SUMMER 2014

HELPING HAND

An Update from the Special Needs Practice Group

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A Commitment that Lasts a Lifetime

SUMMER 2014

SPECIAL NEEDS PRACTICE GROUP

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Transition to Adult Services

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Guardianship and Alternatives

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PRACTICE GROUP MESSAGE

By Frederick M. Misilo, Jr.

New laws affecting the interests of individuals with intellectual and developmental disabilities have been signed into law by Massachusetts Governor Deval Patrick this summer. A thorough update of these new laws will be presented at our Annual Special Needs Briefing for Certified Financial Planners being held on Tuesday, September 16th, 2014 and at the annual Special Needs Trust Administration Seminar on Saturday, November 8th, 2014. Here is a snap shot of these far reaching new laws:

1. ***Real Lives Legislation***: This legislation expands the ability of people to decide where and with whom they want to live and work by allowing them to self-direct their DDS (Dept. of Developmental Services) service dollars. The statute makes person-centered policies and procedures an inherent feature thereby supporting of self-determination. The individual or family will be able use public funds more flexibly within certain guidelines and can be assisted by facilitators and/or fiscal intermediaries to develop services.

2. ***Omnibus Autism Legislation***: This legislation reestablishes the Autism Commission as a permanent and autonomous entity, staff included. The bill creates two specific areas directed to study - the long-term needs for housing and employment - in addition to the areas of study and recommendations previously covered by the commission. Most importantly, DDS is required to include in its eligibility guidelines the federal definition of developmental disability for people on the autism spectrum and those with Prader-Willi. This is a significant change as it will assist many whose functional needs are not reflected by their IQ score and who are now denied access to DDS services. Health insurance coverage for medically necessary treatments to Mass Health recipients for ABA behavior therapy and both dedicated and non-dedicated augmentative communication devices will now be funded for those through age 21 years. Also, public school special education teachers now have the option to attain an "Autism Endorsement" certification - a concentration in autism coursework and training to be leaders within their school communities. In addition, the legislation authorizes a tax-free savings account patterned after the federal ABLE ACT legislation – to allow all disabled families to save in a 529-style plan for expenses including education, housing, and any other needed supports and services. This section will not take effect immediately due to the need for federal participation.

3. ***National Criminal Background Check Legislation***: This legislation requires that anyone who has potential for unsupervised contact with a client of DDS submit their fingerprints to be checked against a national criminal database. The law covers DDS employees as well as DDS providers. Previously, DDS and DDS provider agencies were only required to conduct statewide criminal history checks, but no national check, which meant that an applicant's criminal record outside of MA was not previously identified. Special recognition goes to Attorney Geoff Misilo of FT's Special Needs Planning and Advocacy Group for his pro bono work on this legislation.

4. ***Uniform Guardianship Jurisdiction Legislation***: This legislation enacts the Uniform Guardianship Jurisdiction Act into Massachusetts law. It will allow individual guardianships to transfer to other states that have enacted the legislation. Under previous law, relocation to another state required a new guardianship petition in that new state. Instead, this new law allows a transfer of jurisdiction so the guardianship is actually transferred to the new state without the requirement of a new petition and subsequent juridical action. This will result in easier moves across state lines for loved ones under guardianship. **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.*

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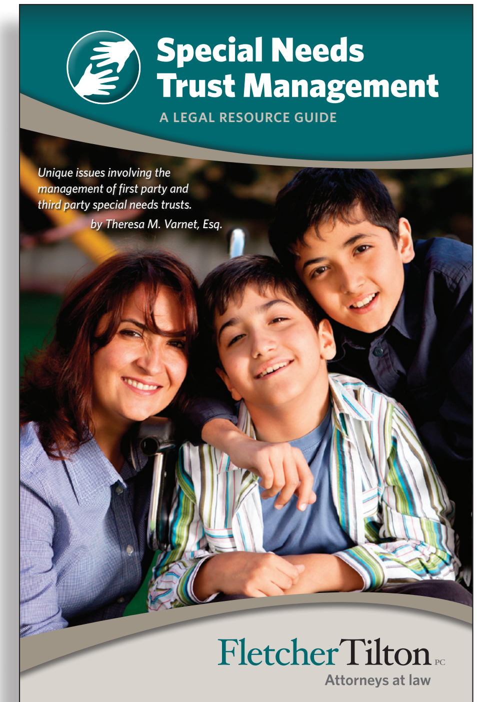

NOW AVAILABLE, OUR RESOURCE GUIDE TO SPECIAL NEEDS TRUST MANAGEMENT

Written by Theresa M. Varnet, this guide concentrates on the unique trust management issues involved with the management of first party and third party special needs trusts.

In addition to basic trust management principles, trustees of special needs trusts need to be informed of their unique distribution rules, tax rules and funding rules. It is critical that the trustee of a special needs trust understand how important it is to properly manage a special needs trust so that the assets held in the trust and/or the manner in which distributions are made do not cause the trust to be a countable asset or the distribution to be deemed as countable income. If distributions are not made correctly, the trustee could naively sabotage an otherwise well written special needs trust.

Making this topic even more difficult is the fact that distributions from a special needs trust are treated differently depending on the type of government benefit received. Distributions may also be treated differently by various public programs if the trust is a self funded (first party) special needs trust rather than a third party funded special needs trust. This resource guide will assist the trustee in managing the special needs trust in a manner which avoids naively sabotaging the intent of an otherwise well written special needs trust to preserve needs based benefits. If you'd like to request a copy, please email us at *solutions@fletchertilton.com.* It's also available on our website at *www.fletchertilton.com.* **FT**

Cut out as a reminder to save this important date.

Save the Date

How to Administer a Special Needs Trust

Saturday, November 8, 2014
8:00 a.m. - 1:30 p.m.
Courtyard Marriott, Marlborough, MA

A Seminar for Parents, Trustees and Successor Trustees of Special Needs Trusts and OBRA '93 Trusts

REGISTER ONLINE TODAY OR LOOK FOR OUR MAILER COMING EARLY THIS FALL

PRESENTED BY THE SPECIAL NEEDS PRACTICE GROUP AT

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Send an email to *solutions@fletchertilton.com* with the subject "SNP Newsletter" and we'll add you to our list!

UPCOMING SEMINARS

SPECIAL NEEDS BRIEFING FOR MA CERTIFIED FINANCIAL PLANNERS

September 16, 2014

Speakers: Frederick M. Misilo, Jr., Esq.,
Theresa M. Varnet, Esq.
David Guarino, Esq.

Location: Sheraton Hotel, Framingham

LIFELONG PLANNING FOR PERSONS WITH SPECIAL NEEDS

September 17, 2014

Speaker: Theresa M. Varnet, Esq.

Location: Seaport Inn & Marina, Fairhaven, MA

BRIDGEWELL - LIVING LONGER: AGING WITH INTELLECTUAL DISABILITY CONFERENCE

September 18, 2014

Fletcher Tilton Special Needs Practice Group

Location: Sheraton Hotel, Framingham, MA

TRANSITION FROM SCHOOL TO ADULT LIFE: CREATING A VISION FOR THE FUTURE

September 20, 2014

Speaker: Frederick M. Misilo, Jr., Esq.

Location: Hogan Center, College of the Holy Cross
Worcester, MA

SHARED LIVING CONFERENCE

September 30, 2014

Speaker: Geoffrey M. Misilo, Esq.

Location: Hogan Center, College of the Holy Cross
Worcester, MA

ANNUAL SPECIAL NEEDS TRUST SEMINAR

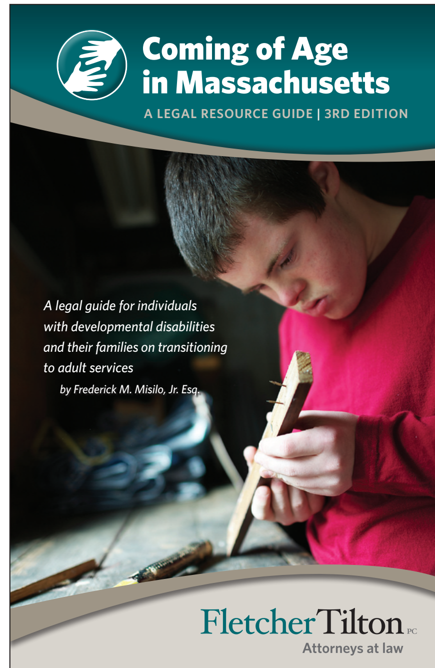
November 8, 2014

Fletcher Tilton Special Needs Practice Group

Location: Courtyard Marriott, Marlborough, MA

To arrange a seminar by a representative of the Elder Law and Special Needs Practice Group, contact Fred Misilo at 508-459-8059 or fmisilo@fletchertilton.com.

ALSO AVAILABLE, OUR RESOURCE GUIDE TO COMING OF AGE IN MASSACHUSETTS



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 the transition is imminent.

In this resource guide, you will find information about the legal consequences of turning 18 years old; important benefits from the state and federal governments; options to assist in personal, financial and health care decision making and the importance of special needs planning by parents and other family members.

It has been seven years since the first edition of Coming of Age was published. Since that time, we've worked with hundreds of families and individuals who have transitioned from the world of special education to the adult services world. In doing so, we have witnessed great triumphs where "all the pieces fit," including obtaining needed government resources; great collaboration among interested parties including transition coordinators, parents, individuals and planners; and appropriate legal planning as described in this resource guide. Unfortunately, this hasn't been the case in all instances. Government resources are still far from predictable and sufficient. Transition planning is too often treated as an afterthought. The level of frustration and anxiety is high as the age of emancipation, age 18, approaches as well as when the loss of special education entitlement looms large at age 22.

This third edition will provide some degree of direction and support to individuals and their families as they approach these two milestone dates. If you'd like to request a copy of the latest edition, please email us at *solutions@fletchertilton.com.* It's also available on our website at *www.fletchertilton.com.* **FT**

Coming again this fall – be sure to tell your financial planner:

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SPECIAL NEEDS BRIEFING *for* CERTIFIED FINANCIAL PLANNERS

Tuesday, September 16, 2014

Sheraton Hotel & Conference Center

Framingham, MA

8:00 A.M. - 11:30 A.M.

Register online Today!

One out of ten families have a need for special needs planning. This training will provide planners with practical information to share with clients.

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VISIT US TODAY TO FIND OUT MORE!

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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