

# ABC's and 123s of Special Needs Trusts

## Family Café 2021

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# Special Needs Trusts

- To benefit individuals with disabilities.
- Maintain eligibility for public assistance programs.
- Enhance quality of life.

# Overview of Public Assistance Programs

## Incomes

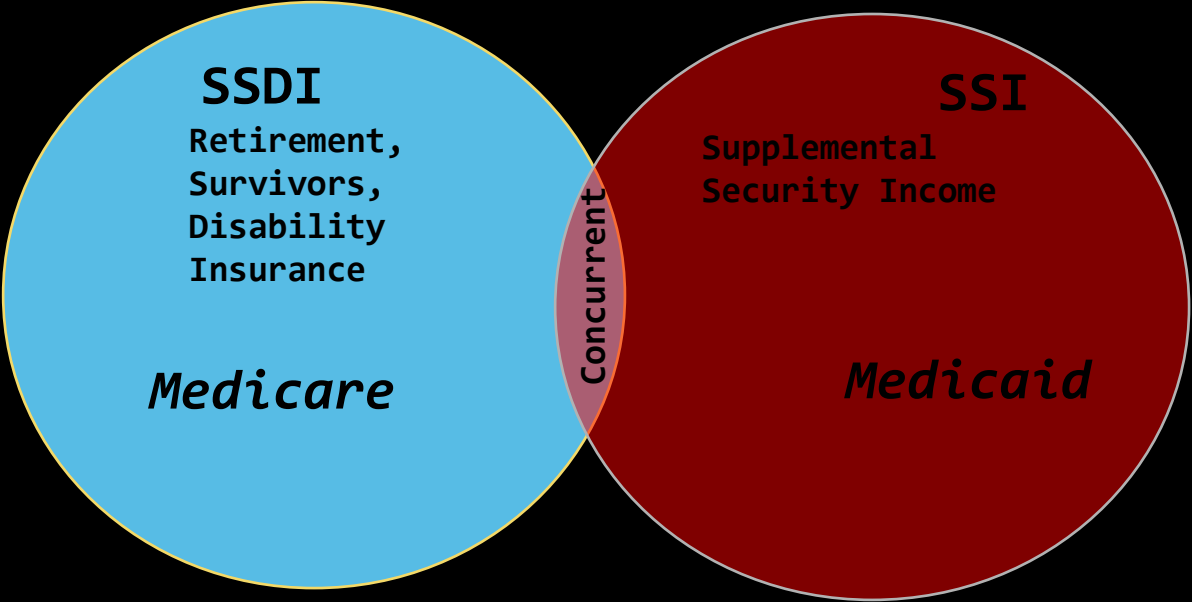
- Social Security Disability Insurance (SSDI)
- Supplemental Security Income (SSI)
- Disabled Adult Child – Childhood Disability Benefits

# Overview of Public Assistance Programs

## Medical Coverage

- Medicare
- Medicaid
- Medicaid Waiver Programs
- Private Insurance - ACA

# Program Differences



# Eligibility for SSI and Medicaid Programs

- Level of care (medical need)
- Resource test and cap levels on assets and income
- Penalty periods if you transfer
- Traditional trusts count as an available resource

**SSI-Related Medicaid Coverage Groups**  
**Financial Eligibility Standards: April 1, 2021**

TYPES OF COVERAGE GROUPS (eff 01/01/21)		INCOME LIMIT	ASSET LIMIT
ICP/HCBS/HOSPICE-Individual (I)-300% Federal Benefit Rate (FBR)		\$2,382	\$2,000
ICP/HCBS/HOSPICE-Couple (C)- 300% FBR		\$4,764	\$3,000
HCBS/Working People w/Disabilities (WPwD) (I)-550% FBR		\$4,387	\$13,000
HCBS/Working People w/Disabilities (WPwD) (C)- 550% FBR		\$8,734	\$24,000
MEDS-AD/ICP-MEDS(I)-88% Federal Poverty Level (FPL)		\$945	\$5,000
MEDS-AD/ICP-MEDS(C)-88% FPL		\$1,278	
Medically Needy, MNIL-(I)-No income limit (subtract from gross income)		\$180	\$6,000
Medically Needy, MNIL-(C)-No income limit (subtract from gross income)		\$241	
TYPES OF COVERAGE GROUPS (eff 04/01/21) <small>A \$20 General Income Disregard applies to these coverage groups</small>		INCOME LIMIT	ASSET LIMIT
Qualified Medicare Beneficiaries (QMB) (I) –100% FPL		\$1,074	\$7,970 \$11,960
Qualified Medicare Beneficiaries (QMB) (C)-100% FPL		\$1,452	
Specified Low-Income Medicare Beneficiary (SLMB) (I)-120% FPL		\$1,288	
Specified Low-Income Medicare Beneficiary (SLMB) (C)-120% FPL		\$1,742	
Qualifying Individual (QI-1) (I)-135% FPL		\$1,449	
Qualifying Individual (QI-1) (C)-135% FPL		\$1,960	
Working Disabled (WD) (I)- 200% FPL		\$2,147	\$5,000
Working Disabled (WD) (C)- 200% FPL		\$2,904	\$6,000
Low Income Subsidy (LIS) Extra Help-(I)-150% FPL		\$1,610	\$13,290
Low Income Subsidy (LIS) Extra Help-(C)-150% FPL		\$2,178	\$26,520
Medicare Part A Premium (free for most)		\$471	N/A
Medicare Part B Premium		\$149	
Personal Needs Allowance (PNA) (eff 01/01/21)		Spousal Impoverishment (eff 07/01/20)	
ICP/HCBS/HOSPICE	\$130 (I)	MMMNA CSMIA (eff 01/21) Excess Shelter Standard (eff 10/20) CSRA Home Equity Interest Limit Transfer of Asset Divisor (eff 03/21)	\$2,155
PACE in NH	\$260 (C)		\$3,260
HCBS/WPwD	\$4,387 (I) \$8,734 (C)		\$647
Community Hospice	\$1,074 (I) \$1,452 (C)		\$130,380
			\$603,000
PACE / SMMC-HBCS	R&B+ 20% FPL	Community Hospice Allocations:	
ALF	\$215 (I)/ \$430 (C)	Spouse only = FBR (\$794)	
Community/iBudget	\$2,382 (I)/ \$4,764 (C)	Spouse + Dependents or Dependents Only = CNS Standard	
Maintenance Needs Standards / Other (eff 01/01/21)		Abbreviations Key	
Standard Disregard = \$20 Earned Income Disregard = \$65 + ½ Student Earned Income Disregard = \$1,930 monthly, maximum \$7,770 for calendar year Spouse Deeming: ½ FBR = \$397 Child Allocation = \$397/child (Difference between the couple and single FBR) Disability Substantial Gainful Activity (SGA) = \$1,310 <i>non-blind</i> -\$2,190 <i>blind</i>		Institutional Care Program (ICP) Home and Community Based Services (HCBS) The Program of All-Inclusive Care for the Elderly (PACE) Statewide Medicaid Managed Care (SMMC) Community Spouse Maximum Income Allowance (CSMIA) Community Spouse Resource Allowance (CSRA)	

# Special Needs Trusts

- First Party (self settled) – with beneficiary's own funds
- Third Party – someone other than the beneficiary or spouse



# Special Needs Trusts

- Parties to a Trust:
  - Settlor/Grantor
    - The person who establishes the Trust
  - Trustee
    - The person or corporation that manages the Trust
  - Beneficiary
    - The person who benefits from the Trust

# Third Party Special Needs Trusts

- **Set up by a family member or friend for a person with disabilities**
- **Can be done by a spouse if done in a Will (only after death)**
- **Generally a specific trust for each beneficiary**
- **No Medicaid pay-back – can go to other family members**

# Third Party Special Needs Trusts

- **Can set up the trust and fund it now**
- **Can have trust funded later**
- **Can write SNT within Will or it can be within a Revocable Living Trust**
- **Can direct funds into a Pooled Trust later**

# Self Settled Special Needs Trusts

Must be Irrevocable

Must be the funds of the person  
with a disability

- Inheritance
- Personal Injury Award
- Earnings and Savings

# Self Settled Special Needs Trusts

42 U.S.C. §1396 p(d)(4) (Social Security Act)

(d)(4)(A) – Under Age 65 Disability SNT

(d)(4)(B) – Qualified Income SNT

(d)(4)(C) – Pooled SNT

# Self-Settled SNT (d4A)

- **As of 12/13/16 can be established by the beneficiary directly (and therefore his or her Agent)**
- **Still can be established by parent, grandparent, legal guardian or by court order**
- **Still MUST have mandatory Medicaid payback on death of the beneficiary before residual beneficiaries**

# Pooled Trusts

- **By combining funds with others similarly situated (pooling), costs can be lowered and “minimum fees” can be avoided**
- **Some pooled trusts have one-time enrollment fees as low as \$500**
- **Many pooled trusts do not have minimum monthly or annual fees**
- **Non-profit organizations also administer trusts**
- **Guardian Pooled Trust – [Guardiantrusts.org](http://Guardiantrusts.org)**

# Special Needs Trusts: Advantages and Disadvantages of Self-Settled SNT's

## ➤ Advantages

- **Maintain governmental benefits**
- **Keep your money**
- **Provide for supplemental needs**

## ➤ Disadvantages

- **Trust assets may be restricted**
- **Challenges related to selecting a trustee**
- **Trust assets subject to state claim on death**



# ABLE Accounts

- Achieving a Better Life Experience
- 529A
- Signed by President in Dec 2014
- Started in Florida July 1, 2016
- Florida's ABLE is ABLE United
- Administered under FL Prepaid College Board

# ABLE Accounts

- Annual contributions limited to annual gift tax excl. (\$15,000)
- Opened on-line at [AbleUnited.com](http://AbleUnited.com)
- Exempted for SSI, Medicaid, Food Assistance, Housing
- Grows Tax-Free if used for QDE – Qualified Disability Expenses

# ABLE Accounts

- SSI limit is \$100K then excess counts
- Medicaid limit is \$418K (529 FL limit)
- Beneficiary's disability must have occurred prior age 26
- Medicaid payback on death of bene
- Can only have 1 ABLE account
- Can make additional deposits over limit if working.

# ABLE Accounts - QDE

- Education;
- Housing;
- Transportation;
- Employment training and support;
- Assistive technology and related services;
- Health;
- Prevention and wellness;
- Financial management and administrative services;
- Legal fees;
- Expenses for ABLE account oversight and monitoring;
- Funeral and burial; and,
- Basic living expenses

Trait	ABLE	d4A	d4C	Third Party SNT
Can be Established by Beneficiary Directly	yes	yes	yes	no
No Limited annual Contributions	no	yes	yes	yes
No Medicaid Payback on Death	no	no	no	yes
Can pay for food and shelter for SSI recipient without impacting benefits	yes	no	no	no
Grows Tax free	yes	no	no	no
No Lifetime Limits on account size	no	yes	yes	yes
Exempt from Creditors Claims	yes	maybe not	maybe not	yes
Allows for some disbursements after death	yes	no	no	yes
Low fees	yes	no	maybe	maybe
Distribution standard broader than just sole benefit of beneficiary	yes	no	no	yes

yes
no
maybe

# Responsibilities of Trustee

- Mandatory reporting to agencies
- Consider distribution impact on benefits of beneficiary
- Annual Tax filing
- Honor terms of the Trust
  - Post death pay back provisions
  - Distribution to residual beneficiaries.

# Governing Rules/Law

- Social Security : POMS (Program Operations Manual System)
  - Over 20,000 pages
- Medicaid : Program Policy Manual
- Federal Law
- State Law

# Thank You!

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