

ANSWERS TO COMMON LEGAL QUESTIONS

FOR MENTAL HEALTH WORKERS
AND THEIR CUSTOMERS

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Government Programs and Protective Services Involve Legal Issues

- You got into social work because you like people, not legal fine print
- But, competence in your field requires you to know the law and the resources of the community

Everything You Always Wanted to Know About.....

- Protective Services & Alternate Decision-Makers
- Public Benefits
- Legal Estate Planning
 - ◆ Using Community and Family funds in the delivery of services
 - ◆ Creation of Special Needs Trusts

Alternate Decision-Makers

- Parent (even of an adult child)
- Guy at the bar
- Guardian of the Person
- Guardian of of the Estate
- Conservator
- Power of Attorney
- Representative Payee
- Trustee
- Social Worker/Service Provider

Court Involved

Court Not Involved



Most Restrictive

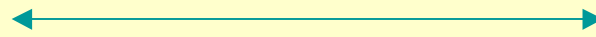
Least Restrictive

Court Involved

Court Not Involved

Most restrictive

Least restrictive



*Plenary Guardian of Person and Estate

*Conservator

*Limited Guardian

*Trustee

*Agent under Power of Attorney

*Rep. Payee

*Social Worker

*Parent

*Guy at Bar

Blending Public & Private Resources

- Person-Centered planning protocols require professionals to know about community resources and private funding opportunities.
- It may be considered malpractice to assume that public benefits will cover everything.

Public Benefits

- Social Security Disability Insurance
- Supplemental Security Income-SSI
- CMH eligibility
- Health Benefits
 - ◆ Medicare
 - ◆ Medicaid

True or False?

1. Some people get both SSDI & SSI.
2. Once you start on SSI, you will get it your whole life.
3. People shouldn't ever work more than 20 hours/week if they want to stay on government benefits.
4. A person on Social Security Disability will lose their check if their assets exceed \$2000.

True or False?

5. Your living arrangement is a key factor in figuring the amount of your SSI.
6. Your living arrangement is important in figuring the amount of your SSDI.
7. Medicaid comes with both SSDI and SSI.

True or False?

8. Medicaid spend-down calculations are done by the Social Security Administration.
9. People on SSI and Medicaid will lose their benefits if they own a house.
10. Everyone who needs 24 hour care must live in a foster care to home to get benefits.

Special Needs Trusts

- What is a Trust?
- Two Kinds of Trusts:
 1. Funded by Parents/Others
 - ◆ Parents/Others Establish a Testamentary Trust in their Will
 - ◆ Parents/Others Create a Living Special Needs Trust While They Are Alive

Special Needs Trust

2. Person Who Receives Benefits Establishes the Trust with His or Her Own Money

- ◆ Lawsuit Settlement
- ◆ Unexpected Inheritance
- ◆ Savings Accumulated Before Disability

Comparison of Trusts

1. Parent/Other

Can Pick Own Trustee
Grantor Can Determine
Where Remainder Will Go

2. Self-Funded

“A” Trust Can Have
Trustee the Family
Chooses, but must
have Medicaid
Payback.

“C” Pooled Trust
Must Have Charity
as Trustee, and
Charity Gets
Remainder.

Common Questions About Trusts

1. If a Parent Creates a Trust, Will Medicaid Take their House When they Die?
2. Who Should Serve as Trustee?
3. Is It Difficult to Serve as Trustee?
4. What Kinds of Things Can the Trustee Buy with the Fund?
5. Can the Trust Own a House?
6. Who Can Advise the Trustee?

More Trust Questions

7. How Much Money Should We Put into the Trust?
8. What is the Minimum Amount You can put into a Trust?
9. Where Can the Fund Be Held/Invested?
10. Should Parents Fund a Special Needs Trust While Alive so they can qualify for Medicaid for their own Nursing Home Care?