



HELPING HAND

An Update from the Special Needs Practice Group

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SPECIAL NEEDS & ELDER LAW PRACTICE GROUP

Frederick M. Misilo, Jr., Esq.
Practice Group Leader

Meredith H. Greene, Esq.
David C. Guarino, Esq.
Marisa W. Higgins, Esq.
John J. McNicholas, Esq.
Lauren E. Miller, Esq.
Geoffrey M. Misilo, Esq.
Mary F. Proulx, Esq.
Theresa M. Varnet, Esq.

TRUST SERVICES

Timothy J. O'Malley
Trust Administration Manager
Jennifer Zaparaskas
Paralegal

ADMINISTRATIVE SUPPORT STAFF

Wilma Vallejos
Manager, Special Needs Practice Group
Lainie Petrou
Paralegal
Danielle Porter
Administrative Assistant
Meghan J. Vaughan
Administrative Assistant

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Special Needs Planning
Elder Law
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Estate Planning Petitions
Adult Support Petitions
Guardianship/Conservatorship

PRACTICE GROUP MESSAGE

By Frederick M. Misilo, Jr., Esq.



As Benjamin Franklin is said to have observed, "In this world, nothing can be certain but death and taxes." The good news from this rather dire statement is that if you have a dependent with special needs you may be entitled to some tax relief. The income tax deductions available to persons with dependents with special needs are widely under utilized. The article in this edition provides some insight into this area. The Tax Department of Fletcher Tilton PC is experienced in this area and is able to provide you with tax advice that may be able to save you some money.

As I write this article, it appears that the Republicans' plan will not go forward to repeal and replace the Affordable Care Act and massively overhaul the federal Medicaid program. I spent three days in Washington, DC at the Disability Policy Seminar leading up to the eventual withdrawal of this proposal in March 2017 along with 1,000 other disability advocates. This three-day advocacy seminar culminated in lobbying Congressional members about the perils of repealing and replacing the Affordable Care Act and the federal Medicaid program. I attended a press conference on the steps of the House of Representatives and listened to House Minority Speaker Nancy Pelosi, Governor Jerry Brown, Senator Chuck Schumer and former Vice-President Joseph Biden speak on the value of the Affordable Care Act as well as the importance of maintaining the federal Medicaid program. Despite their eloquence, the most persuasive speaker was a mother whose family receives

support and personal care services funded by Medicaid through the Arc of Northern Virginia. She described with emotion and passion how her family and others have benefited from this support. She also spoke with palpable fear and sadness of the dire consequences to her family and others if that support was eliminated. Personal stories demonstrate that the federal Medicaid program is a lifeline for persons with disabilities and their families.

The main article provides a detailed description of the multi-pronged attack on services to persons with disabilities and their families. As a special needs attorney, an important component of my job is to help families plan a safe and secure future for their family member with a disability through a combination of available government resources and private funds. The simple fact is that there is a deep divide in our nation on the extent to which government should be involved in providing for its citizens. Experience has shown that the stories of real people have the most impact in persuading our elected and appointed representatives on the state and national level of the importance of government support to persons with disabilities. As with other civil rights movements, change not only happens through laws and litigation such as the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990 and the landmark U.S. Supreme Court decision in Olmstead. It also happens when you change people's hearts and minds. The power of one person's story must never be underestimated. **FT**

To contact me on these or any other related issues, my direct line is 508-459-8059 and my email address is fmisilo@fletchertilton.com.

INCOME TAX DEDUCTIONS, EXEMPTIONS AND CREDITS MAY BE AVAILABLE WHEN PROVIDING FOR A SPECIAL NEEDS DEPENDENT

by Theresa M. Varnet, MSW, JD, Co-Chair of the NAELA Special Needs Law Section

Caring for a family member with special needs can be financially costly. Many of these expenses may be deductible on one's income tax returns. Unfortunately, many families are not aware of

the many income tax deductions for medical and related expenses that exist in the tax code. The following is a summary of tax deductions,

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WORCESTER	370 Main Street, 12th Floor	Worcester, MA 01608	P: 508.459.8000	F: 508.459.8300
FRAMINGHAM	161 Worcester Road, Suite 501	Framingham, MA 01701	P: 508.532.3500	F: 508.532.3100
MEDFIELD	266 Main Street	Medfield, MA 02052	P: 508.359.7656	F: 508.359.7742
CAPE COD	1597 Falmouth Road, Suite 3	Centerville, MA 02632	P: 508.815.2500	F: 508.459.8000

Deductions, Exemptions and Credits, *continued from pg. 1*

exemptions and credits that families often miss and fail to claim. Families often overlook the dependency exemption, deductions for medical expenses, special education costs, medically required home renovations, impairment-related work expenses and the earned income tax credit.

Many families assume that, if their special needs family member is an adult and receiving SSI, they cannot claim their adult child as a dependent on their tax return. However, this is incorrect. Age is irrelevant when determining the dependency exemption of a disabled adult. The taxpayer's child, stepchild, grandchild, sibling, step sibling, niece or nephew may meet the requirement

her spouse is at least 65 years old at the end of the tax year). When one adds the additional cost of tutors, therapies and privately funded special education, one may meet the 10%/7.5% eligibility "floor." Education expenses are not generally deductible as a medical expense, but a deduction may be allowed if the primary reason for attending the school is to alleviate the handicap. Deductions may also be allowed for tuition, lodging, meals, transportation, supervision, care, treatment and special training of a physically or neurologically disabled individual. In addition, a family could set aside certain funds in a flexible spending account (FSA) on a pre-tax basis to pay for some of these expenses.

Family members may also incur costs by attending conferences, seminars and training programs to become more knowledgeable about their child's disability. The registration fees and travel expenses are deductible. There is currently no deduction allowed for lodging or meals. However, if one is an officer with an organization such as The Arc, Williams Syndrome Association, Autism Speaks, etc., one may be able to claim a deduction as a non-cash charitable deduction if one is attending the conference in his/her capacity as an officer of the organization.

If an individual is employed but is privately paying for impairment-related work expenses (IRWE), he or she may deduct the cost of these expenses as a business expense that is not subject to the 2% of AGI floor. The IRWE can be deducted on Form 2106-EZ.

One should be aware that all of the above possible deductions (with the exception of the deduction for medical expenses) may be reduced or entirely unavailable due to an overall limitation on itemized deductions, which affects taxpayers whose AGI exceeds the applicable amount (in 2016, \$259,400 for single taxpayers and \$311,300 for married couples filing jointly). If affected, one's otherwise allowable itemized deductions for the tax year are reduced by the lesser of 1) 3% of the excess of AGI over the applicable amount or 2) 80% of the itemized deductions otherwise allowable.

Additionally, persons who are disabled but employed and earning less than SGA (Substantial Gainful Activity) often fail to claim the earned income tax credit. The purpose of this credit is to offset the cost of Social Security taxes on one's wages.

Families should consult with an accountant or tax attorney to determine whether they are missing out on tax deductions that they could be taking. Doing so may help alleviate the high costs of providing for a family member with special needs. **FT**



Many families assume that, if their special needs family member is an adult and receiving SSI, they cannot claim their adult child as a dependent on their tax return.

of a dependent if he or she is 1) under age 19; 2) under age 24 and a student; or 3) any age if living with the taxpayer for at least six months of the year, and totally and permanently disabled at any time during the year. An individual is considered totally and permanently disabled if he or she is incapable of engaging in substantial gainful activity due to a physical or mental impairment that will end in death within a year or that is expected to last at least a year. The amount of the dependency exemption is the same as the amount of the personal exemption (\$4,050 in 2016).

In addition, various deductions may be available if one elects to itemize deductions rather than simply claim the standard deduction (in 2016, \$6,300 for single taxpayers and \$12,600 for married couples filing jointly). While most families understand that the direct costs of medical care are deductible, they may not realize that many instructional or educational expenses may also be claimed as a medical deduction. Medical expenses may be deductible if they exceed 10% of one's adjusted gross income (AGI) (or if they exceed 7.5% of one's AGI if the taxpayer or his/

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DISABILITY ADVOCATES BREATHED A SIGH OF RELIEF AFTER THE AMERICAN HEALTH CARE ACT WAS PULLED FROM A VOTE ON FRIDAY, MARCH 25

by Theresa M. Varnet, MSW, JD, Co-Chair of the NAELA Special Needs Law Section

While this was a victory for disability advocates, we need to understand that we may have won this battle, but the war against critically needed supports and services continues. Speaker Paul Ryan acknowledged that he did not have the votes to pass the AHCA. Families/advocates need to understand it was pulled simply because members of the Freedom Caucus (the most conservative forces in Congress) did not feel the cuts and rollback in services were deep enough to allow them to vote for the bill. On the other end of the spectrum, Peter Berns, CEO of The Arc, said, "This bill showed a callous and dangerous disregard for the well-being of people with disabilities and those with complex medical needs."

Advocates are bracing themselves for continued attacks over the next two years on community-based supports provided to individuals. The GOP proposal to repeal the Affordable Care Act (aka ACA or ObamaCare) and replace it with the American Health Care Act (aka AHCA, RyanCare or TrumpCare) was only the first volley fired against our lifeline of services. We have won this battle, but the war is not over! Since the early 1970s, we have gradually increased the help that persons with disabilities and their families receive from the federal government. There were a few steps backward under the Reagan and George W. Bush administrations, but for the most part, we made progress chipping away at the institutional bias in federal programs. We expanded supports to those families who wanted to keep their special needs child at home and live a more normal life within the community.

The progress from 1970 to 2016 has been significant. For the first time in my 50 years as an advocate, I fear the loss of many of the gains we have made and a slipping back to the family being on their own with little expectation of help from the federal



Subsidized nutrition programs can significantly reduce the number of children who are labeled intellectually disabled in our schools.

government. Under a GOP-controlled House, Senate and White House, we see the beginning of proposals to roll back funding for education, housing assistance programs, nutrition programs and Medicaid. My goal in writing this article is to educate families

on the threat that faces us. Knowledge is power, and the more informed we are of what changes are being proposed, the more effective we can be in blocking attempts to tear down years of hard-fought gains in the fields of special education, health care, community supports, nutrition and housing.

My fears are not just my own but shared by numerous advocacy groups and state agencies. A headline in the March 25, 2017, Boston Globe read, "MassHealth Can Breathe a Sigh of Relief - for Now." Had the American Health Care Act passed, it would have changed Medicaid as we know it. This bill introduced a dramatic change in funding, from matching grants to assist states in paying for the actual cost of providing Medicaid, and Medicaid waiver services to a per capita formula. The per capita reimbursement will completely undermine the Medicaid program and transfer the burden of providing adequate health services and community-based support services to the states and eventually to the individuals who need these services, through possible copays or loss of eligibility entirely.

Up until now, Medicaid has been an entitlement benefit funded with matching state and federal funds. If you met the financial and program criteria, you received the services and the cost of providing those services was split between the state and the federal governments. Under a Medicaid Cap funding formula, the federal government sets a limit on how much it reimburses the state for each person served. Rather than pay a percentage of the actual costs, it would pay a fixed amount. If the actual cost of care is higher than that, the state will have to make up the difference or, in the alternative, decrease services. Nicole Jorwic from The Arc said, "Let there be no doubt about it - caps mean cuts. This will lead to cuts in services and longer waiting lists." We will continue

to be at risk of losing home- and community-based services, coverage for mental health services, personal care assistance, rehabilitative services, prescription drug assistance, respite care, and other benefits if the AHCA is reintroduced and replaces the ACA.

Other less known attacks on the gains we have made over the past 46 years include a little-known bill, the Protecting Access to Care Act of 2017. This proposed legislation (2017 H.R.1215) limits damages to \$250,000 for non-economic loss due to medical malpractice. This cap of \$250,000 applies even if a parent loses a child, an elder is harmed in a nursing home or a family breadwinner is permanently disabled due to reckless medical care. Patient safety has decreased in those states, such as Texas, that have passed similar legislation. This cap on damages gives medical providers a license to be careless, knowing that their liability is greatly reduced.

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In the area of education, we have a Secretary of Education, Betsy DeVos, who appears to have little awareness of the Individuals with Disabilities Education Act (IDEA). During her confirmation hearings she indicated she would leave it up to the states to determine if they were meeting the needs of disabled students. More recently, Ms. DeVos made statements critical of the free breakfast and lunch programs offered in the public schools to children who meet the low-income guidelines for these programs. These programs were implemented in the early '70s due to overwhelming research that showed that without proper nutrition, students could not learn. These programs play an integral role in providing children with an appropriate education. The nutrition programs offered in the schools were fought for by The Arc as a result of the studies that show 70% of students previously labeled as intellectually disabled (ID) were suffering from malnutrition. When children received adequate nutrition, their so-called ID disappeared, lowering the number of students labeled as ID. Such programs have been an economical way of reducing the costs of special education. We can pay pennies for nutritional subsidies or thousands for remedial care. We need to get the message across to the GOP that this is a program that should be embraced rather than eliminated or cut back.

It is too soon to know what cuts await SSI, SSDI, Medicare, the Supplemental Nutrition Assistance Program (SNAP, aka food stamps), Fuel Assistance, and Section 8 and other HUD housing programs that enable persons with disabilities to live in the community. We know President Trump plans to decrease taxes for the wealthy, and there are few other areas of the budget

where the GOP can make cuts to offset the loss of tax income. Advocates anticipate attempts to make dramatic cuts in these programs.

"It is very important for advocates to speak up and tell their stories." Now is the time for action. These proposed changes are not a done deal.



It is important that families partner with The Arc and other disability groups to educate our legislators about the important role Medicaid and other benefits play in our lives and those of our children. If we do not take a strong stand to fend off proposed cuts to services, it may be too late for an entire generation of persons with disabilities. According to Nicole Jorwic from The Arc, "It is very important for advocates to speak up and tell their stories." Now is the time for action. These proposed changes are not a done deal. I hope this article inspires you to become involved with The Arc's Disability Advocacy Network and to fight to hold on to those benefits for which we have fought so hard. Go to The Arc's website, thearc.org, to see how you can become more involved in the fight to hold on to our lifeline. **FT**

MEET THE SPECIAL NEEDS AND ELDER LAW ATTORNEYS

Fletcher Tilton attorneys are available for group presentations on a variety of topics pertaining to special needs planning, transition planning and elder law issues. There is no charge for parent advisory boards, parent organizations and nonprofit organizations. We prefer groups to be no smaller than 20 people.

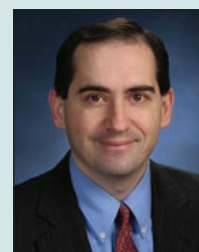
For more information on group presentations or to set one up for your school or organization, contact Christina Lamb at clamb@fletchertilton.com.



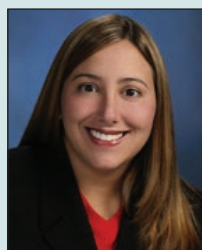
Frederick Misilo
Practice Group Leader



Meredith Greene
Special Needs



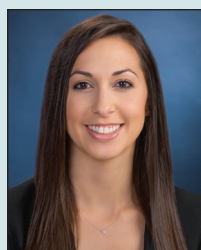
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Special Needs



Marisa Higgins
Family Law



John McNicholas
Elder Law



Lauren Miller
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Geoffrey Misilo
Special Needs



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Theresa Varnet
Special Needs

UPCOMING SEMINARS

YOU'RE INVITED
Educational Breakfast Seminars

BEST PRACTICES IN ASSET PROTECTION & ESTATE PLANNING FOR YOUR FAMILY

Who should attend:
People over 60, and adults with aging family members.

What you can expect to learn:

- Basic overview of how the Medicaid (MassHealth) system works and how to work within it.
- How Massachusetts Estate Taxes are calculated and what can be done to minimize that tax.
- Planning with retirement funds (IRAs, 401(k) and other tax-qualified plans).
- Asset protection involving transferring assets - options that will have the least impact on your lifestyle.
- The basic estate planning documents that every adult should have: A Will, Power of Attorney, Health Care Proxy and HIPAA Release.
- The various types of trusts and which ones are appropriate to achieve your goals.

Seating is limited. Please register early at:
FletcherTilton.com/seminars-events
to reserve your place.

TUESDAY, MAY 2
Renaissance Patriot Place Hotel
Foxborough, MA

TUESDAY, MAY 23
Courtyard Marriott, Milford, MA

THURSDAY, JUNE 8
Primavera Restaurant, Millis, MA

Pick a date/location that is most convenient for you.
Please arrive at 8:30 a.m. for check-in and breakfast.
The presentation starts at 9:00 a.m. and will last approximately 2 hrs.
Seminar fee of \$25 per person includes hot breakfast buffet.
Questions? Email reply@fletcherilton.com or call 508.459.8095

THIS EDUCATIONAL SEMINAR IS PRESENTED BY:

John McNicholas, Esq. Mary Proulx, Esq.

Fletcher Tilton PC
Attorneys at law

LEGAL PLANNING FOR FAMILY MEMBERS WITH DISABILITIES

May 11, 4:30 - 7:00 p.m.

Island Youth Collaborative, Oak Bluffs, MA
Speaker: Frederick Misilo, Esq.

BEST PRACTICES IN ASSET PROTECTION AND ESTATE PLANNING FOR YOUR FAMILY

May 23, 8:30 - 11:30 a.m.

Courtyard Marriott, Milford, MA
Speakers: John McNicholas, Esq. & Mary Proulx, Esq.

BEST PRACTICES IN ASSET PROTECTION AND ESTATE PLANNING FOR YOUR FAMILY

June 8, 8:30 - 11:30 a.m.

Primavera Restaurant, Millis, MA
Speakers: John McNicholas, Esq. & Mary Proulx, Esq.

BEYOND SPECIAL NEEDS TRUSTS - PROVIDING FOR YOUR CHILD'S FUTURE NEEDS

April 22, 2:00-4:30 p.m.

Hilton Head Public Library,
Hilton Head, SC
Speaker: Theresa Varnet, Esq.

ADVOCATING FOR YOUR CLIENT'S RIGHT TO REMAIN IN THE COMMUNITY

April 28, 3:00-4:00 p.m.

NAELA Conference,
Marriott Copley, Boston, MA
Speaker: Theresa Varnet, Esq.

BEST PRACTICES IN ASSET PROTECTION AND ESTATE PLANNING FOR YOUR FAMILY

May 2, 8:30 - 11:30 a.m.

Renaissance Patriot Place Hotel,
Foxborough, MA
Speakers: John McNicholas Esq. & Mary Proulx, Esq.

FALL SEMINARS - SAVE THE DATE

ESTATE PLANNING FOR MASSACHUSETTS-FLORIDA SNOWBIRDS

September 19, Hyannis, MA

Speaker: Frederick Misilo, Esq.

SPECIAL NEEDS PLANNING FOR CFPs & CPAs

October 3, Framingham, MA

Speakers: Frederick Misilo, Esq. & Theresa Varnet, Esq.

HOW TO ADMINISTER A SPECIAL NEEDS TRUST

October 28, Marlborough, MA

Speakers: Frederick Misilo, Esq. , Theresa Varnet, Esq. & David Guarino, Esq.

Register for these and more online at
FletcherTilton.com/seminars-events

The Fletcher Tilton Special Needs Practice Group provides legal counseling, advocacy and innovative solutions on behalf of individuals with differing abilities and their families. We strive to serve as a reliable, trusted advisor committed to providing excellent service to our clients throughout their lifetime. We recognize the importance of treating our clients with respect and dignity.

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