

Master Trust, ABLE Accounts & Special Needs Trusts:

Tools you can use to Ensure Youth's Funds
are Available to meet their Needs

1

1

Master Trust

2

2

Overview – DCF/CBCs Required to:

1. Apply for Benefits
2. Place Funds in the Master Trust Account
3. Pay itself for Cost of Care
4. Plan to use Funds for Short and Long Term Needs
5. Have a Process for Children to Apply for Funds
6. Issue Funds to the Child/Caregiver upon Exit From Care

3

3

1. Apply for Benefits - Caseworker Responsible



[65C-28.004 Comprehensive Placement Assessment.](#)

(3) [T]he child welfare professional responsible for the case shall:

(i) **If there is any potential** that a child may qualify for social security survivor benefits, social security disability benefits or Supplemental Security Income due to disability, or other benefits, **ensure that an application is made for the benefits** on behalf of the child and documented in FSFN.

4

4

Advocacy Tip – Don't Wait for the Caseworker

- Are the parents retired, dead or disabled?
 - If so and they have a work history the child may be eligible for Social Security benefits on the parent's record
- Were they living with a grandparent when they came into care?
 - If the grandparent meets the above criteria the child might be eligible.
- Might there be military, railroad or black lung benefits?
- Does the child have a disability?
 - medically determinable physical or mental impairment that results in marked and severe functional limitations and is expected to last a year or longer.



5

5

2. Place Funds in the Master Trust Account



- DCF's Operating Procedure directs DCF to to apply to be the Representative Payee for children in Foster Care [[CF-OP 55-7, 4-3 a\(3\)](#)]
This contradicts Social Security Priority – Agency is 7th priority!
[[See Social Security POMS - GN 00502.105 Preferred Representative Payee Order of Selection Charts](#)]
- One large bank account with sub accounts
- DCF turned over responsibility for managing it to the CBC Lead Agencies

6

6

Master Trust Citations

- [Florida Statute 402.17](#) Claims for care and maintenance; trust property
- [Fl. Admin. Code 65C-17](#). Master Trust
- DCF Operating Procedures
 - [CF-OP 175-59](#) MASTER TRUST FOR BENEFIT OF FAMILY SAFETY PROGRAM CLIENTS (2006)
 - [CF-OP 170-60](#) Administrative Functions, Chapter 3 Master Trust for Benefit of Family Safety Clients (Draft Pending)

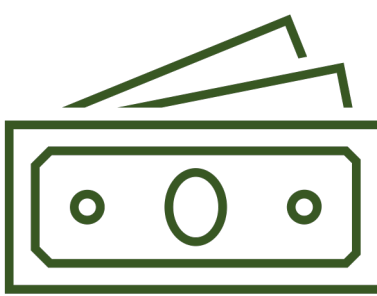
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Advocacy Tip – Consider an Alternative Rep Payee



- Is there a trusted adult who can serve in that capacity?
 - Parent/Guardian, Relative, Stepparent
- Are they stable and constant in the child's life?
- NOTE – DCF Operating Procedures permit the collection of fees from a Rep Payee [\[CF-OP 55-7 4-3 a\(s\)\]](#)

8



3. Pay itself for Cost of Care

- [Fla. Stat. 402.33\(2\)](#) **Department authority to charge fees for services provided**
 - Requires DCF to collect fees for the services it provides
 - Permits DCF to serve as Representative Payee
- [Fla Stat. 402.17](#) **Claims for care and maintenance; trust property.**
 - Requires funds to be spent on current needs which “includes payment of fees assessed under s. [402.33](#).”
- Cost of Care is cost of the residential services. [65C-17.002 \(3\)](#)

9

Kid's Aren't on the Hook, DCF Can't Take All of the Money & CBCs don't Get it

Children are not liable for fees owed and their wages cannot be taken to pay fees. [CF-OP 55-7, 4-2a\(s\)](#)

If the Cost of Care is greater or equal to the monthly income, DCF must leave a “personal allowance” in the child’s account. (minimum of \$15 a month) . [65C-17.002 \(9\)](#). [This is separate from allowance owed to all children.]

CBCs are responsible for managing the Master Trust but they don't keep the money collected for cost of care.

10

Cost of Care Payments are a Tool to Prevent Loss of Asset-Based Benefits

[Fla Stat. 402.17\(1\)\(a\) 9](#)

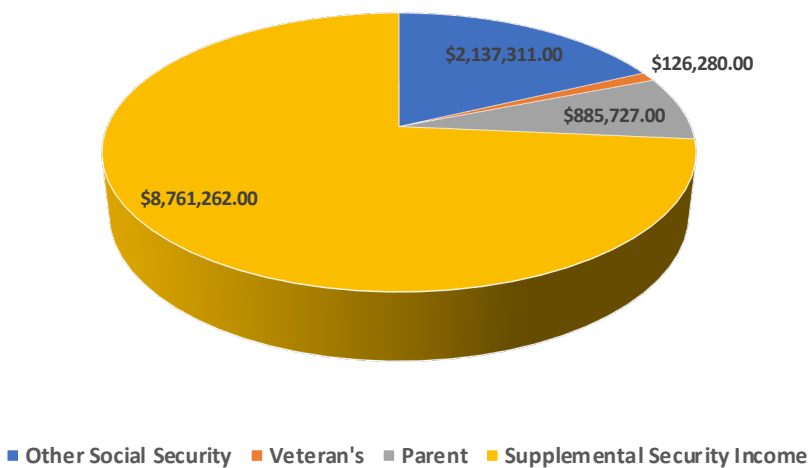
Establish procedures by rule for the use of amounts held in trust for the client to pay for the cost of care and maintenance, if such amounts would otherwise cause the client to become ineligible for services which are in the client's best interests.

- SSI and Medicaid have Asset limits of \$2,000
- Social Security Death, Disability and Retirement Benefits have NO asset limits.

11

11

Source of DCF Trust Funds



12

12

Advocacy Tip – Check the Accounting Carefully

- Was the child in the placement that was charged for all the dates.
 - Incarcerated
 - On the Run
 - Hospitalized
- Is the amount charged correct?
- Was another entity responsible for paying for the placement? [E.g. APD]



13

13

4. Plan to use Funds for Short and Long-Term Needs



- How much money DCF takes for cost of care must be done in consideration of the child's long-term needs including:
 - Having sufficient financial resources available to be able to function as an adult upon reaching the age of 18
 - Meeting the special needs of a client with disabilities and whose special needs cannot otherwise be met by any form of public assistance or family resources
 - Maintaining the client's eligibility for public assistance, including medical assistance, under state or federal law

[Florida Statute 402.17\(2\)\(c\)](#)

14

14

Case Manager Responsible for Planning

- Keep track of the fund balance
 - Monitor client's current and anticipated needs and the best interests of the child
 - Inform the child of purchases made with the funds.
 - Purchases of \$500 or more must inform the parents, the GAL and child's attorney
- [65C-17.003\(1\)](#)
- Function as any prudent parent who must budget both for the child's day to day needs and his or her future health, educational or vocational needs.
- [CF-OP 175-59 9a](#)
- Can be captured in an Expenditure Plan – Form [CF-FSP 5312](#)

15

15

Current Needs

- Medical, psychological, psychiatric, or dental treatment which cannot be provided from other sources;
- Personal comfort items or expenses including clothing, radio, television, tape player, alarm clock, books, art supplies, sports equipment, and special activity fees.
- Transportation (mass transit, cab or carpool) to and from work, school or other activities;
- Other expenses approved in writing by the district administrator or designee, or facility administrator or designee.

[65C-17.002\(3\)](#)

16

16

Advocacy Tip – Review & Revise (or help Make) a Plan!



- Ask to See the Plan!
- Expenditure Plans are focused on not exceeding the asset limitations of SSI and Medicaid (APD)
 - Intended to prevent that last minute scurrying around to buy \$200 sneakers or electronics that will get stolen
- They can be planning tools to be used with young people – has the child been informed?
- If the child does not receive asset-based services make sure the plan is not unnecessarily spending down.

17

17

5. Have a Process for to Apply for Funds



- DCF/CBC Must issue a Notice of Fee Assessment and Rights of the Child. [Form 285D](#)
 - Child, Parents, GAL, Child's Attorney, Foster Parents
 - Notice provided at time of Judicial Review
- DCF/CBC Must provide Application for Review of Assessed Fee. [Form 285E](#).
- Denial is appealable per Ch. 120.

See [Fla. Stat. 402.33\(7\)\(a\) and \(b\)](#) and [65C-17.005](#)

18

18

Application For Review of Assessed Fee

- [The Application](#) asks DCF to take less money to reimburse itself for cost of care
 - Either for a limited time so funds can accrue for a specific purpose, or
 - A reduction of the monthly amount assessed so additional funds are available every month.
- Include detailed reasons for the request along with receipts, bills or other documents.
- A District Waiver Committee of three staff appointed by the District Administrator reviews the application. (not the case worker or an advocate for the child)
- Denials can be appealed within 21 days

[65C-17.005](#)

19

19

Advocacy Tips –



- Successful applications are clear and specific about what the money will be used for and why it is needed.
- Get creative! How can money be used to improve the child's quality of life? What is important to the child? Not just things, but experiences.
- Plan for the future – funds can be used to purchase items that young people need to live on their own.

20

20

Advocacy Tips –



- An accounting of the funds can be requested at any time – Don't wait for a judicial review if you don't know what's in the account.
- Failure to provide Notice of Fee Assessment is an unconstitutional taking of property without due process of law.
 - Request a refund of the child's money if proper notice was not supplied.
 - Provide details of what money would have been used for if notice was provided, and what it can be used for going forward.

21

21

6. Issue Funds to the Child / Caregiver upon Exit From Care



[Florida Statute 402.17\(7\)](#) Requires DCF to:

- Apply for a court order directing DCF how to dispose the funds it is holding for a child who exits care prior to age 18
- Issue funds to the child when child turns 18
 - Unless child is incompetent or incapacitated to handle his or her own finances. Then DCF must seek a court order creating a trust.

DCF must seek pre-approval from Social Security to support the transfer of funds to the child. See [DCF memo 3/11/11](#)

22

22

Advocacy Tips –



- Work with the case worker at least 4 months before the child's 18th birthday to ensure that the caseworker notifies Children's Legal Services and the required application is submitted to Social Security.
- If Social Security permission is not received, assert that Florida law takes precedence over Social Security Regulations and DCF is required to provide the money to the young adult.
- If funds were returned to Social Security they can be re-issued to the child's caregiver or to the young adult him or herself.

23

23

24

24

ABLE Accounts

OVERVIEW

What is an ABLE Account?
What is the purpose and what benefits are protected?
Who can establish an ABLE Account?
Where does one establish an ABLE Account and How is it Funded?
How can ABLE Accounts be used?
How does an ABLE Account Differ from a Special Needs Trust or Guardianship?

What is an ABL Account?

Stephen Beck Jr., Achieving a Better Life Experience Act (ABLE), December 2014 (Public Law 113-295), December 2014

Amended the Internal Revenue Code of 1986 to add Sec. 529(A) – Tax Savings Account

Florida Achieving a Better Life Experience Act, May of 2015 established Florida's ABL Program, ABL United www.ableunited.com and FL Stat. 1009.985-1009.988

An account established to allow an individual living with a disability to save for their future and still qualify for certain means based government benefits.

28

28

Purpose and Benefits Protected

ABLE was passed due to the recognition of the cost factors for individuals living with disabilities

Supplemental Security Income and Medicaid (Long Term Care/HCBS)

\$100,000 for SSI vs. \$2,000

\$418,000 for Medicaid vs. \$2,000

Tax Advantaged Accounts

29

29

Who can establish an ABLE Account?

- Onset of Disability Prior to Age 26 (trying to expand to age 46 through the Age Adjustment Act) - can be older than 26 when establish account
- Automatic determination of disability if receiving SSI or SSDI, but the individual does not have to receive benefits at time opened if you have a letter of disability certification form from a licensed physician MD, DO, Doctor of Optometry, Dentist, podiatric medicine or chiropractor.
- Account opened by Individual living with a disability; DPOA, legal guardian/conservator; a spouse, parent, sibling or grandparent; or representative payee (recent case – court order directing)
- Only 1 account per individual

30

30

Establishing an ABLE Account & Funding

- On-line opening for all ABLE Accounts via links provided to each state on www.ablenrc.org (all states except HI, ID, ND, SD and WI have their own programs or collaborate)
- States vary on the opening deposit amount
- Maximum amount of deposit annually in the aggregate is \$15,000 (tied to the annual gifting exclusion amount) in cash only
- Anyone can fund the ABLE Account, individual or 3rd party, SNT (transfer to ABLE not income), Guardianship, 529 plan with limits
- Payback Provision (FL will not file claim, but over age 55 issue)
- ABLE to Work Act – employment income on top of the \$15,000 of \$12,760 (changes annually tied to poverty level)

31

31

How can ABLE Accounts Be Used?

Qualified Disability Expenses

- Food*
- Housing*
- Education
- Transportation
- Medical Needs
- Employment Training and Support
- Assistive Technology and Support Services
- Health Care
- Funeral and Burial Expenses**
- General Health and Well Being

*In Kind Support & Maintenance – no reduction if within the same month of request, see, <https://secure.ssa.gov/apps10/poms.nsf/lnx/0501120201> and <https://secure.ssa.gov/apps10/poms.nsf/lnx/0501130740>

**Funeral Expenses can be paid after passing

32

32

How is ABLE different from a Guardianship or SNT?

- ABLE is an account, Guardianship is a court appointment due to incapacity and a SNT is a legal document that has protections for means benefits under 42 U.S.C. Sec. 1396p(D)(4)(A) & (D)(4)(C)
- Guardianships are considered available resources to the individual declared incapacitated or a minor, but could hold exempt assets such as a house
- ABLE has limitations on funding, where a SNT does not
- ABLE is more flexible than a SNT
- You can have more than 1 SNT, but only one ABLE
- ABLE and SNT aren't mutually exclusive

33

33

For More Information

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34