

Special Needs Trust Planning and the ACA

By **Scott MacDonald**

For plaintiffs with special needs who have capacity and are deciding whether it makes financial sense to utilize a Special Needs Trust (SNT), we explore the question: Will foregoing an SNT and purchasing health insurance via the California ACA exchange, Covered California (www.CoveredCA.com), improve their future financial situation?

The chart below describes the achievable lifestyle of a 40-year-old woman with a disability who receives Supplemental Security Income (SSI) and Medi-Cal, exploring different financial amounts resulting from litigation.

These figures are striking. As seen below, if an individual receives a financial amount of \$2,868,000, utilizing an SNT can help them to achieve a higher monthly income, rather than take the funds and purchase private health insurance. In fact, across all options, the value of adopting an SNT and receiving the resulting SSI payments results in dramatically increased standards of living.

The primary reason for these outcomes is access to SSI over a lifetime with a cost of living adjustment (COLA). The value of that income is generally in the hundreds of thousands of dollars for most beneficiaries.

Under lower financial amounts, the effect on annual spending is even more vivid. If an individual with special needs receives \$100,000, the annual achievable lifestyle with the SNT would be \$12,610. If they

make the decision not to fund the settlement into an SNT and lose the SSI as a result, the annual spending amount would be \$3,614 – a 71 percent reduction for life!

The individual with special needs can still utilize private healthcare even if they select the SNT option. This has the added benefit of providing a higher quality healthcare through private insurance and limit (or eliminate) the SNT Medi-Cal payback after the plaintiff dies. It is surprising to see that using this option is generally far superior on a cost-benefit analysis than doing without the SNT.

There will still be individuals who are disabled and have capacity who will want their settlements in their own name (and under their control) despite the financial benefit of not doing it this way. There is certainly nothing wrong with this approach, but the individual should be making this decision with the benefit of all the factors that go into an appropriate settlement plan.

Scott MacDonald holds the Certified Special Needs Advisor designation, which is an internal Merrill Lynch self-study curriculum based on a variety of wealth management topics and a course exam.

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PLANNING PROJECTIONS (40 YEAR OLD FEMALE)					
SETTLEMENT NET ASSET LEVEL =>	\$100,000	\$396,000	\$500,000	\$1 Million	\$2.868 Million
	Net Spendable Income – Annual Amount [u]				
SNT Only [v]	\$12,610	\$23,751	\$22,208	\$33,484	\$67,500
No SNT, Buy ACA Insurance [w]	EM	EM	\$11,196	\$15,794	\$67,504
SNT with ACA Supplemental [w]	EM	EM	\$17,700	\$20,684	\$53,766
No SNT, Expanded Medi-Cal	\$3,614	\$14,291	NQ	NQ	NQ
Income Percent of Federal Poverty Limit [x]	34.80 percent	138 percent [y]	174.06 percent	348.13 percent	600.70 percent
Average Annual ACA Premium (Net Subsidy) [z] ⁱ	\$0	\$0	\$4,508	\$12,800	\$15,552
Average Monthly ACA Premium (Net Subsidy)	\$0	\$0	\$376	\$1,067	\$1,296

Source: Merrill Lynch Wealth Management Analysis through the Wealth Outlook Program, May 2013. ⁱ Covered California (2013). Health Plans & Rates for 2014: Making the Individual Market in California Affordable, 32-76.

Footnotes to Chart

- EM** = Qualifies for the Expanded Medi-Cal Program
- NQ** = Not Qualified for Expanded Medi-Cal Program
- u** – After-tax spendable income, net of premium or SNT expenses, assuming 2.5 percent COLA through actuarial life expectancy of the beneficiary
- v** – Net Spendable Income for SNT options has been reduced by \$3,000 expense to establish the SNT and 1 percent annual administrative expenses. Assumes \$856 monthly SSI income received with 2.5 percent annual COLA.
- w** – Net Spendable Income for ACA options has been reduced by average annual premium and maximum annual out of pocket expenses for the respective income level (based on percent of FPL)
- x** – Assumes 4 percent annual taxable income based on the settlement net asset level
- y** – Maximum annual income level to qualify for the Expanded Medi-Cal Program is 133 percent of the Federal Poverty Limit (\$15,282) plus 5 percent (\$11,490 * .05 percent = \$574.50) any income disregard = \$15,856 for 2013
- z** – Average of highest premium rate for that income level across the 19 California regions. Amount shown is beneficiary’s cost after federal subsidy.