

ESTATE PLANNING	<i>Will & Trust Contests</i>	Special Needs	Elder Law
<i>Guardianship & Conservatorship</i>	Medicaid Planning	ESTATE & TRUST ADMINISTRATION	Financial Exploitation of Vulnerable Adults
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Planning for our Rising Special Needs Population

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Why Focus on Special Needs Planning?



- 1 in 6 children has a developmental disability. 15% of students receive special education.
- 27% of all adults have some type of disability. In 2020, 20 million adults needed assistance in performing activities of daily living.
- Life expectancies for individuals with disabilities are increasing.
- A smaller workforce and an aging population will put fiscal pressure on programs like Social Security and Medicaid. Families must anticipate the need for private dollars to fund support and care for their loved ones with special needs.

Part 1: Understanding Government Benefits

Means Tested “Needs Based” v. Entitlements “Not Needs Based”

SSI v. SSDI

Disabled Adult Child Benefits



Government Benefits

Means Tested “Needs Based”

- **Supplemental Security Income (SSI)**
- **Medicaid**
- **Community Mental Health Services**
- **Food Assistance**
- **HUD (Housing) Programs**



Government Benefits

Entitlements "Not Needs Based"

- **Social Security (Non-SSI)**
 - Retirement
 - Disability (SSDI = Social Security Disability Insurance)
 - Disabled Adult Child / Childhood Disability Benefits
- **Medicare**
- **Education**

SSI & SSDI: Similarities



- **Monthly cash benefits for persons with disabilities through the Social Security Administration (SSA)**
- **Must be medically eligible for either program**
- **See SSA's "Listing of Impairments"**
- **Earned income cap – Substantial Gainful Activity (SGA) - If the recipient earns more than the SGA limit, he/she is Not Severely Disabled. SGA is \$1550/month in 2024.**

SSI & SSDI: Differences



- **SSI - needs-based program:**

- **\$2000 asset limit** (countable assets) for single adults
- Recipient must be low income
- **Remember:** When a child turns 18, income & assets of the parents are not counted
- Comes with **Medicaid** (Medicaid also has **asset limit** and covers a wide range of services, **including CMH**)
- How much does recipient receive month? Amount determined annually; varies based on living arrangement and work. Monthly rate for 2024, based on Independent/Sharing living arrangement - \$943
- **Tip:** Parents consider charging Room and Board



...SSI & SSDI: Differences



- **SSDI is based on payment of FICA taxes by benefit recipient or qualifying relative – not needs based**
 - Recipient may qualify based on the “work record” of a qualifying relative (Disabled Adult Child Benefits / CDB) – **remember this when a parent retires!**
 - No asset limit
 - Comes with **Medicare**, but recipient may be eligible to receive Medicaid as well, *if Medicaid asset and income rules are satisfied*
 - How much does the recipient receive per month? Depends on the payment of FICA taxes.



Disabled Adult Child Benefits



IF CHILD'S DISABILITY BEGAN BEFORE AGE 22:

- Child can switch to SSDI – Disabled Adult Child Benefits (commonly called “DAC” or CDB) benefits when:
 - *Parent starts drawing Social Security at retirement or disability, or*
 - *A parent dies.*
- Disabled Adult Child Benefits = Medicare and Usually Higher Social Security Disability Benefit
- Neither are means tested! (But consider ongoing need for Medicaid)



Disabled Adult Child Benefits



IF CHILD'S DISABILITY BEGAN BEFORE AGE 22:

- Tip: Apply for SSI as soon as possible (and certainly before retirement) to get Medicaid disregard!

How much can you get?

- Living parent: benefit 50% of Primary Insurance Amount*
- Deceased parent: benefit is 75% of Primary Insurance Amount*

*Subject to a maximum amount that can be claimed on one record.



Part 2: Shelter Private Funds – Estate Planning, SNTs & More



Whose money is it??



Third-Party Funds	First-Party Funds
<ul style="list-style-type: none"> ✓ Parents or others can keep funds in their own names during their lifetimes 	<ul style="list-style-type: none"> X The person with the disability can't give his/her funds to another (divestment)
<ul style="list-style-type: none"> ✓ <i>Third-Party Special Needs Trusts</i> 	<ul style="list-style-type: none"> ✓ First-Party Special Needs Trusts: Freestanding/Pooled
<ul style="list-style-type: none"> ✓ ABLA Accounts 	<ul style="list-style-type: none"> ✓ ABLA Accounts

Special Needs Trusts



Created for a person with a disability or inability to manage assets or finances.

Primary purpose is to “shelter” assets to protect and maintain eligibility for “*needs based*” public benefits

Used to supplement the public benefits to enhance quality of life

Person with disability can have more than one SNT. No minimums or maximums.

Not Just For Government Benefits!

- **Exploitation.**
- **Waste.**
- **Mismanagement.**
- **Many more reasons!**



Discretionary Distribution Standard

- A pure discretionary standard provides the trustee the absolute and total discretion when making distributions
- Trustee can distribute all or nothing
- Intended to supplement public benefits, but can make distribution even if it reduces or eliminates benefits
- Thoughtful choices about who acts as Trustee
- Consider a Memorandum of Intent for more detail



Tip: Letter of Intent



- **Not a legal document**
- **It is our loved one's history and hopes for the future**
- **Road map for Trustee**
- **Provides written guidance and goals for others: Courts, Care Providers, or Family Members**
- **Sign and date document**
- **Update it regularly**



Third-Party v. First-Party SNTs



Third-Party	First-Party / Self-Funded
- Used in advanced Estate Planning (see next slide)	
- Can be funded by others like parents or grandparents	
- Can be revocable	
- Party setting up trust chooses trustee	
- Party setting up trust chooses where any remainder will go – NO MEDICAID PAYBACK	
- Usually, a separate trust for the person with disabilities	
- No age restriction. No Disability Requirement.	

Estate Planning & Third-Party SNTs



- If you or a client has a loved one with disabilities, consider leaving his or her inheritance to a Third-Party SNT. Better than disinheriting!
- Reference it in a Will or Revocable (Living) Trust. Consider making it “freestanding.”
- **Name the Third-Party SNT as a death beneficiary of Life Insurance.** Second-to-die policies can be a cost-effective SNT funding choice.
- **Name the Third-Party SNT as the death beneficiary of Retirement Accounts.** It’s tricky, but consider funding the SNT with qualified funds. Under the SECURE Act & SECURE 2.0, if all criteria are met, the “Stretch IRA” applies to SNTs, based on the life expectancy of the beneficiary – postponing tax payments and potentially paying at lower rates.

... Third-Party v. First-Party SNTs



Third-Party	First-Party / Self-Funded
- Used in advanced Estate Planning	- Funded by the person with disabilities, i.e., with \$ that is already “in his or her pocket” – examples: inheritance w/o proper planning, settlement, SSA overage
- Can be funded by others	
- Can be revocable	- Irrevocable
- Party setting up trust chooses trustee	- The trustee depends on the type of trust (see next slide)
- Party setting up trust chooses where any remainder will go – NO MEDICAID PAYBACK	- The remainder provision depends on the type of trust (see next slide)
- Usually, a separate trust for the person with disabilities	- Could be a separate trust or pooled
- No age restriction. No Disability Requirement.	- Must be under 65 (for sure for A-Trusts); meet SSA definition of disability

More on First-Party SNTs



Freestanding, “Exception A” Trusts – allowed under 42 USC 1396p(d)(4)(A)

- Individually drafted by attorney
- Party setting up the trust chooses the trustee
- Required remainder provision: **Medicaid payback**
- Sometimes requires a trip to court and/or court supervision

“Exception C” / Pooled Trusts – allowed under 42 USC 1396p(d)(4)(C).

- Master trust is set up by a non-profit; person with disabilities join with a joinder agreement
- Assets “pooled” for management and investment; individuals each have subaccount
- Non-profit serves as trustee
- Required remainder provision: Medicaid or remainder may stay with the **non-profit**
- Sometimes requires a trip to court

Special Needs Trust Administration

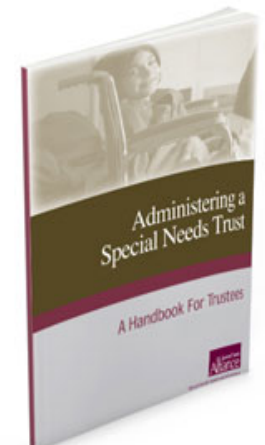
Free Special Needs Administration Handbook from the Special Needs Alliance:

Free Trustee Handbook

Get Your Complimentary Copy of the *Handbook for Trustees*

A special needs trust can be a very powerful aid in managing care for a family member with a disability. It can provide supplemental items like therapy, respite care, dental work, companions, entertainment, education — all without interfering with the beneficiary’s SSI, Medicaid or other government programs. The special needs trust can be a flexible tool. It can also be very difficult and confusing to administer.

Have you been named as trustee of a special needs trust? Have you created a special needs trust, and wonder what the job of trustee is actually like? Are you a trust beneficiary, trying to figure out what the trustee is permitted — and required — to do? The Special Needs Alliance is pleased to offer its free booklet on



www.specialneedsalliance.org

ACHIEVING A BETTER LIFE EXPERIENCE



9 THINGS YOU
NEED TO KNOW ABOUT
ABLE ACCOUNTS

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ABLE Accounts

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ABLE Basics



- **The ABLE Act of 2014 – allows tax-advantaged savings accounts for persons with disabilities who have onset of disability before age 26; each person can only have one account; person with disability is the account owner and can control the account**
- **Funds not counted toward the countable asset limit for needs-based public benefits (with limits, e.g., 100K cap for SSI recipients)**
- **For more info on Michigan ABLE accounts, go to:**
<https://savewithable.com/mi/home.html>
- **Joining another state's program is an option. See ABLE National Resource Center: www.ablenrc.org**

Funding an ABLE Account

- **Anyone Can Contribute To An ABLE Account (First-Party or Third-Party)**
- **Annual Contributions Limited To Annual Tax Exclusion From Any Source (i.e., \$18k)**

Contributions and Distributions



- **Contributions must be “cash” (presumably meant to exclude in-kind stock transfers, not checks)**
- **Accounts are irrevocable, but rollovers permitted to family member who is also disabled**
- **“Qualified Disability Expenses” – education, housing, transportation, employment training and support, assistive technology and personal support services, health, financial management, legal fees, and more**

ABLE and Taxes



- **Income earned by the account is not taxed.**
- **In Michigan, there is a state income tax deduction for contributions, up to \$5,000 (individual return) and \$10,000 (joint return) per year.**
- **No federal income tax deduction.**



First-Party

Third-Party

All ABLE Accounts Have A:

**Medicaid
Payback**



Third-Party



When To Use ABLE?

- **Housing**
- **Want Michigan Tax Deduction**
- **Give person with disability control over money – this can include distributions from a Third-Party SNT to an ABLE account**

First-Party



When To Use ABLE?

- **Individual Wants To Retain Control Of Funds**
- **Small Inheritances / Settlements**
- **To Stay Under \$2,000**
- **Save For Larger Purchases**