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www.chesapeakelegalcounsel.com
info@chesapeakelegalcounsel.com

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**Planning For Persons
 with Disabilities and the
 Families Who Support Them**

Presented by
 Sharon J. Ritter Beall, Esq.
 Chesapeake Legal Counsel


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 **Public Benefits**

- **Needs Based**
 - Supplemental Security Income (SSI)
 - Medicaid/Waiver Programs
 - Both have income and resource limits (\$2,000)
- **Entitlement**
 - Medicare
 - Supplemental Security Disability Insurance (SSDI)
 - Disabled Adult Child benefits

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Why Plan?



- Eligibility for Government Benefits
- Framework for Child's Care
- Management and Preservation of Assets
- Protection from Creditors/Predators

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Planning Mistakes
What Can Go Wrong




- No Plan
- Leaving Disabled Child Out/Disinheritance
 - Problems:
 - Public Benefits often Inadequate
 - Benefit programs change
 - Individual Circumstances Change

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Planning Mistakes continued 

- Leaving Assets outright to Disabled Child
- Failing to Provide for Care of Disabled Child After You are Gone
 - Problems:
 - Loss of Benefits
 - Who Will Manage
 - Who looks out for your Child

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Planning Mistakes continued 

- Depending on Siblings to Care for Disabled Child
 - Problems:
 - Whose money is it really
 - Possible Undue burden
 - Are they emotionally able to handle
 - Divorce/Creditors
 - Sibling dies or becomes incapacitated

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Special Needs Trusts 

- 2 Ways to Create
 - Stand Alone
 - Attorney drafts
 - Usually only one beneficiary
 - Trustee can be anyone
 - Pooled
 - Master Agreement
 - Sign Joinder
 - Funds are pooled for investment only. Each person has own account
 - Trustee is non-profit corporation

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“SPECIAL NEEDS” Trusts AKA “Supplemental Needs” Trusts

Types of Trusts:

Third Party

-funded by money from somebody else:

- Stand alone
- or
- Pooled SNT

First Party a/k/a Self-Settled

-funded with beneficiary’s own money

- (d)(4)(a) – “Stand alone” and
- (d)(4)(c) – Pooled SNT

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Third Party Special Needs Trusts



- Method of providing for the person with disabilities, either in the **present or in the future**
- Uses assets of someone other than the person with disabilities.
 - Parent * Grandparent * Siblings * Aunts & Uncles
- Primary Functions
 - Preserves Eligibility for SSI/Medicaid
 - Directs Personal Care and Advocacy for Person with Special Needs

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Things to Know

- Beneficiary Can Not be Trustee and has no control of the funds
- Trustee has sole discretion to make or withhold distributions
- You designate the Trustee
- You determine the ultimate beneficiary of the Trust
- Adequate resources for individual
- Means to treat all children equally (estate planning)

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Things for Trustee to be Aware of

- Accounting
- Investing
- Tax Returns
- Distributions
- Meeting Needs of Beneficiary
- Sensitivity to
- Understanding Public Benefits Programs



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Who Can Be Trustee

- Family
 - Parents
 - Siblings
- Professional/Corporate/Non-Profit Trustee
 - Consider amount to be Managed
 - Family Dynamics
 - Family Member Co-Trustee



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Funding the Trust

- How Much
 - What will your disabled child need over a lifetime
 - Equal shares to all of your children?
 - Will there be enough?
- When
 - Trust During your Life
 - Trust Created by Will



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Guidelines for Care

- Memorandum of Intent 
 - Can be separate Letter or Included in Trust
- Can Include
 - Living Arrangements
 - Personal Preferences
 - Program and Services
 - Abilities/Level of Independence
 - Anything else care givers should be aware of

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First Party a/k/a Self-Settled Trust

First Party SNTs are one of only a very few planning tools that allow an individual who has assets to preserve those assets AND preserve eligibility for needs-based public benefits.

- Inheritance
- Medical malpractice/personal injury claim
- Social Security lump sum
- “over scale” funds
- Turned 18 and has assets

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Stand Alone First Party SNT – (d)(4)(a)

Requirements:

- Drafted by attorney
- Established by the beneficiary, parent, grandparent, legal guardian or the court
- Requires approval by Department of Health, Office of Eligibility (Maryland)
- Must be for Sole Benefit of beneficiary under age 65
- Trust must reimburse State for all Medicaid expenses on death of beneficiary

Beneficiary has NO CONTROL of funds

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First Party Pooled SNT - (d)(4)(c)



Requirements:

- Established by beneficiary, parent, grandparent, guardian or by Court order
- Master Agreement
- May require court approval
- May be payback to state or may be retained by the non-profit.
- Either no minimum deposit or small deposits

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Examples of what any SNT can pay for:

- Automobile and maintenance 
- Clothing
- Computer/internet service
- Health club memberships
- Fitness equipment
- Laundry services
- Music lessons or instruments
- Personal care items 

- Pets and pet supplies 
- Public Transportation
- Telephones
- Television and cable service
- Vacation travel & accommodations
- Sporting goods & events
- Medical expenses not covered by insurance
- School tuition 
- Furniture

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Pooled Special Needs Trusts

In Maryland:


- First Maryland Disability Trust
- Arc of Northern Virginia
- Shared Horizons

In Delaware:

- Plan of Delaware

Some are National

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Another Tool 

ABLE Accounts
Savings Program for Individuals with Disabilities

- Eligibility
 - MUST BE eligible for or receiving SSI or SSDI benefits (Social Security Disability under Title II of the Social Security Act) OR be certified by a doctor as having severe physical, intellectual disability or blindness
 - AGE RESTRICTION: Onset of the qualifying disability must occur before the beneficiary turns age 26

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ABLE continued

- Who may apply and manage
 - A beneficiary over age 18
 - Parent
 - The Authorized Legal Representative
 - Legal Guardian
 - Power of Attorney
 - New in 2020: the Representative Payee
- Only account one per beneficiary

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ABLE continued


- Contributions:
 - Limits: Cannot exceed the annual gift tax exclusion – currently \$15,000 per year
 - For Maryland taxpayers, contribution could qualify for state income deduction
 - Total Lifetime Contributions are capped at \$500,000
 - Beneficiaries who work can contribute an amount equal to their current year’s gross income up to a maximum of \$12,760 (for 2021)



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ABLE continued

Withdrawals must be for qualified disability expenses and Do NOT affect Medicaid eligibility

Qualified Disability Expenses include: 

- Education
- Food & Housing
- Transportation
- Employment training and support
- Financial Management
- Legal and Accounting
- Services

- Assistive technology
- Personal support services
- Health care expenses such as Dental and Eye Care
- Funeral and burial
- Administrative Services
- Any expense that helps improve health, independence, and quality of life



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Resources

- By Their Side <http://bytheirside.org/>
- Special Needs Navigator <https://www.specialneedsnavigator.us/>
- ABLE National Resource Center <https://www.ablenrc.org/>
- Maryland Able <https://www.marylandable.org/>
- Guardianship <https://mdcourts.gov/family/guardianship/>
- Disability Rights Maryland <https://disabilityrightsmd.org/>
- National Resource Center for Supported Decision Making <http://supporteddecisionmaking.org/>
- Academy of Special Needs Planners <https://specialneedsanswers.com/>
- Special Needs Alliance <https://www.specialneedsalliance.org/>

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Thank You!

Sharon J. Ritter Beall, Esq.
 Chesapeake Legal Counsel, LLC
 2661 Riva Road, Suite 410A
 Annapolis, MD 21401
 410-266-1625
Sharon@robbertlaw.com
www.ChesapeakeLegalCounsel.com

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