







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

4

Why Plan?



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

5

Planning Mistakes What Can Go Wrong



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

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

7

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

8

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
 - Trustee is non-profit corporation

"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

10

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

11

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)

Things for Trustee to be Aware of

- Accounting
- Investing



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

13

Who Can Be Trustee

• Family



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

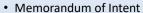
14

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

Guidelines for Care





- 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

16

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

17

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 <u>Sole Benefit</u> of beneficiary under age 65
- Trust must reimburse State for all Medicaid expenses on death of beneficiary

Beneficiary has NO CONTROL of funds

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
- Either no minimum deposit or small deposits

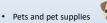
19

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

.



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





20

Pooled Special Needs Trusts

In Maryland:

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

In Delaware:

• Plan of Delaware

Some are National

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

22

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

23

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)



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

25

Resources

- By Their Side http://bytheirside.org/
- Special Needs Navigator https://www.specialneedsnavigator.us/
- ABLE National Resource Center <u>https://www.ablenrc.org/</u>
- 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
- Special Needs Alliance https://www.specialneedsalliance.org/

26



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