a permanent withdrawal order can be arranged with the bank, authorizing the bank to send certain sums of money on a regular basis to a specified party, such as the landlord or the person who is disabled for pocket money, thus providing structure to allow for budgeting and money management.

2. Trusts

Trusts may be an appropriate alternative to conservatorship.

A trust is a legal plan for placing funds and other assets in the control of a trustee for the benefit of an individual. Trusts for the benefit of a person who is disabled should be established with the help of a lawyer experienced in wills and trusts and familiar with the law relating to government disability benefits. A trust set up without regard to the eligibility laws may disqualify a person who is disabled for MASS Health, SSI and other important government benefits.

1. Special Bank Accounts
2. Trusts
3. Representative Payee
4. Durable Power of Attorney for Property
5. Appointment of an Advocate
6. Health Care Proxy
7. Conservatorship
8. Guardianship



3. Representative Payee

For persons receiving government benefit checks, consider obtaining a representative payee to manage these funds. Benefit checks are sent to the representative payee who manages them and spends them for the benefit of the individual with a disability. The representative payee has authority only over income from the particular checks for which she is payee.

4. Durable Power of Attorney for Property

A durable power of attorney for property is useful where a person is mildly or moderately incapacitated and is capable of choosing another to handle his/her money. The power of attorney (P.O.A.) is a legal document that grants one person the legal authority to handle the financial affairs of another. A durable P.O.A. continues the authority in the event the individual becomes disabled or incapacitated. Both a drawback and an advantage is the fact that the person with a disability still has the legal power to make decisions. Also a strength and a drawback is the fact that a person can withdraw the P.O.A. anytime she or he wants and can remove the agent by verbal or physical action of destroying the P.O.A. A drawback is that a person with a quick temper or who acts impulsively without thinking things through may remove their agent at a time with the agent is needed the most.





5. Appointment of an Advocate

A person may appoint another person to act as their advocate in educational, adult services or health related matters. This advocate can obtain documents, attend meetings and generally speak up for an individual in important ways.

6. Health Care Proxy

A health care proxy is a legal document that enables a competent individual, (the “principal”), to designate a health care agent to make health care decisions should the principal become unable to make them. The health care agent is permitted to make all health care decisions, including decisions about life-sustaining treatment. The proxy must be a written document that is signed by the principal and witnessed by two adults. The principal may revoke the proxy at any time and in any manner that demonstrates specific intent to terminate the power. A health care proxy goes into effect when the principal’s doctor determines in writing that the principal does not have the capacity to make or communicate health care decisions.

7. Conservatorship

Conservatorship should be considered for persons who are unable to make informed financial decisions and who have income from sources other than government benefit checks. A conservator handles only financial affairs, allowing the person to make personal decisions. The court may appoint a conservator if the person is unable to properly care for his or her property. Physical incapacity is also a legally sufficient reason for appointing a conservator, provided the person agrees to the appointment. For a person with mental retardation, the court must find that (1) the person “is incapable of making informed decisions with respect to the conduct of his financial affairs” and (2) “failure to appoint a conservator would create an unreasonable risk to the person’s property.”






8. Guardianship

Guardianship is an option for persons who are incapable of making decisions about their personal and financial affairs. The probate court requires evidence of incompetence by mental illness, mental retardation, or other incapacity. For an individual with an intellectual disability, the court also requires evidence of an unreasonable risk to the person's health, welfare or property if a guardian is not appointed.

Guardianship also may be limited to certain areas of decision making, thereby allowing an individual to continue making decisions in all other areas of his or her life.



As you can see, there are a number of options for personal, financial and health care decision-making. It's desirable that the least restrictive option under the circumstances be used. This means using only that amount of support necessary and not unduly restricting a person's right to make decisions he or she may be competent to make on his or her own.

Transition to Federal Government Benefits



Government Benefits Based on Financial Need

The two most important programs in this category are Supplemental Security Income (SSI) and Medical Assistance, which is referred to as Medicaid. Upon attaining the age of eighteen years, a person is eligible for SSI and Medicaid even if they are living with their parents and without the parent's assets and income being deemed to him or her.

It is important for parents to realize that eligibility for SSI and Medicaid may be critical to an individual who is disabled because SSI and Medicaid eligibility is often necessary for adult services such as case management, job training, individual and family support services including respite and attendant care, specialized vocational services, protection and advocacy services, and residential services. Given the range of services that are presently available through SSI and Medicaid and those which may be available in the future, it is important to be aware of the financial eligibility criteria to qualify for these two programs.





Eligibility for SSI

Eligibility for SSI requires that the person be aged, blind or disabled and that the individual have limited income and resources according to the guidelines of the program. All assets count against the amount of SSI an individual receives. Income is defined as “the receipt by an individual of any property or service which he can apply, either directly or by sale or conversion, to meet his basic needs for food and shelter”. The SSI regulations specifically include inheritance and gifts as income. SSI regulations further state that property is considered a resource if the claimant has the right, authority or power to liquidate the property.

An individual is allowed up to \$2,000 in resources before being disqualified from receiving benefits. The recipient is also allowed to own a home, one car, regardless of its value, if it is used to transport the recipient or a member of the recipient’s household, reasonable household goods and personal effects and a life insurance policy if the total face value does not exceed \$1,500.

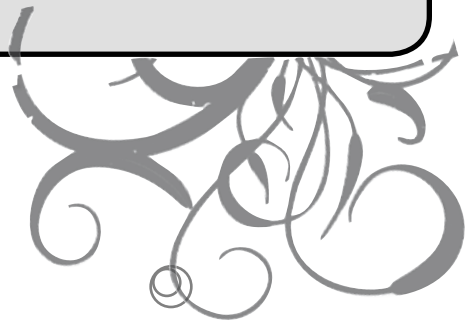




A Note About Parent's Health Insurance Coverage

Some parents may feel that they do not have to be concerned with federal medical assistance because their adult child is covered with a private health insurance policy. Often the coverage in programs that insure persons who are disabled is minimal and the cost for private medical coverage may be prohibitive in the future. In some cases, while the child presently has medical insurance, his or her medical coverage may terminate upon the death or retirement of the parent.

Many parents are not aware that they can continue their group plan health care coverage for their dependent adult child after their child graduates or leaves school. You will need to check with your personnel department to see if your company health insurance plan has this option available. Most companies require that you notify them within 3 months of your child's 19th birthday that he or she is disabled and is dependent on you for care. If you do not notify your health insurance carrier of your child's special needs, they may drop your child from your coverage.





Federal Benefits NOT Based on Financial Need

The major insurance programs in this category are Social Security Disability Income (SSDI) and Medicare. A child of a person who is retired, disabled or deceased can collect monthly cash benefits based on the parents' earnings previously paid into Social Security provided that the child's disability began before the age of 22, he or she is unmarried and is dependent for support on the parent who is retired, disabled or deceased.

Disability is defined as "the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than twelve months."

A person who receives Social Security disability benefits for two years is entitled to Medicare. The advantage of Social Security benefits is that the benefits are not reduced or affected by the person's assets.



Transition to Adult Human Service Support Systems



We wish to gratefully acknowledge that this section is derived primarily from “The Road Forward” (2nd Edition, May 2007) published by The DMR Central Middlesex Area Office.

▶ **WHAT is Chapter 688?**



Chapter 688 is a law enacted in 1983 to provide a two-year planning process for young adults with severe disabilities who will lose their entitlement to special education at the age of 22, or at the time of graduation from high school, whichever comes first. The law creates a single point of entry into the adult human service system.

▶ **WHO is Eligible for Chapter 688?**



To be eligible for Chapter 688 services, a person must:

- Be receiving special education paid for by the Commonwealth of Massachusetts,
- Need continuing habilitative services at the time of turning 22 or graduating from special education, and
- Be unable to work competitively (without specialized supports) for more than 20 hours per week at the time of leaving school.

An individual is automatically eligible for Chapter 688 if receiving SSI, SSDI, or registered with the Massachusetts Commission for the Blind.



► **HOW is a 688 Referral Made?**

Only the local school system, also known as the Local Education Authority or LEA, can make a 688 referral.

The referral must be made while the student is still in school. The local school system typically decides which human service agency might best meet the student's needs as an adult and sends the referral directly to that agency. If an individual is being referred to DMR, the referral typically is sent directly to one of the DMR Area Offices. If a student or parent feels that a 688 referral has not been made, but should have been, they should contact the Special Education Department at the school, or the Director of Special Education services for the school system.

► **WHEN Should a 688 Referral Be Made?**

Chapter 688 requires the school system to make the 688 referral two years before a student graduates or turns 22, whichever is earlier. In order to facilitate the planning process, DMR prefers to have the 688 referral even earlier than required by Chapter 688. DMR suggests that referrals be made at age 18 to coincide with DMR adult eligibility age requirements.

Referrals that are made less than 2 years until graduation do not afford adequate planning time to assist a student in the most meaningful way possible. Students or families who are concerned about the timing of a 688 referral should contact both the school system and the local DMR Area Office, if they feel DMR would likely become the Transitional Agency.

► **If A Student is Already Known to DMR, Is a 688 Referral Still Necessary?**

YES. Even though some individuals with mental retardation receive DMR services as children, a referral should still be made. The 688 referral starts the DMR planning process for the individual student.



► **What is the “SPED DATE” And Why Is It Important?**

The special education date (or “sped date”) is the date on which a student is planning to leave special education and school. Typically, the sped date is either the student’s expected date of graduation or 22nd birthday. The sped date is used in the 688 referral process as the reference date for planning. Students leaving on a short notice in advance of the sped date specified on the 688 referral may not have the benefit of adequate planning time to assist with a smooth, well-planned transition.

► **What happens if a Student Leaves School Without a 688 Referral?**



If a student leaves school without a 688 referral being made, the student is not eligible for planning through 688. The student can still apply to DMR or other state agencies serving adults at any time as any citizen could.

► **What is the Transitional Agency (TA)?**

The Transitional Agency (TA), sometimes referred to as the Lead Agency, is the state agency that receives the 688 referral. It is the agency that the local school system feels will best meet the student’s future needs as an adult.

The TA is responsible to assist the individual in planning to move from special education services into adult life. DMR is one such agency. Other Transitional Agencies include the Department of Mental Health and the Massachusetts Rehabilitation Commission.





DMR 688 TRANSITION COORDINATOR

► **What is a DMR Transition Coordinator?**

A DMR Transition Coordinator, sometimes called the “688 Coordinator” is a case manager who works at the local DMR Area Office. The Transition Coordinator’s case load consists of individuals age 18-22 who have been found eligible for adult supports through DMR.

The Transition Coordinator is the individual’s primary link to information and assistance from DMR during the transition from special education to adult life. The Transition Coordinator will help the individual and family understand what DMR can offer and assist with identifying and securing requested supports, subject to prioritization for those supports. Following graduation and transition into adult supports, an individual’s case will be transferred to an adult Service Coordinator within the Area Office.



DMR ELIGIBILITY PROCESS

► **Who is Eligible for Adult Supports From DMR?**

A person, 18 or older meets the criteria for eligibility for services and supports provided, purchased or arranged by the Department if the individual:

1. is domiciled in the Commonwealth of Massachusetts
2. is a person with mental retardation as defined in 115 CMR 2.01 (this information can be found under the “regulations and policies” link at www.mass.gov/dmr)

► **What is the Application Process?**



Application Process:


The application process is initiated by sending an application form (Application for DMR Eligibility) to the DMR Eligibility Team. This form contains basic information about the applicant that enables the Regional Eligibility Specialist to make contact with the applicant to arrange an interview. The Regional Eligibility Team may receive telephone requests for eligibility determination and may complete the application form via telephone conversation.

Intake Process:

When the application is received, an eligibility specialist from the Regional Eligibility Team will contact the applicant, guardian or referral source within 10 days of receipt of a completed application form to arrange for an intake interview. This interview can take place at the DMR Regional Office, the Area Office, or other location. The intake process generally consists of the initial interview, the gathering of relevant information which may include requests for additional assessments or testing and a clinical assessment that assists the DMR to identify needed resources.



Eligibility Determination:

The applicant or guardian is responsible for obtaining all relevant information needed to determine eligibility and must make every reasonable effort to ensure that the information is received by the Department in a timely manner. When all information is gathered and assessments completed, the Regional Eligibility Team Psychologist conducts a review and makes the determination decision after conferring with members of the Eligibility Team. 

The Regional Eligibility Team is asked to make a determination within 60 days. If no final determination can be reached after 60 days due to incomplete information, the DMR may extend the process for an additional 60 days. After 120 days, the Regional Eligibility Manager will send a formal decision letter based on the information that has been made available to DMR. This decision is communicated to the applicant or his/her guardian and to the appropriate DMR Area Office.

Determination of Needed Supports for Eligible Individuals:

The Department of Mental Retardation Area Office will work with the newly eligible individual and/or family/guardian to determine the supports needed and desired by the individual and the individual's priority for services.

Appeals

Individuals have the right to appeal any findings contained in the eligibility letter within 30 days of receiving the letter and have the right to a Fair Hearing before an impartial hearing officer.

Implications for Families Regarding Special Needs Planning



As noted throughout this handbook, it is likely that at some point in his or her life, a person with a disability will need government benefits such as SSI, Medicaid, residential support, job training and other support services.

Parents need to plan so that their son or daughter can maximize their opportunities to receive government benefits and services. Parents need to realize that without careful planning, an inheritance may make their child ineligible for benefits which can be far more valuable than the inheritance. In some cases, the more a person inherits, the worse off he or she may be.

Government benefits are important because it is seldom possible for the average family to leave sufficient funds to provide sufficient services and supports. The cost of services and supports will vary tremendously depending on the area in which the individual lives and the nature and degree of the individual's disability. It is difficult to predict what these costs will be twenty or thirty years from now.

Parents have an opportunity to supplement government benefits with family assets through careful special needs planning. There are a variety of approaches to consider, including the creation and funding of a special needs trust, which holds assets for the benefit of a person which does not affect that person's entitlement to needs-based government benefits such as SSI or Medicaid.



Special Needs Trust Expenditures Can Include But Are Not Limited To:

- ▶ Additional physician visits (over the Medicaid limit)
- ▶ Appliances
- ▶ Bicycle, fitness equipment, personal trainer
- ▶ Bottled water
- ▶ Bus or train pass
- ▶ Cab scrip
- ▶ Cable TV bill
- ▶ Car/Van: fuel, repairs, maintenance, insurance
- ▶ Cell phone
- ▶ Club dues
- ▶ Computer, internet service, software, training, repairs
- ▶ Curtains, blinds, drapes
- ▶ Dental work, eyeglasses, hearing aids, batteries not covered
- ▶ Dermatology not covered by Medicaid
- ▶ Drugs unavailable through Medicaid (non-generic)
- ▶ Entertainment, movie or theater tickets
- ▶ Furniture
- ▶ Haircuts, manicures, pedicures, and other salon services
- ▶ Health club membership
- ▶ Hobby supplies
- ▶ House cleaning/maid service
- ▶ Incontinence supplies and equipment
- ▶ Laundromat/Dry Cleaners
- ▶ Legal fees/Guardian fees
- ▶ Lessons, classes or college tuition and fees
- ▶ Linen
- ▶ Massage, Acupuncture/ Acupressure, Roling and other alternative treatments
- ▶ Musical instruments
- ▶ Non-food grocery items, such as: laundry soap, bleach, etc. kleenex, household cleaning products, paper towels, napkins, deodorant, soap, personal hygiene products
- ▶ Orthopedic shoes/podiatry
- ▶ Over the counter medications
- ▶ Oversight, monitoring, and advocacy
- ▶ Painting and music therapy
- ▶ Payment of private health insurance premiums
- ▶ Personal attendant services beyond Medicaid limits
- ▶ Pets, pet supplies/food, pet care (veterinarian bills, etc.)
- ▶ Private counseling
- ▶ Record/Book clubs
- ▶ Rehabilitation and physical therapy beyond Medicaid limits
- ▶ Respite care
- ▶ Telephone bill or phone card
- ▶ TV, VCR, DVD player, stereo
- ▶ Vacation
- ▶ Vitamins, Herbs
- ▶ Wheelchairs not covered by Medicaid; repairs, driving gloves

CAUTION: Do not distribute funds directly to the beneficiary. The above goods and services must be paid directly from the trust to the vendor or service provider.

Preparing a Life-Planning Document for Your Disabled Family Member

A life-planning document, sometimes called a “letter of intent” or “letter of instructions,” aims to provide critical information to future service providers and trustees.

Such a document can contain the following information about:

- ▶ Personality characteristics and personal preferences.
- ▶ Family members.
- ▶ Medical history, list of physicians and other individuals and organizations providing support and services.
- ▶ Friends, pets, favorite foods, likes and dislikes, and hopes and expectations.

You should develop a life-planning document when it is likely that your son or daughter is going to live outside your home sometime in the future and will require a good deal of support and services to maintain and enhance his or her quality of life.

A life-planning document is important to have because many people with cognitive or psychological impairments may be unable to accurately convey pertinent facts and information about themselves to others. The life-planning document gives you an opportunity to communicate your perspective on and knowledge of him or her regarding a wide range of topics. Combined with your disabled family member's self-determination, the life-planning document contains the core considerations that providers should heed when providing support and services.

The amount of time and energy required to prepare a life-planning document varies widely, depending on how much information you want to include and whether you plan to write it by hand or on a computer. Generally speaking, count on it taking six to eight hours. Fletcher, Tilton & Whipple, PC has developed a life planning document template to help parents begin this process.

The initial effort can be considerable and daunting as you try to think of everything to include. Rest assured that updates are usually much easier. We recommend that you update the life-planning document at least once a year – perhaps around the birthday of your disabled family member. Using his or her birthday may help you to remember that it is time to update the document. Time has a way of flying and without a trigger date to help you remember, you may forget to update the plan.

If you find it difficult to write a life-planning document, we recommend that you work with a qualified person who can facilitate a discussion and help to write the document. This person can be a certified life planner, certified care manager, or someone with a social-services, educational or journalistic background.

In short, rely on someone who can listen well to the story you tell and who can write it in coherent, understandable terms.



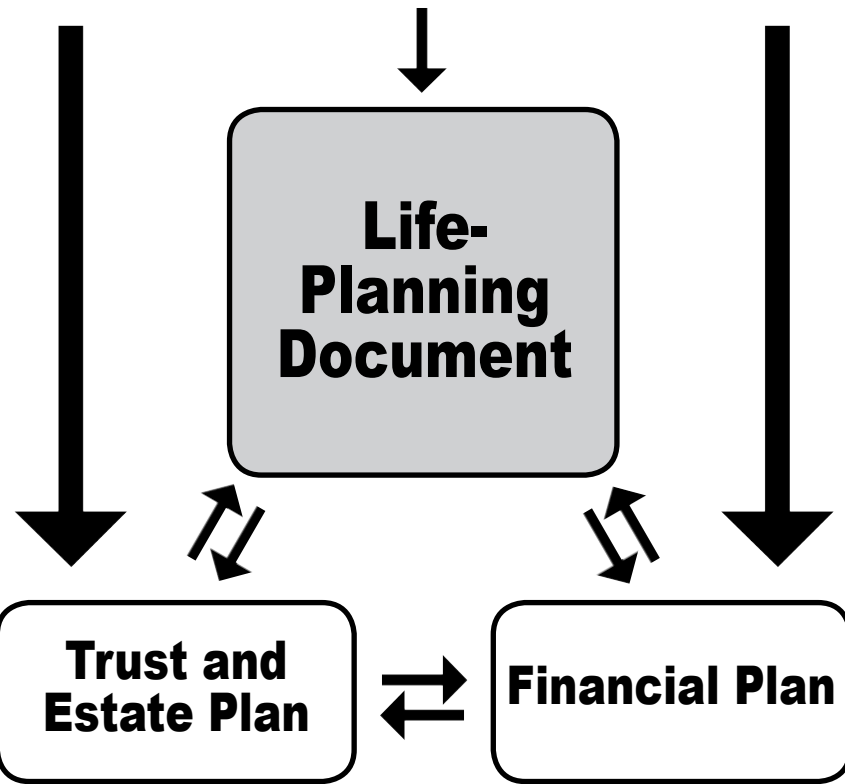
A Paradigm for Planning

**Self-Determination Principles
and Basic Legal Principles**

**Life-
Planning
Document**

**Trust and
Estate Plan**

Financial Plan



Internet Connections



American Association on Mental Retardation	www.aamr.org
Assn. of Developmental Disabilities Providers	www.addp.org
Association of Retarded Citizens, US	www.thearc.org
Association of Retarded Citizens, MA	www.arcmass.org
Department of Employment & Training	www.detma.org
Department of Mental Health	www.mass.gov/dmh
Department of Mental Retardation	www.mass.gov/dmr
Department of Education	www.mass.gov/doe
Department of Labor	www.mass.gov/dlwd
Department of Public Health	www.mass.gov/dph
Disabled Person's Protection Commission	www.mass.gov/dppe
Department of Social Services	www.mass.gov/dss
Department of Transitional Assistance	www.mass.gov/dtw
Executive Office of Elder Affairs	www.mass.gov/elders
Executive Office of Health & Human Services	www.mass.gov/eohhs
Federation for Children with Special Needs	www.fcsn.org
Families Organizing for Change	www.mfofc.org
Dept. of Housing & Urban Development	www.mass.gov/dhcd
Institute for Community Inclusion	www.communityinclusion.org
Mass. Assn. of 766--Approved Private Schools	www.spedschools.com
Mass. Advocated Standing Strong	www.communitygateway.org
Mass. Bay Transportation Authority	www.mbta.com
Mass. Com. for the Deaf & Hard of Hearing	www.state.ma.us/mcdhh
Mass. Developmental Disabilities Council	www.state.ma.us/mddc
Mass. Housing Finance Agency	www.mhfa.com
Mass. Office of Disability	www.state.ma.us/mod
Mass. Rehabilitation Commission	www.mass.gov/mrc
Mass. Society for the Prev. of Cruelty to Children	www.msppcc.org
Statewide Head Injury Program	www.mass.gov/mrc/ship
Social Security Administration	www.ssa.gov
The Assn. for Persons with Severe Handicaps	www.tash.org
United Cerebral Palsy Association	www.ucpa.org



Contacts



Autism Society of America
47 Walnut Street
Wellesley Hills, MA 02481
www.autism-society.org
781-329-4244

Boston Center for Independent Living
60 Temple Place, 5th Floor
Boston, MA 02111-1324
www.bostoncil.org
617-318-6665

Bureau of Transitional Planning (BTP)
617-727-7600

Department of Education (DOE)
350 Main Street
Malden, MA 02148
www.doe.mass.edu

Department of Mental Retardation (DMR)
www.mass.gov/dmr
617-727-5608

Department of Public Health (DPH)
250 Washington Street
Boston, MA 02108
www.mass.gov/dph
617-624-6000

Department of Social Services (DSS)
24 Farnsworth Street
Boston, MA 02210
www.mass.gov/dss
617-748-2000

Department of Transitional Assistance (DTA)
600 Washington Street
Boston, MA 02111
www.mass.gov/dta
800-249-2007

Disabled Persons Protection Commission (DPPC)
50 Ross Way
Quincy, MA 02169
www.mass.gov/dppc
800-426-9009

Division of Medical Assistance
www.mass.gov/dma
800-841-2900

Massachusetts Arc
217 South Street
Waltham, MA 02453
781-891-6270
www.arcmass.org

Massachusetts Commission for the Blind (MCB)
48 Boylston Street
Boston, MA 02116
www.mass.gov/mcb
800-392-6450

Massachusetts Commission for the Deaf and Hard of Hearing (MCDHH)

150 Mt. Vernon St., Suite 550
Dorchester, MA 02125
www.mass.gov/mcdhh
617-740-1600

Massachusetts Developmental Disabilities Council (MDDC)

1150 Hancock Street
Quincy, MA 02169
www.mass.gov/mdds
617-770-7676

Mass. Families Organizing for Change

P.O. Box 61
Raynham, MA 02768
www.mfofc.org
800-406-3632

Mass Health

www.mass.gov/masshealth

Massachusetts Office on Disability (MOD)

1 Ashburton Place #1305
Boston, MA 02108
www.mass.gov/mod
617-727-7440

Massachusetts Rehabilitation Commission (MRC)

27 Wormwood Street
Boston, MA 02110
www.mass.gov/mrc
617-204-3602

Medicaid

www.cms.hhs.gov/MedicareGenInfo

Medicare

www.medicare.gov
800-MEDICARE

United Cerebral Palsy Association

1660 L Street, NW, Suite 700
Washington, DC 20036
www.ucp.org
617-926-5480



Glossary of Legal Terms

A

Advocacy: The active support of a legal cause (example: obtaining government benefits through representation before courts and governmental agencies).

Attorney-in-fact: The person named to act for another person under a power of attorney.

B

Beneficiary (under a trust): The person who receives the equitable title to trust property and hence the right to benefit from that property according to the grantor's instructions.

Beneficiary (under a will): A generic term for a person who receives property under a will.

C

Charitable Lead Trust: A trust in which a charity obtains benefits for a specified period of time, after which the benefits return to the grantor or the grantor's family.

Charitable Remainder Trust: A trust in which the grantor or the grantor's family retains benefits until a specified time, after which the remainder passes to a charity.

Charitable Trust: A trust created for a charitable beneficiary.

D

Discretionary Trust: A trust giving the trustee discretion with respect to payments to and on behalf of the trust beneficiary.

Donee: The recipient of a gift.

Donor: The maker of a gift.

E

Estate Tax: A tax on a decedent's transfer of property at death.

Executor: The person named under the will to act as the decedent's personal representative with respect to the administration and distribution of the decedent's estate.

F

Fiduciary: A person having the legal duty to act for the benefit of another, such as an attorney, an



executor or a trustee. A fiduciary is subject to obligations and responsibilities prescribed by law and is personally liable for any wrongdoing.

G

Generation-Skipping Transfer

Tax: An additional tax on certain transfers to beneficiaries who are more than one generation younger than the person transferring the property (example: a transfer from grandparent to grandchild).

Gift Tax: A tax on lifetime transfers of property for less than full and adequate consideration.

Gift Tax Annual Exclusion:

The amount that a person may transfer to another annually without the imposition of a gift tax. Currently the gift tax annual exclusion amount is \$11,000.00 per donee.

Grantor: A person who creates a trust. Also called settler, trustor and donor.

Guardian: A person appointed by the court to be responsible for making decisions on behalf of a person deemed by a court to be incapable of making decisions and properly caring for himself/herself.

Guardian Ad Litem: A guardian appointed by the court to represent the interest of certain individuals incapable of representing themselves (such as minors, incompetents or unborn beneficiaries) in legal proceedings.

H

Health Care Proxy: A document appointing another person to make healthcare decisions in the event of incapacity or an inability to communicate.

Heir: A person entitled to take property of a decedent under state default rules for those persons dying without a valid will.

I

Intestate: Dying without a will.

JK

L

Life Insurance Trust: A trust which holds a life insurance policy and is designed to minimize transfer taxes and to provide additional funds to the estate. Policy premiums are covered through contributions to the trust which are structured to qualify for the annual gift tax exclusion.



MNO

P

“Pay Back” Requirement:

Phrase used to refer to the requirement that any assets remaining in an OBRA '93(d)(4) (A) trust be used to reimburse the state (see below).

Power of Attorney: A document authorizing one person to act for another with respect to property.

Prudent Person Rule: A flexible legal investment standard that allows a fiduciary to purchase securities that a prudent person of discretion and intelligence would choose in order to earn a reasonable income and to preserve the principal.

QRS

T

Testamentary Trust: A trust created at the Grantor's death, pursuant to his or her will. Such trusts are subject to the jurisdiction of the Probate Court.

Trust Agreement: A document whereby property is conveyed by the owner of the property (the grantor) to the trust to be managed by the trustee for the benefit of others (the

beneficiaries).

Trustee: The person who holds legal title to the trust property and who has the fiduciary duty to manage that property for the benefit of the trust beneficiary, according to the grantor's instructions and applicable trust law.

Supplemental Needs Trust (also known as Special Needs Trust):

A trust where the trustee has the discretion to make distributions on behalf of the beneficiary. The only limitation on the trustee's discretion is a directive that distributions be supplemental to otherwise available government benefits. The trust is designed to provide resources while still maintaining the beneficiary's eligibility for state and federal assistance programs.

There are two main types of supplemental needs trusts:

- **Third Person Supplemental Needs Trust:** A trust created for the benefit of a disabled person using funds contributed by another person, such as a parent. The assets contributed are held in trust for the benefit of the disabled person during his or



her lifetime. Upon the disabled person's death, any remaining assets are not subject to a governmental payback provision.

- **OBRA '93 Trust:** Technical term for a trust funded with assets belonging to the disabled person for which the trust is created. Such trusts must meet the requirements prescribed by federal statute in order to maintain person's eligibility for governmental assistance. An OBRA '93- Trust can be one of two types:

a) **(d)(4)(A) Trust:**

Technical term for an OBRA '93 Trust whereby a disabled person's assets are held in trust for the disabled person's benefit during his or her lifetime. Upon the disabled person's death, any assets remaining in the (d)(4)(A) Trust must be used to reimburse the state for governmental assistance received by the disabled person during his or her lifetime.

b) **(d)(4)(C) Trust (also known as a Pooled Trust):**

Technical term for an OBRA '93 Trust whereby the individual assets of sever are pooled together into a common trust, usually managed by a charitable organization acting as trustee. Such pooling of assets leads to

greater investment flexibility and rates of return while minimizing trust expenses. The collective assets are held in trust for the disabled persons' benefit during their lifetimes. Upon death, the remaining assets continue to be held in trust for the benefit of surviving and future contributors to the pooled fund.

U

Unified credit: A credit available to each individual to offset gift and state tax liability.

V

W

Will: A written document or oral declaration directing the disposition of the decedent's property upon the decedent's death.

XYZ



How Can We Help?

The attorneys at Fletcher, Tilton, & Whipple P.C. are experienced representing clients with special needs issues. We have extensive experience with special needs estate planning, guardianships and other less restrictive measures, DMR eligibility appeals, ISP appeals, supplemental needs trust management, as well as general advocacy for our clients.

If you have a legal problem, we can assist you in getting it resolved.

For more information contact:

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C O U N S E L O R S A T L A W

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