

Guardianship and Guardian Advocacy vs. Alternatives

Kole J. Long, Esq.

1

Guardianship Introduction

- Process to protect and exercise the legal rights of individuals who are unable to exercise them.
 - Adult
 - Minor
- Only necessary when there are no “less restrictive alternatives.”

2

Guardianship Law

- Constitution (Florida and USA)
- Florida Statutes
 - F.S. § 744
 - F.S. § 393
- Florida Rules of Guardianship
- Local Court Rules
- Case Law

3

Key Terms

- Guardian (Limited vs. Plenary)
- Guardian Advocate
- Guardian Ad-Litem
- Alleged Incapacitated Person (“AIP”)
- Incapacity (or Incapacitated Person)
- Attorney (Petitioner, Guardian, AIP)
- Court Monitor
- Ward

4

Who can Serve as Guardian?

- Any person who is fit, proper and qualified to act whether or not they are related to the ward.
- However, the Court gives preference to the following (F.S. § 744.312):
 - Related by blood or marriage.
 - Relevant educational, professional, or business experience.
 - Capacity to manage financial resources involved.
 - Ability to meet the requirements by law and needs of the individual.

5

Who can Serve as Guardian?

- The Court can also consider:
 - Wishes of incapacitated person
 - Declaration of Preneed Guardian
 - Preference of a Minor, if over the age of 14
 - Person designated in a Will in which the Ward is the beneficiary
 - Wishes of the next of kin, when ward cannot express a preference

6

Guardianship Process

- Petition and Application for Appointment
- Petition to Determine Incapacity
- Appointment and Review by Examining Committee
- Credit and Criminal Investigation
- Hearing
- Order Determining Incapacity
- Order of Appointment
- Letters of Guardianship
- Education requirements
- Oath and Bond

7

Guardianship Process

- Initial Guardianship Report
- Verified Inventory of Assets
- Initial Guardianship Plan
- Annual Reporting
- Final Reporting
- Discharge

8

Rights Retained by the Ward

- Review of annual reports
- Review of the need for continuing restriction of rights
- Restore capacity at earliest possible time
- Treated with dignity and respect and protected against abuse and neglect
- Qualified Guardian
- Independence (when possible)
- Proper education
- Prudent management of property
- Necessary services
- Free from discrimination
- Access to the courts
- Access to counsel
- Receive visitors (family)
- Notice of all proceedings
- Privacy

9

Rights that can be removed but not delegated

- To marry
- To vote
- To personally apply for government benefits
- To have a driver's license
- To travel
- To seek and retain employment

10

Rights that may be delegated

- To contract
- To sue and defend lawsuits
- To apply for government benefits
- To manage property or make any gift or disposition of property
- To determine residence
- To consent to medical treatment
- To make decisions about social environment or other social aspects of life

11

Powers and Duties of Guardian

- Only exercise rights that have been removed and delegated
- Act within scope granted by court and law
- Act in good faith
- Act in best interest of ward
- Use special skills or expertise
- File initial report
- File annual report
- Implement guardianship plan
- If more than one guardian, consult with other guardian
- Protect and preserve property of ward
- Use prudent person standard
- Take possession of property and income of ward
- For professional guardian: visit the ward once a quarter

12

Powers and Duties of Guardian

- Consider desires of ward
- Allow ward to maintain contact with family
- Not restrict physical liberty
- Assist ward in regaining capacity
- Notify court if ward regains capacity
- Make provision for medical care of ward

13

Powers that require court approval

- | | |
|---|---------------------------------------|
| • Perform (or refuse) contracts | • Borrow money |
| • Execute power as P.R. or Trustee | • Negotiate debts |
| • Make extraordinary repairs to buildings | • Prosecute or defend claims |
| • Subdivide or develop land | • Sell real or personal property |
| • Enter into lease | • Continue business |
| • Abandon property | • Purchase real property |
| • Pay calls, assessments of securities | • Exercise option in insurance policy |
| | • Pay funeral expenses |

14

Powers that require court approval

- Make gift of ward's property
- Create or amend trust
- Disclaim an interest in an Estate
- Enter into contracts
- As to a minor, pay expenses for support, health, maintenance, and education, if parents are alive
- Guardian's fees

15

Powers that do not require court approval

- | | |
|--|--|
| • Retain assets | • Deposits into bank accounts |
| • Receipt of assets | • Pay incidental expenses of admin of estate |
| • Vote stocks or other securities | • Sell or exercise stock |
| • Insure assets against loss | • When reasonably necessary, employ persons |
| • Pay taxes or assessments | • Pay those people |
| • Pay valid encumbrances | • Provide confidential information about ward relating to investigation under this chapter |
| • Pay reasonable living expenses of the ward | |

16

Withholding of Life Prolonging Procedures of Ward

- Has the ward previously made an advance directive?
 - Remains in effect after incapacity unless court revokes or modifies.
- What if there is no Health care surrogate or living will documents in place?
 - If guardian holds authority to consent to medical treatment, they are authorized to make health care decisions for the ward.
 - The guardian proceeds as medical proxy for ward pursuant to F.S. § 765
 - Does not cover DNRs

17

Guardian Advocacy

- F.S. § 393.12 Appointment of a Guardian Advocate
 - Guardian Advocate may be appointed by court without the determination of incapacity
 - For person with developmental disability
- F.S. § 393.063(12) Developmental Disability
 - Intellectual disability, Cerebral Palsy, Autism, Spina Bifida, Down syndrome, Phelan-McDermid syndrome, or Prader-Willi
 - Each is defined in F.S. § 393.063

18

Guardian Advocacy

- F.S. § 393.12(10) Powers and Duties of Guardian Advocate
 - Same powers, duties, and responsibilities required under chapter 744
 - May not have to file an annual accounting, if court determines the Ward receives only income from Social Security benefits and the Guardian Advocate is Representative Payee

19

Similarities/Differences for Guardian Advocacy to Guardianship

- Powers, duties and responsibilities are the same
- Accountings can be waived
- In the past, education requirements have been waived
- Procedural process is the same, for the most part
 - Must have proof of DD before age 18
 - No examining committee
 - No determination of incapacity

20

Similarities/Differences for Guardian Advocacy to Guardianship

- Attorney
 - F.S. § 393.12(2)(b) A person who is being considered for appointment or is appointed as a guardian advocate need not be represented by an attorney unless required by the court or if the guardian advocate is delegated any rights regarding property other than the right to be the representative payee for government benefits.

21

Guardianship/Guardian Advocacy

- Necessary when there are no alternatives (less restrictive). To make decisions for someone who cannot
- Court Oversight
- Rights are removed
- Rights are delegated

22

Alternatives to Guardianship

- Why?
- What?
- How?
- When?

23

Why would we want alternatives to Guardianship?

- To avoid a guardianship
- Why would we want to avoid guardianship?
 - Expense
 - Court Costs
 - Attorney Fees
 - Guardian Fees
 - Time
 - Annual reporting
 - Getting access to Wards Property/Decision making
 - Loss of independence of the Ward
 - Removal of rights

24

What are the (less restrictive) alternatives to Guardianship?

- Representative Payee/Fiduciary
- Trust
- Durable Power of Attorney
- Joint Bank Accounts
- Direct Deposit and Electronic Bill pay
- Advance Health Care Directives
- Health Care Proxy

25

Representative Payee

- Social Security payment management for beneficiary who is unable to manage their own SS/SSI payment.
 - Minor Children or Legally Incompetent Adult
- Representative is appointed to receive the payment on beneficiary's behalf
- Looks for family or friends who can serve, if not, there are authorized organizations who can serve
- Payee must open a separate bank account to receive benefits on behalf of the beneficiary
- SSA does not recognize Power of Attorney authority

26

Representative Payee

- Application to be appointed Representative Payee is done at the local SSA office, in person
- Form SSA-11
- Only a qualified organizational payee can collect a fee for serving as Representative Payee

27

Representative Payee Duties

- Determine the beneficiary's needs and use his or her payments to meet those needs;
- Save any money left after meeting the beneficiary's current needs in an interest bearing account or savings bonds for the beneficiary's future needs;
- Report any changes or events which could affect the beneficiary's eligibility for payments;
- Keep records of all payments received and how you spent and saved them;
- Provide all records of how payments are spent or saved to SSA upon request;
- Report to SSA any changes that would affect your performance or your continuing as payee;
- Complete reports accounting for your use of payments, as required;
- Return to SSA any payments to which the beneficiary is not entitled; and
- Return to SSA any payments saved when you are no longer the representative payee for the beneficiary.

28

Trust

- F.S. § 736
- A fiduciary relationship where one party (settlor) gives another party (trustee) the right to hold property or assets for the benefit of a third party (beneficiary)
- Typically memorialized in a written trust document
 - Can be oral
- Trustee can manage/use the assets for the benefit of the beneficiary
- Revocable or Irrevocable

29

Trust

- Trust is created when the settlor has capacity to do so
- Needs to be funded
- If Settlor/Beneficiary becomes incapacitated, trustee is still able to manage trust assets
 - Settlor can name successor Trustees in case initial Trustee is unable to serve
- Trustee is bound by terms of the Trust
 - Distribution guidelines
- Trust can hold different/unique types of assets
- Can help avoid probate upon death

30

Durable Power of Attorney

- F.S. § 709
- One party (principal) appoints another party (agent) to make decision on their behalf.
 - Agent is limited to the powers granted in the document
- Is “Durable” if it contains the words “This durable power of attorney is not terminated by subsequent incapacity of the principal except as provided in chapter 709, Florida Statutes,” or similar words that show the principal’s intent that the authority conferred is exercisable notwithstanding the principal’s subsequent incapacity.
- No more springing powers in Florida

31

Durable Power of Attorney

- Must be done when Principal has capacity to execute
- Must have two witnesses and notarized
- Can be limited or broad
- Agent must be natural person age 18 or older or a financial institution with Trust powers

32

Durable Power of Attorney

- Super Powers require specific enumeration
 - Create an inter vivos trust
 - Amend, modify, revoke or terminate trust, but only if trust allows agent to do so
 - Make a gift
 - Create or change rights of survivorship
 - Create or change a beneficiary designation
 - Waive right to be beneficiary of a joint and survivor annuity, including a survivor benefit under a retirement plan
 - Disclaim property and powers of appointment

33

Joint Bank Account

- Two or more people are able to access money in the account
 - Ownership vs. Signing privileges
- Done through the financial institution
- If one of the owners become incapacitated, the other can still access and use the money
- Can avoid probate

34

Direct Deposit and Electronic Bill Pay

- Direct Deposits are established with the payment source
- Bill pay is done through the bank or through payee
- Allows for the in and out flow of money from a bank account with out individual direction from the owner
- Can allow for the payment of expenses without the need for a guardian or power of attorney

35

Advance Health Care Directives

- F.S. 765
- Witnessed written or oral statement in which instructions are given by a principal's or in which the principal's desires are expressed concerning any aspect of the principal's health care or health information
- Health Care Surrogate, Living Will, Anatomical Gift
- Provides an agent authority to make health care decisions on behalf of the principal

36

Advance Health Care Directives

- Designation of Health Care Surrogate
 - Designates a surrogate to make health care decisions
 - Signed in the presence of two witnesses
 - Surrogate cannot be witness
 - At least one witness should not be spouse or blood relative
 - Exact copy must be provided to the surrogate
 - Can designate that authority begins immediately or upon incapacity

37

Advance Health Care Directives

- Living Will
 - Expresses principal's instructions regarding life prolonging procedures
 - Responsibility of principal to provide the document to health care providers
 - Same execution requirements of Health Care Surrogate

38

Health Care Proxy

- F.S. § 765
- Absence of a Health Care Directive
- Health care decisions may be made by the following in descending priority:
 - Judicially appointed guardian
 - Spouse
 - Adult child or majority of adult children who are available
 - Parent
 - Adult sibling
 - Adult relative
 - A close friend
 - Clinical social worker

39

Pros/Cons of Guardianship

Pros

- Judicial Appointment via Court Order
- Judicial oversight
- Bond
- Rights are removed
- Rights are delegated
- Rights can be restored
- Can protect against exploitation or other harm

Cons

- Can be adversarial
- Rights are removed
- Expense

40

Pros/Cons of Alternatives

Pros

- Principal decides who is in charge
- Low cost relative to guardianship
- Rights are not removed
- Avoids judicial oversight
- Duty to act in best interest

Cons

- Can be revoked
- Rights are not removed
- Does not protect from exploitation
- No judicial oversight
- No Bond

41

Thank you!

42

PLANNING FOR AN ILL OR DISABLED SPOUSE

Presented by
Charles F. Robinson
Florida Board Certified Elder Law Attorney
Special Needs Lawyers, PA

43

**ELDER AND DISABILITY LAW
FORUM 10-30-19**

44

A BRIEF HISTORY OF ELECTIVE SHARE LAW

45

DOWER UNTIL 1975

- **One third in fee simple of real property owned by deceased spouse**
- **One third of personal property**
- **Free from all debts and all administrative expenses**

46

DEADLINE TO ELECT

- Within 7 months of notice to creditors publication or
- Within 70 days after final adjudication of any estate dispute.

47

EXAMPLE

- \$300,000 estate
- \$200,000 debts and claims
- Dower \$100,000
- After claims remaining beneficiaries nothing

48

1975 PROBATE CODE

- Dower to Elective Share
- From 1/3 of gross to 30% of net probate

49

NET ESTATE

- Probate minus all debts, claims and expenses

50

POST 1975 ELECTIVE SHARE

- \$300,000 estate
- \$200,000 debts and claims
- \$100,000 estate
- Elective share $.30 \times \$100,000 = \$30,000$

51

EASY TO AVOID ELECTIVE SHARE

- Living Trust
- Joint/POD/ITF accounts
- What is 30% of zero

52

FRIEDBERG V. SUNBANK/ MIAMI N.A. 1-18-1994

- Milton and Nancy married at time of Milton's death in 1992
- Total estate over \$7 million
- Probate Estate \$247,386
- Balance in living trust

53

DOWER TO ELECTIVE SHARE IMPACT

- From 1/3 of gross to 30% of net probate $\$247,386 \times .3 = \$74,315.8$
- Dower would have been \$2,310,000

54

COURT FOOTNOTE

- Urged RPPTL, Tax Law, Family Law Sections of The Florida Bar to draft legislation to fix the inequitable situation so obvious in the Friedberg case.

55

1975 PROBATE CODE

- Dower to Elective Share
- From 1/3 of gross to 30% of net probate $\$247,386 \times .3 = \$74,315.8$
- Dower would have been \$2,310,000

56

SPOUSE WITH SPECIAL NEEDS- AUGMENTED ESTATE STATUTE

- Qualifying Special Needs Trust Section 732.2025(8)
- Ill or Disabled Surviving Spouse
- Must Have Court Approval
- Trustees have discretion over both Income and Principal Distributions

57

CURRENT ELECTIVE SHARE LAW

- In effect 10-1-99
- For decedents dying after October 1, 2001

58

ELECTIVE ESTATE AMOUNT

- Probate
- Joint property
- Property in trust
- Total elective estate x.30
- Private Benjamin issue

59

TWO NEW TRUSTS DEFINED

- Qualifying Special Needs Trust
- Elective Share Trust

60

QUALIFYING SPECIAL NEEDS TRUST



- Trustees
 - Majority Must Be Eligible Trustees
 - Ineligible Trustees
 - Decedent's Grandparents
 - Descendant's of Decedent's Grandparents
 - Who are not also descendants of the surviving spouse
 - Income and Principal at Trustee Discretion

61

**TONY BLAIR, W BUSH
KISSINGER**

62

QUALIFYING SPECIAL NEEDS TRUST

- Only Spouse Can Direct Distribution Other Than to Spouse
- Full credit toward Elective Share Amount
- Court Approval and Ineligible Trustee Rules When Trust Assets Exceed \$100,000



63

QSNT

- All children of the current marriage eligible trustees
- All trust assets count 100% toward 30%
- Court approval required if trust assets exceed \$100,000
- Spouse's children can't be majority trustees

64

ELECTIVE SHARE TRUST

- Blended families

65

ELECTIVE SHARE TRUST

- No restriction on choice of trustee
- Must pay lower of actual income or 3% asset value
- Spouse has sole right to assign Principal or Income to anyone other than spouse

66

ELECTIVE SHARE TRUST CONT

- No limit on who can be trustee
- Trust assets count 80% toward Elective Share

67

WHEN TO USE ELECTIVE SHARE TRUST

- Well spouse wants to choose her/his children over ill spouse's family in blended family
- Costs
 - Must fund over 30%
 - Must pay out income

68

HOW MEDICAID FITS INTO THE ELECTIVE SHARE CHOICES

- Trust must come from probate estate to qualify for Medicaid
- Irrevocable trust from spouse to spouse ineffective for Medicaid purposes although valid for Elective Share

69

PLANNING TIP- FORK IN THE ROAD LIVING TRUST

- If ill spouse dies first, keep on trustin'
- If well spouse (grantor) dies first, on to Probate



70

PLANNING CRITICAL WHEN SPOUSE ILL OR DISABLED

- All assets joint/simple wills
 - Guardianship or
 - Wild spending
 - Easy target for bad actors
- Two Elephants in the room
 - How to pay for long term care
 - How to protect spouse if I die first

71

ADVANCED MEDICAID STRATEGIES WITH SPECIAL NEEDS TRUSTS - 2019

Travis D. Finchum
Special Needs Lawyers, PA



SPECIAL NEEDS  LAWYERS, PA

72

**What Do We Mean by “Special Needs Trust” –
refer to Appendix B for a detailed overview of
these Trusts**

- Under Age 65 Disabled Trust (d (4) (A)) – U65 Trust
- Pooled Trust (d (4) (C)) – Pooled Trust
- Qualified Income Trust (d (4) (B)) – QIT
Third Party Special Needs Trust

SPECIAL NEEDS  LAWYERS, PA

73

The Resources

Appendix A

- **Federal Statutes**
- **Federal Regulations**
- **Federal Policy – POMS, CMS Medicaid Manual**
- **State Statutes – Florida Statutes**
- **State Regulations – Florida Administrative Code**
- **State Policy – DCF Program Policy Manual and Memorandums**

SPECIAL NEEDS  LAWYERS, PA

74

The Topics

- **Using SNT's as Over Income Trusts**
- **Using SNT's for Other Medicaid Programs**
- **SNT's for Half a Loaf Strategies**
- **Paying Personal Services Contracts out of a SNT**
- **Transfers to Sole Benefit SNT's**
- **Miscellaneous Uses of SNT's**
 - **Assigning Alimony and Child Support**
 - **Irrevocable income only trusts**
 - **MSA's (Medicare Set Aside Accounts)**

SPECIAL NEEDS  LAWYERS, PA

75

Using SNT's as Over Income Trusts

- **Can an U65 or Pooled Trust be a QIT**
 - **CMS Medicaid Manual says yes**
 - **Florida DCF Program Policy Manual says yes**

SPECIAL NEEDS  LAWYERS, PA

76

SSI-Related Programs - Financial Eligibility Standards: July 1, 2019						
PROGRAMS & TYPES OF COVERAGE	INCOME		ASSETS		MAINTENANCE NEEDS STANDARDS / OTHER	
	Individual	Couple	Individual	Couple		
PROGRAMS MANAGED BY SOCIAL SECURITY (eff 01/01/2019)						
*Supplemental Security Income (SSI) Federal Benefit Rate (FBR) Cash payment of SSI from SSA, Includes Full Medicaid	\$771 (FBR)	\$1,157 (FBR)	\$2,000	\$3,000		
*Low Income Subsidy (LIS) or Extra Help (150% FPL) Helps with costs associated with Medicare Prescription Drug Plans Automatic with Full Medicaid or Medicare Savings Programs (OMB, SLMB, QIDP). Income asset limits change annually	\$1,562	\$2,115	\$14,390	\$28,720		
PROGRAMS FOR PEOPLE 65+ OR DISABLED (Community Medicaid Programs) (eff 04/01/2019)					Parent to Disabled Child Deeming: Parent Allocation = \$771 Disability Substantial Gainful Activity (SGA) = \$1,220 non-blind \$2,040 blind	
*MEDS-AD (MM 3) (100% FPL) Full Community Medicaid	\$916	\$1,241				
*Medically Needy (No Income Limit) Medically Needy Income Level (MNIL) Full Community Medicaid when Share of Cost is met	Subtract \$188 from gross income	Subtract \$241 from gross income	\$5,000	\$6,000		
PROGRAMS FOR PEOPLE WITH MEDICARE (Medicare Savings Programs/Buy-In) (eff 04/01/2019)					* A \$20 General Income Disregard applies to these programs. \$20 will be subtracted from the <u>total of all income</u> not based on need before comparing the income to the income limit. In addition, \$65 is subtracted from the <u>total of all earned income</u> , and 1/2 the remainder is subtracted before comparing the income to the income limit.	
*QMB (100% FPL) Pays Medicare A & B premiums, coinsurance & deductibles only	\$1,041	\$1,410				
*SLMB (20% FPL) Pays for Medicare Part B premium only (PBMG)	\$1,249	\$1,691	\$7,730	\$11,600		
*QIDP (155% FPL) PBMG	\$1,406	\$1,903				
*Working Disabled (200% FPL) Qualified Disabled Working Individuals (QDWI) Program Pays for Medicare Part A only. Must have lost SSDI due to employment	\$2,082	\$2,820	\$5,000	\$6,000		
PROGRAMS BASED ON INSTITUTIONAL POLICY – Patient Responsibility & Income Trusts may apply (eff 01/01/2019)					PERSONAL NEEDS ALLOWANCE	
Institutional Care Program (ICP) Pays Nursing Home (NH) room, board & care Pays Medicare A & B premiums, coinsurance & deductibles					Individual	Couple
					\$130	\$260
Hospice Pays Hospice services related to terminal illness Pays Medicare A & B premiums, coinsurance & deductibles					Community \$1,841 NH \$138	Community \$1,416 NH \$260
					PACE / SBMAC LTC in ALF: RADY \$208 / \$416 PACE / SBMAC LTC at home: \$2,313 / \$4,626 PACE in NH: \$138 / \$260 Budget: \$2,313 / \$4,626	
Home and Community Based Services (HCBS) or Waivers Pays Medicare A & B premiums, coinsurance & deductibles					Spousal Impoverishment: (eff 7/1/2019) MM/MNA = \$2,114 Excess shelter = \$834 Standard Utility Allowance = \$369 Maximum Income Allowance = \$2,161 Community Spouse Resource Allowance = \$126,420 Family Members Allowance with Spouse = (MM/MNA-income) divided by 3 Dependents with no Spouse = CNS Standard Home Equity Interest Limit = \$885,000	
STATE FUNDED PROGRAMS (eff 01/01/2019)						
OPTIONAL STATE SUPPLEMENT (OSS) REDESIGN Maximum Payment = \$78.48 single / \$156.99 Couple Assists with paying room & board at alternate living facilities					\$54 Provider rate \$795.40	\$108 Provider rate \$1,590.80
PROTECTED OSS Maximum Payment = \$239 single / \$478 Couple Assists with paying room & board at alternate living facilities					\$54 Provider rate \$956	\$108 Provider rate \$1,912
HOME CARE FOR DISABLED ADULTS (HCDA) Pays small stipend to caregivers of disabled						
	\$2,313	\$4,626				

Appendix A-9

77

SSI-RELATED MEDICAID PROGRAMS

FACT SHEET



The SSI-Related Medicaid Programs Fact Sheets provides only brief information. It is not a legally binding document and is not to be relied upon for specific information on recipient eligibility or service limitations. Specific policy is contained in statute or administrative rule. Policy staff in the Department of Children and Families prepares the fact sheet. The Department is responsible for eligibility policy for SSI-Related Programs (public assistance for the aged, blind or disabled). The fact sheets are located on the Internet at the following web address: <http://www.dcf.state.fl.us/programs/access/docs/ssi/factsheet.pdf>

Note: The financial Eligibility standards generally change during January and April of each year.

September 2018

78

Using SNT's as Over Income Trusts

1640.0576.09 Treatment of Qualified Disabled Trusts (MSSI, SFP)

After the trust is approved by the Circuit Legal Counsel as meeting the criteria of a qualified trust for the disabled **under age 65** or **a pooled trust**, apply the following policies to determine the individual's eligibility for Medicaid benefits:

1. Do not consider the corpus of the exempt trust as an asset to the individual beginning with the month the assets are placed into an executed qualified disabled trust or pooled trust;
2. Do not consider the funding of a qualified disabled or pooled trust as a transfer of assets or income subject to imposition of a penalty period, provided the trust purchases items and services at fair market value for the sole benefit of the disabled individual (refer to 1640.0609.06);

79

Using SNT's as Over Income Trusts

1640.0576.09 Treatment of Qualified Disabled Trusts (MSSI, SFP)

3. Do not count any income deposited into the trust as income to the individual when determining the individual's eligibility;
4. Do not consider disbursements from the trust to third parties as income to the individual;
5. Do not consider any income earned by the trust which remains in the trust as income to the individual;
6. Count any payments made directly to the individual as income to the individual;
7. Count all income placed into the trust (along with countable income outside the trust) when computing patient responsibility. Standard spousal impoverishment policies apply.

80

Using SNT's as Over Income Trusts

- **Can an U65 or Pooled Trust be a QIT**
- **Why Use a U65 or Pooled Instead of a QIT**
 - **Professional Trustees**
 - **Limitations of QIT**
 - **Flexibility of other SNT's**
 - **Economics – Service charges/difficult banks**
 - **Age 65 Issue with Pooled Trusts**

81

Using SNT's as Over Income Trusts

- **Limitations of QIT**

1840.0110 Income Trusts (MSSI)

The following policy **applies only to** the Institutionalized Care Program (ICP), institutionalized MEDS-AD, institutionalized Hospice, Home and Community Based Services (HCBS) and PACE. It does not apply to Community Hospice.

82

Using SNT's as Over Income Trusts

- **Limitations of QIT**

No such Limitations in 1640.0576.09 so applies to all MSSSI programs. What are they?

83

Using SNT's as Over Income Trusts

0240.0102 Program Overview (MSSI, SFP)

SSI-Related Medicaid provides medical assistance as defined by policy (see below) to certain groups of individuals. Although Medicaid is run by the state, the state is given federal matching funds for the program and must follow certain federal requirements in order to receive these funds.

SSI-Related Medicaid Programs include:

84

Using SNT's as Over Income Trusts

1. SSI Eligible Individuals (SSI-DA),
2. Institutional Care Program (ICP),
3. Eligible Individuals under SOBRA - Aged or Disabled (MEDS-AD),
4. Protected Medicaid (PM),
5. Medically Needy (MN),
6. Emergency Medicaid for Noncitizens (EMN),
7. Hospice,
8. Home and Community Based Services (HCBS),
9. Modified Project Aids Care (MPAC),
10. SSI-Related Programs for Refugees (RAP),
11. Qualified Medicare Beneficiaries (QMB),
12. Working Disabled (WD),
13. Special Low Income Medicare Beneficiary (SLMB),
14. Qualifying Individuals I (QI1), and
15. Program of All Inclusive Care for the Elderly (PACE)

SPECIAL NEEDS  LAWYERS, PA

85

SSI-Related Programs - Financial Eligibility Standards: July 1, 2019						
PROGRAMS & TYPES OF COVERAGE	INCOME		ASSETS		MAINTENANCE NEEDS STANDARDS / OTHER	
	Individual	Couple	Individual	Couple		
PROGRAMS MANAGED BY SOCIAL SECURITY (eff 01/01/2019)						
*Supplemental Security Income (SSI) Federal Benefit Rate (FBR) Cash payment of SSI from SSA. Includes Full Medicaid.	\$771 (FBR)	\$1,157 (FBR)	\$2,000	\$3,000	Disregards: *Standard Disregard = \$20 *Earned Income Disregard = \$65 + 1/2 Student Earned Income Disregard = \$1,870 monthly, maximum \$7,550 for calendar year	
*Low Income Subsidy (LIS) or Extra Help (150% FPL) Helps with costs associated with Medicare Prescription Drug Plans Automatic with full Medicaid or Medicare Savings Programs (OMB, SLMB, QI1). Income asset limits change annually.	\$1,562	\$2,115	\$14,390	\$28,720	Ineligible Spouse Deeming: 1/2 FBR = \$386 Child Allocation = \$386/child (Difference between the couple and single FBR)	
PROGRAMS FOR PEOPLE 65+ OR DISABLED (Community Medicaid Programs) (eff 04/01/2019)						
*MEDS-AD (MM S) (88% FPL) Full Community Medicaid	\$916	\$1,241			Parent to Disabled Child Deeming: Parent Allocation = \$771	
*Medically Needy (No Income Limit) Medically Needy Income Level (MNIL) Full Community Medicaid when Share of Cost is met	Subtract \$188 from gross income	Subtract \$241 from gross income	\$5,000	\$6,000	Disability Substantial Gainful Activity (SGA) = \$1,220 non-blind \$2,040 blind	
PROGRAMS FOR PEOPLE WITH MEDICARE (Medicare Savings Programs/Buy-In) (eff 04/01/2019)						
*QMB (100% FPL) Pays Medicare A & B premiums, coinsurance & deductibles only	\$1,041	\$1,410			Medicare Part B Premium = \$136, Part A free for most or \$437	
*SLMB (120% FPL) Pays for Medicare Part B premium only (PBMO)	\$1,249	\$1,691	\$7,730	\$11,600	* A \$20 General Income Disregard applies to these programs. \$20 will be subtracted from the total of all income, not based on need before comparing the income to the income limit. In addition, \$65 is subtracted from the total of all earned income, and 1/2 the remainder is subtracted before comparing the income to the income limit.	
*QI1 (150% FPL) PBMO	\$1,406	\$1,903				
*Working Disabled (200% FPL) Qualified Disabled Working Individuals (QDW) Program Pays for Medicare Part B only. Must have lost SSDI due to employment.	\$2,082	\$2,820	\$5,000	\$6,000		
PROGRAMS BASED ON INSTITUTIONAL POLICY – Patient Responsibility & Income Trusts may apply (eff 01/01/2019)						
Institutional Care Program (ICP) Pays Nursing Home (NH) room, board & care Pays Medicare A & B premiums, coinsurance & deductibles	\$2,313 (MEDS-AD Institutional Income Limit \$916)	\$4,626 (MEDS-AD Institutional Income Limit (\$1241)	\$2,000 (MEDS-AD AD eligible)	\$3,000 (\$6,000 if MEDS-AD eligible)	PERSONAL NEEDS ALLOWANCE	
					Individual	Couple
Hospice Pays Hospice services related to terminal illness Pays Medicare A & B premiums, coinsurance & deductibles					\$130	\$260
Home and Community Based Services (HCBS) or Waivers Pays Medicare A & B premiums, coinsurance & deductibles					Community \$1,041 NH \$130	Community \$1,410 NH \$260
					PACE / SBMAC-LTC in ALF: RADA \$208 / \$416 PACE in NH: \$130 / \$260 Budget: \$2,313 / \$4,626	
STATE FUNDED PROGRAMS (eff 01/01/2019)						
OPTIONAL STATE SUPPLEMENT (OSS) REDESIGN Maximum Payment = \$78.48 single / \$154.88 Couple Assists with paying room & board at alternate living facilities	\$849.40	\$1,698.80			\$54 Provider rate \$295.40	\$108 Provider rate \$1,590.80
PROTECTED OSS Maximum Payment = \$239 single / \$478 Couple Assists with paying room & board at alternate living facilities	\$956	\$1,912	\$2,000	\$3,000	\$54 Provider rate \$956	\$108 Provider rate \$1,912
HOME CARE FOR DISABLED ADULTS (HCDA) Pays small stipend to caregivers of disabled	\$2,313	\$4,626				
						SSI Individual \$30 only in NH = \$100 (PSS) Transfer of Asset Disolver = \$9,485 (eff 7/1/2019) Community Hospice Allowances: Spouse only = FBR (\$771) Spouse + Dependents or Dependents Only = ONS Standard Spousal impoverishment: (eff 7/1/2019): Medicaid = \$2,114 Excess shelter = \$834 Standard Utility Allowance = \$359 Maximum Income Allowance = \$3,161 Community Spouse Resource Allowance = \$126,420 Family Members Allowance with Spouse = (MMNH+income) divided by 3 Dependents with no Spouse = ONS Standard Home Equity Interest Limit = \$85,000

Appendix A-9

86

Using SNT's as Over Income Trusts

- Limitations of QIT

1840.0110 Income Trusts (MSSI)

Funds deposited into a qualified income trust are not subject to transfer penalties **provided** they are paid out of the trust **for medical care for the individual**.

When such payments are made, the individual is considered to have received fair compensation for income placed in the trust account up to the amount paid for the medical care and to the extent medical care costs are at fair market value.

87

Using SNT's as Over Income Trusts and for other Medicaid Programs

- **Deposit excess Income or Assets**
- **Opens up programs to pay Medicare Premiums and other Medical Expenses**

88

Opens up programs to pay Medicare Premiums and other Medical Expenses

QMB – Pays Medicare premiums, co-insurance and deductibles:

Part A Deductible - Hospital	\$ 1,364.00
Part B Premiums - \$135.50 x 12	\$ 1,626.00
Part B Deductible	\$ 185.00
Skilled Nursing days 21-100 @ \$170.50/day	\$13,640.00
Hospital days 61-90 @ \$341/day	<u>\$10,230.00</u>
	\$27,045.00

SLMB and QI1 pays Medicare premiums: \$135.50/mo x 12 = \$1,626

89

SNT's for Half a Loaf Strategies

- **The Traditional Half a Loaf**
- **Using a SNT for Half a Loaf**
 - **Money is Protected**
 - **More Room for Error**
 - **Economics**
 - **Easier to Explain**

90

Paying Personal Services Contracts out of a SNT

- **Immediate Eligibility**
- **Scrutiny by DCF**
- **Ability to Pay Over Time**
- **Necessary Tax Reporting**

91

Transfers to Sole Benefit SNT's

- **Spouses**
- **Blind or Disabled Children**
- **Any Person Disabled Under
Age 65**
- **What is "Sole Benefit?"**

92

Miscellaneous Uses of SNT's

- **Alimony Payments**
- **Child Support**
- **Income Only Trusts**
- **MSA's**

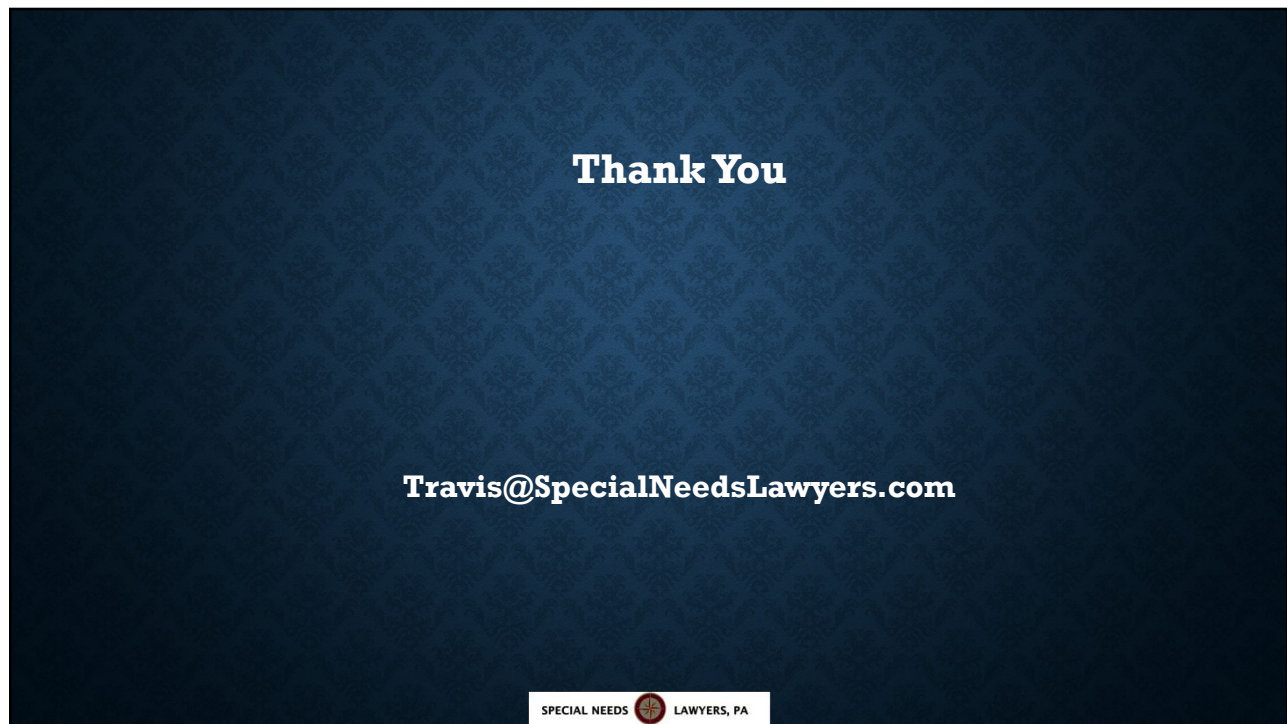
93

More Creative Uses?

**Email me with your Creative Ideas, we'll use
them for Part IV of this Presentation.**

Travis@SpecialNeedsLawyers.com

94



95



96

MEDICARE OPEN ENROLLMENT

2020 ANNUAL ENROLLMENT PERIOD DATES
 Dates and deadlines you need to know

		
OCT. 15, 2019	DEC. 7, 2019	JAN. 1, 2020
ANNUAL ENROLLMENT PERIOD BEGINS	ANNUAL ENROLLMENT PERIOD ENDS	FIRST DATE COVERAGE CAN START
This is the first day you can enroll for 2020 health coverage.	This is the last day you can enroll for 2020 health coverage.	Even if you enroll in December 2019, your new Medicare plan won't go into effect until Jan. 1, 2020.

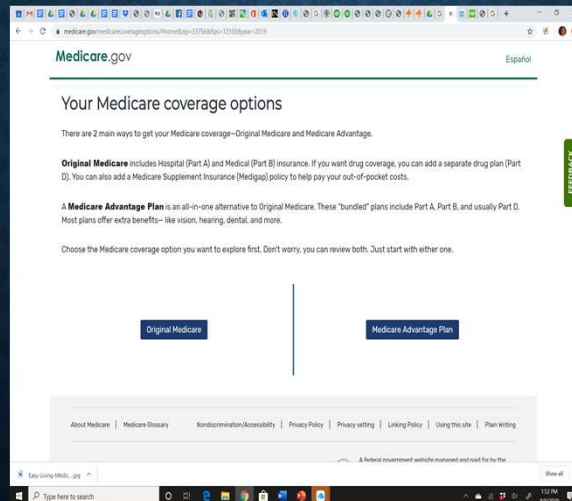
97

MEDICARE OPEN ENROLLMENT

- Utilize the Medicare Plan Finder at www.Medicare.gov
- Medicare A&B, Part D for Meds, Supplemental (No Plan C or F available) or Medicare Advantage Plan Part C
- Only individuals eligible prior to 2020 can purchase or re-enroll in Plan C or F.

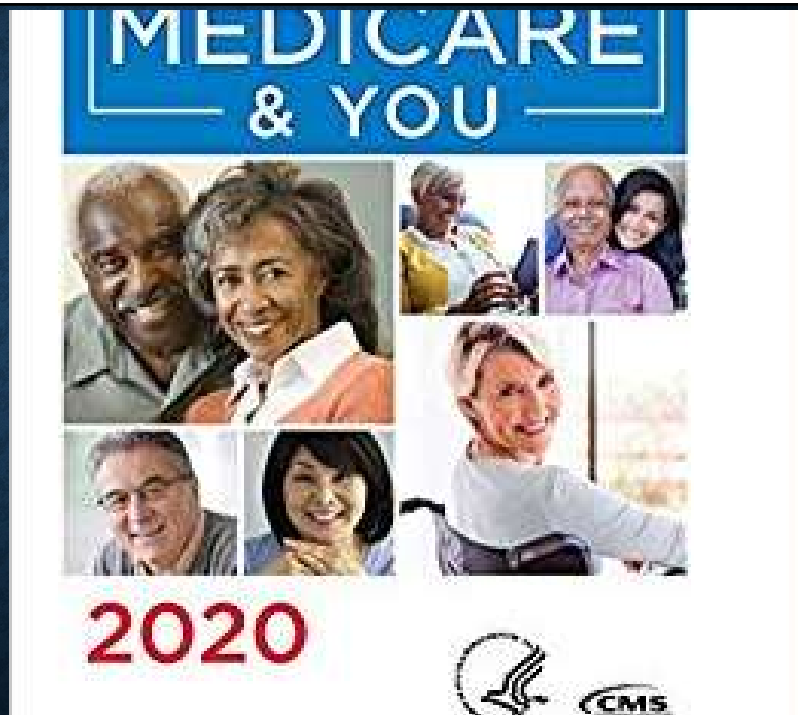
98

ORIGINAL MEDICARE OR MEDICARE ADVANTAGE PLAN



99

MEDICARE TIP #1 READ THE BOOK



100

MEDICARE TIP #2 COMPLETE MEDICARE AUTHORIZATION FORM

1-800-MEDICARE Authorization to Disclose Personal Health Information
Use this form if you want 1-800-MEDICARE to give your personal health information to someone other than you.

1. **Print Name** _____ **Medicare Number** _____ **Date of Birth** _____
(First and last name of the person with Medicare) (Exactly as shown on the Medicare Card) (mm/dd/yyyy)

2. Medicare will only disclose the personal health information you want disclosed.

2A. Check only one box below to tell Medicare the specific personal health information you want disclosed:

☐ Limited Information (go to question 2b)

☐ Any Information (go to question 3)

2B. Complete only if you selected "limited information". Check all that apply:

☐ Information about your Medicare eligibility

☐ Information about your Medicare claims

☐ Information about plan enrollment (e.g. drug or MA Plan)

☐ Information about premium payments

☐ Other Specific Information (please write below, for example, payment information): _____

3. Check only one box below indicating how long Medicare can use this authorization to disclose your personal health information (subject to applicable law—for example, your State may limit how long Medicare may give out your personal health information):

☐ Disclose my personal health information indefinitely

☐ Disclose my personal health information for a specified period only beginning: (mm/dd/yyyy) _____ and ending: (mm/dd/yyyy) _____

101

Medicare.gov [Live Chat](#) [FAQ](#) [Español](#) [Log In](#)

New Medicare cards are in the mail!
[Learn more](#)

MyMedicare Secure Sign In
Enter your User name and Password and sign in to MyMedicare.gov to continue.

User name:

Password:

By accessing this system, you agree to our Terms and Conditions. [Read more](#)

[Sign In](#)

[Trouble Signing In?](#)

New To MyMedicare?
Register to get personalized information and use Medicare's Blue Button feature.

[Create an Account](#)

MyMedicare.gov Help

- Get MyMedicare help
- Online Services/Web confidentiality agreement

[FEEDBACK](#)

MEDICARE TIP #3 REGISTER AT MYMEDICARE.GOV (INTEGRATES WITH TRICARE PATIENT PORTAL AND VA WEBSITE)

102

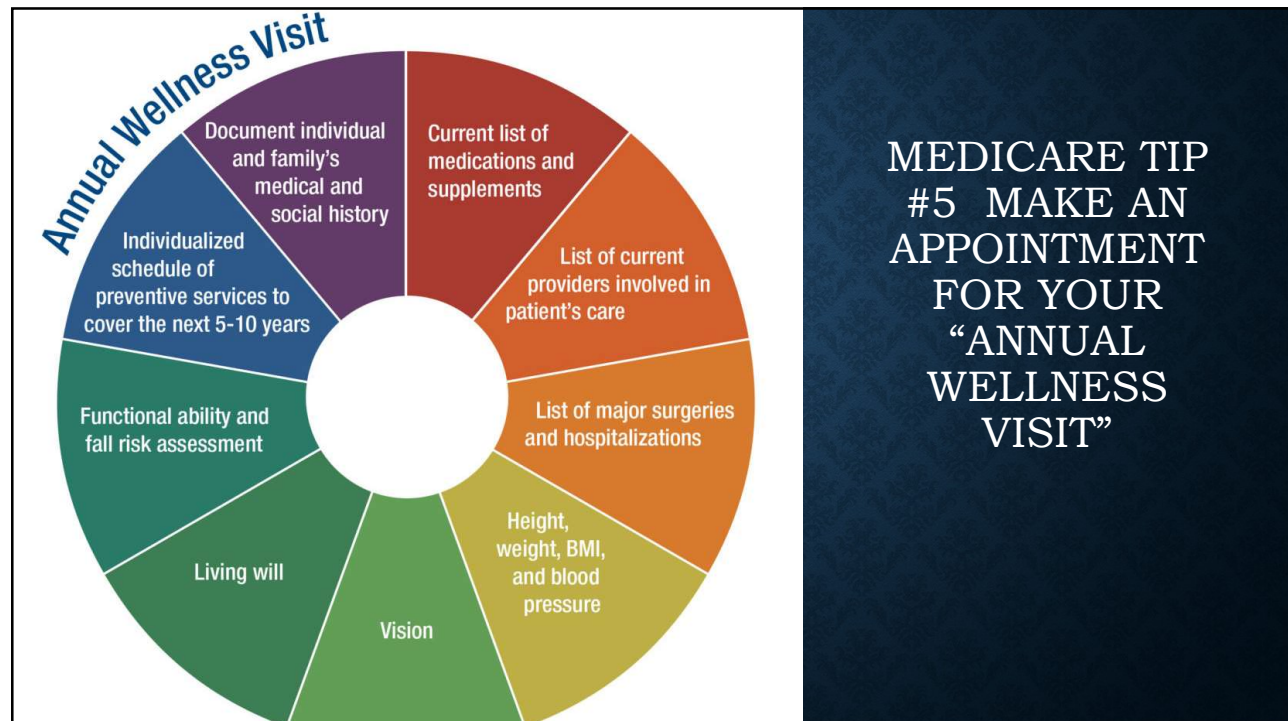
MEDICARE TIP #4 DOWNLOAD “WHAT’S COVERED APP”

Want to know
What’s Covered?

Find out on your
smartphone.

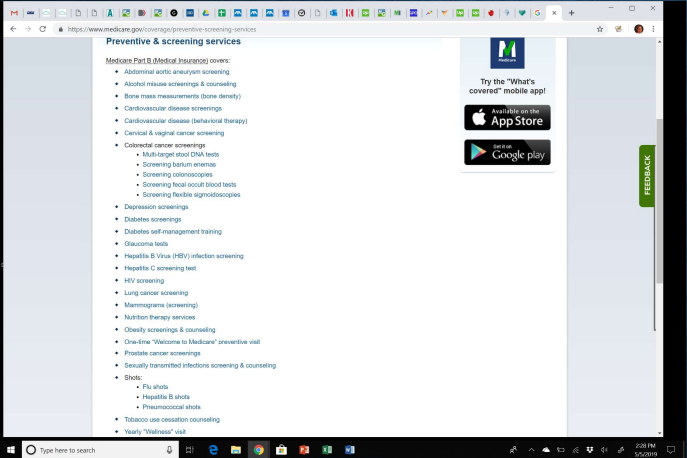


103



**MEDICARE TIP
#5 MAKE AN
APPOINTMENT
FOR YOUR
“ANNUAL
WELLNESS
VISIT”**

104



MEDICARE TIP #6 PREVENTIVE SERVICES

105

	Doctor Accepts Assignment	Doctor Doesn't Accept Assignment	Doctor Has Opted Out of Medicare
Doctor's bill	\$120	\$120	\$120
Medicare-approved amount	\$100	\$100	Not applicable
Medicare pays	\$80 (80% of Medicare-approved amount)	\$80 (80% of Medicare-approved amount)	\$0
You pay	\$20 (20% of Medicare-approved amount)	\$20 (20% of Medicare-approved amount) + up to \$15 (15% of Medicare-approved amount)	\$120
You pay in total	\$20	Up to \$35	\$120

MEDICARE TIP #7 MEDICARE ASSIGNMENT

CHOOSE HEALTHCARE PROVIDERS THAT ACCEPT MEDICARE ASSIGNMENT

106



107



108

**MEDICARE TIP #10
MEDICARE REHABILITATION
AND
ELIGIBILITY**

- Understand hospital Admission and Observation status.
- Know your Advantage Plan and what facilities they make available to their insureds.
- Utilize Medicare's Nursing Home Compare website.
- Request copy of your Assessment and individualized Care Plan.



109

**MEDICAID QMB
QUALIFIED MEDICARE BENEFICIARY**

**Gross Income
Limit - \$1,041
Single, \$1,410
Couple**

**Countable Asset
Limit - \$7,730
Single, \$11,600
Couple**

**Pays Medicare A
& B Premiums,
coinsurance (co-
payments) and
deductibles**

110

MEDICAID SLMB SPECIFIED LOW-INCOME BENEFICIARY

**Gross Income
Limit - \$1,249
Single, \$1,691
Married**

**Countable Asset
Limit - \$7,730
Single, \$11,600
Married**

**Pays Medicare
Part B Premium**

111

MEDICAID QI1 QUALIFIED INDIVIDUAL PROGRAM

**Gross Income
Limit - \$1,406
Single, \$1,930
Married**

**Countable Asset
Limit - \$7,730
Single, \$11,600
Married**

**Helps pay for Part
B Premiums Only
and this program
only funded for "x"
amount each year**

112

QMB, SLBM, QI1

If eligible for the QMB, SLMB, or QI program you automatically qualify for the Medicare Part D Extra Help program (or Low-Income Subsidy).



The Medicare Part D Extra Help program will help you pay your Medicare Part D prescription drug plan premiums, provide lower co-payments on your medications, and remove the Donut Hole or Coverage Gap from your prescription drug coverage.

113

FIND MY BENEFITS BENEFITSCHECKUP.ORG

BenefitsCheckUp. National Council on Aging

Disaster Relief If you live in an area that was affected by a hurricane, wildfire, or any other disaster, you may be able to get help. [Find Help](#)

Home Find My Benefits About Us Sponsors Resources

Find My Benefits

Let's start with some basics.

What is the zip code for the area you would like to get help?

Enter Zip Code [Let's Get Started](#)

[Continue](#)

[Learn a Message](#)

114

**THANK YOU
SO MUCH!**



Linda Chamberlain
Special Needs Lawyers, PA



727.443.7898