

An Informal Glossary of Selected Entitlements, Guardianship and Estate Planning Terms¹

I. Government Benefit Programs

Supplemental Security Income:

A federally administered income-benefits program for persons of any age who are disabled, aged, or blind, and who meet certain income and asset restrictions. For persons under age 18 and living at home, the assets and income of the parent(s) are also taken into account. If a person is eligible for SSI, he or she is also automatically eligible for Medicaid, called MassHealth in Massachusetts. A person is considered disabled for purposes of this program if he or she is unable to engage in any substantial gainful activity by reason of a serious mental or physical handicap or combination of handicaps which is expected to last for a continuous period of at least twelve months. Basic benefit levels for 2013, based on living arrangement, are as follows: \$824.39 for a disabled individual living alone; \$740.40 for an individual in a “shared living expense” placement (such as a group home); \$560.92 for a disabled individual living in someone else’s household (such as the home of parents or another family member); and \$1,164 for a disabled individual in assisted living.²

Social Security Disability Benefits:

A federal program providing monthly income benefits and **Medicare** (after two years of eligibility for income benefits) for persons age eighteen and older who (1) have worked in “covered” employment (where FICA taxes are withheld; most important exceptions are state and local government employment in many states, including Massachusetts, (2) are disabled, and (3) became disabled with a certain period after stopping work. The disability standard is the same as for Supplemental Security Income. A person is eligible for Disability Benefits and Medicare regardless of his or her assets and income from other sources.

A special program called **Childhood Disability Benefits** may provide both income benefits and Medicare to adult disabled individuals who have never worked substantially. To be eligible, the individual: (1) must be over age 22; (2)

¹ By Donald N. Freedman. This paper was prepared to provide general background information. It is not intended to be and should not be taken as legal advice. For that, consult with a knowledgeable attorney in your state who is knowledgeable about estate planning and elder and disability law, and who is thoroughly familiar with all the circumstances of your particular case. Updated May 1, 2013.

² The benefit levels listed is the total of the Federal SSI benefit distributed by the Social Security Administration and a state payment, under the Massachusetts State Supplement Program (SSP) distributed by the state Department of Transitional Assistance. Prior to April 1, 2012, the benefits were received in a single check from the Social Security Administration. Now, separate checks are issued.

must have become disabled prior to age 22 and have remained continuously disabled since; and (3) must have or have had a parent who was covered by Social Security and who has become disabled, has retired or has died.

MassHealth/Medicaid:

Medicaid, or **MassHealth** as the program is called in Massachusetts, is a medical assistance program for persons who are eligible for **Supplemental Security Income (SSI)** or who are 65 or older or disabled and whose assets and income fall within specified limits that vary depending primarily on age, marital status, family size and work status. (No asset limit applies to most MassHealth recipients age 18 – 65 not in a nursing home or receiving services under a home- and community-based waiver (such as is the case with most residents of group residences for people with developmental disabilities). While the focus of MassHealth is on medical, hospital and nursing home services, MassHealth also provides (1) a broad range of home and community based residential and non-residential programs; (2) work- and life-training services through the Day Habilitation program; (3) non-medical personal support through the Personal Care Attendant program; (4) psychiatric day hospital programs for persons with mental illness; (5) assisted living services through the Group Adult Foster Care program, (6) private in-patient psychiatric hospital services for persons under age 21 or over age 65, as well as other programs which may be very important for persons with severe disabilities.

CommonHealth:

CommonHealth is a specific MassHealth program for certain disabled individuals whose income is too high for “regular” MassHealth Standard. Disabled persons age 18 – 65 who work at least 40 hours per month are eligible, regardless of their income. Also, non-working disabled persons may be eligible if out-of-pocket medical expenses are high enough in relation to their income to meet a one-time six-month deductible. In either case, eligible persons may have to pay a monthly premium, on a sliding scale.

Section 8 and other rental-housing subsidy programs:

The federal “**Section 8**” voucher program is the best known but really only one of a number of federal and state rental subsidy programs for people of low income, including elders and persons with disabilities. These programs are administered by local public housing authorities, and by regional non-profit agencies under contract with the state. (In Boston and 26 surrounding communities, the regional entity is the Metropolitan Boston Housing Partnership.) Programs similar to Section 8 include the tenant-based MRVP program, and the state Alternative Housing Voucher Program (AVHP) (only for non-elder persons with disabilities).

An individual with a voucher may live in any apartment owned by a landlord who has agreed to participate in the program. The tenant pays no more than 30% of his income as rent; and the housing authority pays the landlord the difference, up to an agree level. A person with a voucher may use it in any community in the Commonwealth. (In fact, a Section 8 voucher can be used

anywhere in the United States.) There is currently a freeze on the issuance of any new vouchers. Vouchers now become available only if a holder dies or leaves the program. Therefore, there is a waiting list for benefits, so early application should be considered.

Section 8 Home Ownership Program:

This is a new program administered by local public housing authorities. The program is optional with public housing authorities, and only some participate. It can be used to purchase single-family homes, condominiums and co-ops. Assistance is paid to the homeowner and the lender to the extent necessary to cap the homeowner's major housing expenses (mortgage, mortgage insurance, utilities, maintenance repairs, etc) at a level not greater than 30% of the homeowner's income.

Home Modification Loan Program:

The Home Modification Loan Program provides low- and no-interest loans (of up to \$25,000) to modify the primary and permanent homes of elders, and of children and adults with disabilities, as necessary to accommodate the resident's functional limitations. Typical modifications include installation of ramps and lifts, widening of doorways, and alteration of kitchens and bathrooms. The program is administered through regional provider agencies under contract with the Massachusetts Rehabilitation Commission. (In Boston and 26 surrounding communities, the agency is the Metropolitan Boston Housing Partnership.)

Medicare:

This is the federal health insurance program for people on Social Security Disability (including Childhood Disability Benefits) for at least two years, and for people receiving Social Security retirement benefits. Medicare covers basic hospital and medical services, subject to co-payments and deductibles. Perhaps the most significant gaps are in coverage for medication and for more than very limited nursing home services.

Medicare Prescription Drug Program:

Recipients of Medicare now have the option of enrolling with private insurance companies for drug coverage. The program is also referred to as "Medicare Part D." While each participating insurance company must meet certain federal standards, the details of coverage vary widely, as to **premiums** (the basic cost of coverage), **deductibles** (the amount that must be paid each year before benefits are paid), **co-insurance** requirements (the amount that must be paid for each prescription, and perhaps most importantly, **formularies** (the drugs covered by the particular plan).

Medi-gap Insurance:

This popular type of health insurance is intended to supplement or fill in at least some of the gaps in benefits provided under Medicare. The gap filling, however,

is generally limited to meeting obligations for co-payments and deductibles, and generally does not pay for services not covered by Medicare, or increase the duration of services covered by Medicare. Generally speaking, Medi-gap policies do not provide for long-term nursing home care. The “Medex” policies, offered by Blue Cross-Blue Shield in Massachusetts, are examples of medi-gap health insurance, as are group policies offered by AARP.

II. Guardianship Terms

Guardian:

A person appointed by the court with authority to make medical and other personal decisions on behalf of an individual who is determined to be an “incapacitated person.”

Incapacitated Person:

An incapacitated person one “who for reasons other than advanced age or minority, has a clinically diagnosed condition that results in an inability to receive and evaluate information or make or communicate decisions to such an extent that the individual lacks the ability to meet essential requirements for physical health, safety, or self-care, even with appropriate technological assistance.”

Conservator:

A person appointed by the court with authority to make decisions about the property, financial and business affairs on behalf of an individual who is determined to be “a person to be protected.”

Person to be protected:

“the person is unable to manage property and business affairs effectively because of a clinically diagnosed impairment in the ability to receive and evaluate information or make or communicate decisions, even with the use of appropriate technological assistance, or because the individual is detained or otherwise unable to return to the United States; and the person has property that will be wasted or dissipated unless management is provided or money is needed for the support, care, and welfare of the person or those entitled to the person’s support and that protection is necessary or desirable to obtain or provide money.”

III. Estate Planning Terms

Trusts:

A trust is a legal arrangement whereby one person (called the “Donor” or “Settlor”) transfers property to another person (called the “Trustee”) who manages the property on the basis of written directions (called the “Trust Instrument”) for the benefit of a specified person or persons (called the “Trust

Beneficiaries).” There are many kinds of trusts, and literally infinite variations within general categories that make trusts often appropriate for highly individualized planning for a person with disabilities. Trusts may be “testamentary” or “living.” A **testamentary trust** is described and is funded and goes into effect as a part of a Will. A **living trust** (also called an *inter vivos* trust) is established to take effect during the lifetime of the person (usually called the “settlor”) who establishes it. Living trusts may be **funded** during lifetime, or initially **unfunded**, with the plan being to have them funded as a result of a “**pour-over**” from a Will or proceeds of life insurance. Living trusts may also be revocable or irrevocable. A **revocable trust** can ordinarily be amended at any time. An **irrevocable trust** ordinarily cannot be amended or revoked. The use of self-funded trusts is severely limited by law in the Medicaid and Supplemental Security Income context, but several are permitted and are often considered for use in special circumstances. These include income-only trusts, and special needs and pooled trusts for persons with disabilities.

Wills:

A **will** is the legal declaration of a person’s wishes as to the disposition of his or her assets, to take effect on death. Wills may be simple or complex, but must to be valid meet certain formal requirements regarding signing and witnesses. The person making the will is called the **testator**, or testatrix if a woman. The person named to arrange approval of the will and to settle the testator’s affairs at death is called the **executor** (executrix). People with young or disabled children may also nominate a **guardian**, although actual appointment will require a formal petition to the probate court.

Health Care Proxy:

Under Massachusetts state law, any competent person at least 18 years of age can authorize another person to make medical treatment decisions on his or her behalf in the event of incapacity, including the authority to decide about withholding or withdrawing life-sustaining treatment – even artificially administered food and water. The instrument signed by the individual is called a **health care proxy**. The person who makes the appointment is called the **principal**. The person who is to have the authority to make the decisions in the event of incapacity is the **health care agent**. There are legal formalities that must be observed for the proxy to be valid and to be put into effect. The proxy can be quite general, but can also reflect specific limitations that the individual considers appropriate, for example, relating to the administration of anti-psychotic medications.

Living Will (or Medical Directive)

This is not a “will” at all, but a statement by an individual intended to give guidance to relatives and physicians in the event that the individual becomes terminally ill or is otherwise severely incapacitated, and cannot make or communicate decisions regarding the prolonging of life, such as through mechanical life-supports or feeding tubes. In Massachusetts, **Living Wills** are not legally binding, but may serve as evidence of the individual’s wishes, and help

family and medical providers to make decisions in such circumstances. Some lawyers prefer the name **Medical Directives**.

Power of Attorney:

A power of attorney is a written statement by an individual that another person is authorized to perform certain actions in his place. The person who is given the authority to act is called the **attorney-in-fact** or **agent**. The person who appoints the attorney-in-fact is called the **principal**. Powers of attorney are usually legal and financial in nature, but need not be limited in this way. Powers of attorney may be very broad or very limited, and should be individually drawn to reflect the individual's particular circumstances, needs, wishes and relationship with the attorney-in-fact. For example, the power may or may not extend to the making of gifts to family members, the sale of real estate, or the creating or funding of trusts.

A person cannot execute a power of attorney if incompetent (that is, incapable of understanding the general nature of the power of attorney or his or her relationship to the attorney-in-fact). A power of attorney will have no legal effect if the person giving the power later becomes incompetent, unless the power is described in the instrument as "**durable**," or contains a statement that it is intended to remain in effect despite the incompetence of the principal. A power may also be made conditional, that is, not to go into effect until some event occurs, such as serious illness or mental incapacity. This is called a **springing power of attorney**.

Representative Payee:

A **representative payee** is a person or agency named by the Social Security Administration (or certain other federal agencies) to receive and manage benefits (e.g., SSI, Disability, Old Age, Survivor's) on behalf of a person who the agency determines to be incapable of handling the benefits himself or herself. The agency makes its decision on the basis of its own administrative procedure, and has no relation to the appointment of a guardian by a court. The authority of the representative payee extends only to the administration of benefits from the agency involved.

Beneficiary Designations:

As important as the Will is to an estate plan, the Will deals only with "probate assets" such as real estate, investment accounts and other assets that are held in individual name at death. The Will does not ordinarily affect the distribution of retirement accounts, pensions and life insurance. The after-death distribution of these assets is ordinarily governed by **beneficiary designations**, formal written instructions on file with the insurance company, employer or financial institution with custody of the account. Also, some financial institutions have similar arrangements by which a written instruction can be used to facilitate the distribution of even general investment and bank accounts at death. Such arrangements may be referred to as "payable on death" or "transfer on death" instructions. Bank accounts listed in individual name "in trust for" the person intended to receive the account on the

individual's death. Even simple joint designation of the ownership of an account can serve the same purpose of facilitating distribution. However, any such arrangements must be reviewed and coordinated with the overall estate plan. Otherwise, such side arrangements, by "end-running" the Will and the dispositive plan it reflects, may defeat the intent of the Will (for example in treating children equally), and confound any tax-savings strategies the plan embodies.

Homestead:

Homestead is a type of protection provided under Massachusetts law for a person's principal residence. Filing a "Declaration of Homestead" in the Registry of Deeds in the county where the residence is located creates a homestead. Under most circumstances it protects the residence from creditors, up to certain limits. It does not protect the residence from creditor claims after death, including MassHealth estate recovery claims. There are two types of homestead: the "regular" homestead, to the extent of \$500,000, which is available to any homeowner/occupant; and an elderly-and-disabled-persons exemption, also to the extent of \$500,000. Only one homestead may be placed on any property. Under recent interpretations, homestead protection may be available with respect to real estate held in trust.