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New Law Eases Burden for Special Needs Military Kids

March 10, 2015, in [Spouse & Family News](#) by [Guest Bloggers](#)

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A new law has taken a big load off the shoulders of special needs military families who want to stay in the service until retirement.

The Disabled Military Child Protection Act, signed into law by President Obama in December, 2014 allows a military parent to provide a survivor benefit for a disabled child by paying it to a special needs trust for that child's benefit.

Before this law passed, military parents of minor or adult children with disabilities faced a serious dilemma at retirement — whether or not to choose the military Survivor Benefits Plan (SBP) retirement option for their children. The problem was that the benefit could not be assigned to a special needs trust and would potentially interfere with the child's eligibility for government benefits programs, such as Medicaid, SSI and housing programs. The old law provided that the SBP could be designated only to a "person" and it was interpreted by the Defense Department that "person" did not include a trust.

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The new law is a major victory for military parents of children with special needs because it allows them to provide a survivor benefit and also keep their child qualified for various government benefit programs. The SBP will pay up to 55 percent of the military member's retirement pay to a spouse and/or dependent child when the retiree dies. The member can also select a lesser benefit at a lesser cost. The military member can select between coverage for a spouse only, a spouse and children, or children only. The member takes a

reduction of about 6.5 percent in retirement pay for SBP for a spouse and only about \$20/month for dependent children.

A very important point in this new legislation is that the special needs trust to which the SBP is assigned must be “a supplemental or special needs trust established under subparagraph (A) or (C) of section 1917(d)(4) of the Social Security Act (42 U.S.C. 1396p(d)(4)) ...”

That means that the trust must be a first party or self-settled special needs trust with payback to Medicaid on the death of the beneficiary/disabled child. Families considering assigning the SBP to a special needs trust should consult an experienced special needs planning attorney to ensure that the correct type of special needs trust is utilized in their plan.

In addition to (or in place of) the survivor benefit, a military member can provide an array of benefits for a child with a disability. In most cases a disabled child over age 18 can be designated as an Incapacitated Dependent (DD Form 137-5) and be permanently eligible for military post privileges as well as Tricare health benefits. However, these military benefits do not include supportive living programs or vocational opportunities. Unfortunately, the SBP and Tricare benefits are often not enough to pay privately for all the help that may be needed by an adult child with a disability. So the military family must often look to other programs to provide for a child's needs.

If the disabled child over age 18 has assets of less than \$2,000 and minimal income, the disabled adult child will usually be eligible for Supplemental Security Income (SSI) and Medicaid. Although SSI pays only \$733 monthly (2015 benefit) and Medicaid may seem to duplicate Tricare's health benefits, Medicaid “waiver” programs pay for a wide variety of programs and services that Tricare does not. If a disabled child is living independently, SSI money pays for food and shelter while Medicaid waiver pays for supported living programs, day programs, job coaching and other services. Thus, Tricare and Medicaid provide a complementary mix of health care benefits and support services needed by many adults with disabilities.

For a number of years we have advised families facing the SBP choice to consider just not electing the benefit for a disabled child. We believe that the Defense Finance and Accounting Service (DFAS) will consider establishing an “open season” for service members who previously declined the SBP for a disabled child — allowing them to elect the SBP now that it can be assigned to a trust.

Military families who have a family member with a disability face numerous challenges not faced by most families. Frequent transfers make meeting the educational needs of their child a moving target. Those same transfers mean that obtaining Medicaid and other benefits for their child is repeated often as they move from state to state. A military family may spend years on a waiting list for Medicaid waiver services in one state, finally receive benefits, only to be transferred to another state and start the waiting list process all over again.

The inability to assign SBP payments to a special needs trust was one challenge facing military families that has at last been fixed.

Kelly A. Thompson has been a lawyer for 35 years, practicing law in Arlington, Virginia for the last 19 years. Her clients include many military families and her practice focuses on planning for individuals with disabilities and the elderly, special needs trusts, trust administration and estate planning. She is a member of the Special Needs Alliance, a national, non-profit organization committed to helping individuals with disabilities, their families, and the professionals who represent them. Contact information for a member in your state can be obtained by calling toll-free 1-877-572-8472, or by visiting: www.specialneedsalliance.org.

Photo courtesy U.S. Army.



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[Notes From The Backseat](#) 21p · 17 hours ago

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The payback to Medicaid is where I get confused. Our daughter has autism and is currently under age 18. She doesn't have Medicaid, but if a trust were to be set up for her, it would be paid to Medicaid when she dies. That doesn't seem fair to repay a service she isn't receiving. As yet, we don't know what her disability status will be when she reaches 18, but it seems a bit odd to be forced into a Medicaid repayment plan if your adult disabled child doesn't receive Medicaid.

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Jeremy · 16 hours ago

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If she doesn't have Medicaid and never utilizes any Medicaid funding, it shouldn't be an issue.

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christopher cady · 14 hours ago

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What about someone who has already retired but still has a disabled dependent under 18?

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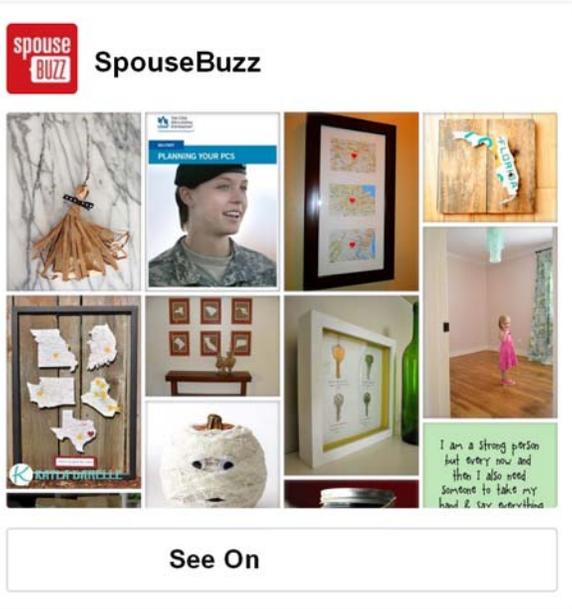
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Pick Your Own Tricare Cuts

If you could choose your own Tricare cuts, what would they be? Here are some options:

Pick one: *

- Throw-out the current Tricare and get a "healthcare market place" instead.
- Toss current Tricare and get "Tricare consolidated" instead.
- Only change costs for future retirees from the incoming force
- Change nothing. Leave my healthcare benefits alone.
- I have a genius change idea that I will tell you about in the comment section.



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