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## Legislation Enables Survivor Benefit Plan (SBP) Payments to a Special Needs Trust

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On December 12, 2014, Congress passed legislation allowing veterans who retired from service to elect that a portion of their monthly annuity be paid into a special needs trust created for the sole benefit of the veteran's adult child with a disability.<sup>1</sup> The legislation is the result of a lobbying effort that began in April 2009 with the introduction of House Resolution 2059.

Upon retirement, a veteran of the United States Armed Forces begins to receive retirement income and, absent another valid election, is enrolled in the Survivor's Benefit Plan (SBP). With a full election of the SBP, upon the death of the retiree, up to 55% of the retiree's retirement pay will be paid to a spouse or dependent child. Under the SBP, a dependent child includes an adult child that is incapable of self-support as a result of a physical or mental disability, provided such disability occurred prior to the age of 22. By making an election to provide the SBP to a dependent child, the retiree ensures a continuation of income to support the dependent child when the retiree and any surviving spouse have passed. Absent such an election, upon the death of the retiree, military retirement pay will cease.

While good in theory, prior to the passage of recent legislation, retirement presented retirees with a dilemma as it pertained to the benefits to be received by the child with the disability. Typically, an individual with a disability as defined under section 1614(a)(3) of the Social Security Act is eligible to receive Supplemental Security Income (SSI) and Medicaid upon reaching the age of 18, provided their assets do not exceed \$2,000.<sup>1</sup> The eligibility for these means-tested public benefits is endangered when additional income or assets are received. Specifically, SSI payments are reduced by a dollar for every dollar of unearned income received by the individual in excess of \$20. If SSI is reduced entirely, the individual's Medicaid eligibility may also be jeopardized. The retiree was often forced to determine whether the benefit of the additional income exceeded the loss of other valuable benefits.

While a retired service member's adult child who has a disability, as identified on DD Form 137-5, may be permanently eligible for military post benefits and health benefits under TRICARE<sup>®</sup>, these benefits may not provide the range of services necessary for that child's care. Specifically, TRICARE<sup>®</sup> provides acute care services and will not provide the long-term care and waiver services covered under the Medicaid program. As a result, various programs provided through Medicaid are lost which exposes the individual to extensive out-of-pocket costs to meet their needs.

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## **Legislation Enables Survivor Benefit Plan (SBP) Payments to a Special Needs Trust (cont'd)**

The long-standing problem with the SBP was that it required payment to an individual and did not allow payment into a trust, resulting in this loss of benefits. Many advocates argued that the intent of the SBP was to benefit a dependent child and not detrimentally affect other valuable benefits, and that as a result a retired service member should be able to elect a special needs trust, which is designed to preserve public benefit eligibility, to receive payment of the SBP benefit. With the introduction of House Resolution 2059 in 2009 and the Disabled Military Child Protection Act of 2013, Congress was presented with an opportunity to preserve both the SBP and means-tested benefits such as SSI and Medicaid.

Congress was finally able to achieve the intended result by incorporating many of the provisions contained within previously introduced legislation into the National Defense Authorization Act of 2015. Specifically, section 624 of the National Defense Authorization Act amends 10 U.S.C. 1450 by allowing the monthly SBP annuity to be paid to "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)) for the sole benefit of a dependent child considered disabled under section 1614(a)(3) of that Act (42 U.S.C. 1382c(a)(3)) who is incapable of self-support because of mental or physical incapacity," thereby eliminating the previous dilemma of determining which benefits would most benefit their child.

The National Academy of Elder Law Attorneys (NAELA) and the Special Needs Alliance (SNA) were instrumental advocates in lobbying for this important piece of legislation. Many of the attorneys at Hook Law Center are members of NAELA. Andrew H. Hook of the Hook Law Center is a member of the Special Needs Alliance (SNA); the only SNA member in the Hampton Roads area. After years of hard work, we congratulate and thank these organizations, along with the other various participating organizations, for the resulting success of their efforts.

Since we are located within a large military community, we understand that many of our clients may need to review their previous elections and update their estate plans. To discuss this legislation and its effect, please contact Hook Law Center to schedule an appointment.



### **Wild Turkeys**

**Hook Law Center:** Kit Kat, what do you know about wild turkeys?

**Kit Kat:** Well, actually there's quite a bit to tell. Wild turkeys are making a comeback, and their numbers are rebounding. They've recently been seen in Frederick, MD and along the George Washington Parkway near Reagan National Airport in the DC area. It's terrific! Who would have thought these once endangered birds would now number more than 7 million! In the 1970s, Maryland had approximately 1,000 wild turkeys. Today, they number around 35,000. Virginia's numbers have increased, too, to 200,000+.

How was this accomplished? According to Bob Long, Maryland's state turkey biologist, "...this ranks near the top of any conservation success story." At first, it was thought one could breed the birds in captivity and then release them into the wild. This didn't work, because they didn't know how to feed or fend for themselves. Next, trapping was tried, but wild turkeys are notoriously wary, and if they saw a cage nearby, they flew off. Then, a wildlife expert in South Carolina started a project to trap and move the birds with rocket-controlled nets. The wide nets could be camouflaged in a particular spot. Then, when the turkeys happened upon it, remotely-controlled rockets would activate the net and catch them. Next, the wild turkeys were moved to other areas which were lacking them. Nature took its course, and we now find ourselves in the current situation where they are once again plentiful! They can be found in every state except Alaska. It's too cold there for them. It's remarkable what scientists can do to help these wonderful, large birds which figure so prominently in American history! (Michael S. Rosenwald, "Wild turkeys have made a comeback and are ruffling some suburban feathers," The Washington Post, Nov. 22, 2014).

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## Upcoming Events

- **January 22, 2015** – Andrew Hook will be speaking to the Portsmouth Community Criminal Justice Board regarding how the aging population may affect the court system.
- **January 29 – 31, 2015** - Andrew Hook will attend the NAELA Summit in Newport Beach, California.
- **February 3, 2015** – Andrew Hook will be speaking at King's Grant House regarding Long-term Care Insurance.
- **February 7, 2015** – Shannon Laymon-Pecoraro will be speaking to the Down Syndrome Association of Hampton Roads' Baby Play Group.
- **February 20-21, 2015** – Andrew Hook will be speaking on Managing a Small Law Firm at the 2015 VAELA UnProgram in Charlottesville, VA.

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