

Planning for Special Needs and Ohio's STABLE Account

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Concerns for Families

- “Everything will be fine as long as my child dies before I do.”
- “Will my typical child have to take care of my child with special needs?”
- “Will I have to take care of my sister for the rest of my life?”
- “How do I make sure my child does not lose government benefits?”
- “Where will my child live in five years, 10 years, when I’m gone?”
- “How much is enough money to leave for my special needs child?”
- “Will my typical children resent my special needs child?”
- “My 18 year old is impressionable, will he get in trouble?” “Will she be taken advantage of?”

Medicaid Generally

- **Medicaid** is a needs-based health insurance program that pays for services for elderly, blind, or disabled.
 - Prescription drugs
 - Adaptive equipment
 - Residential programs and support

- **Medicaid Waivers provide funding for services outside of residential centers and institutions.**

Medicaid Waiver Details

- Medicaid home and community-based waiver services allow people with disabilities and chronic conditions to receive care in their homes and communities instead of in long-term care facilities, hospitals or intermediate care facilities.
- Waivers allow individuals with disabilities and chronic conditions to have more control of their lives and remain active participants in their community.
- County Job and Family Services determines eligibility.

Eligibility for Government Benefits

Medicaid

Asset limit of \$2,000.00.

Individuals who work have a higher limit but have buy in or premiums.

SSI

Asset limit is \$2,000.00.

Income limit is \$20.

(All unearned income over \$20 off-sets or reduces SSI.)

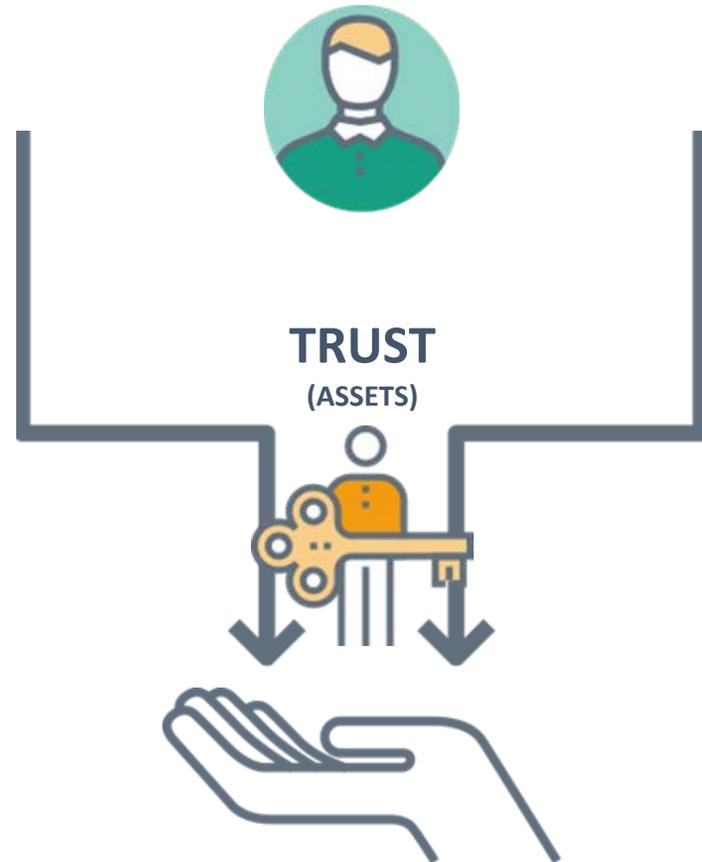
Overview

Trust— An arrangement that allows a trustee, to hold assets on behalf of a beneficiary or beneficiaries.

Trustmaker—The person who creates the trust for the beneficiary.

Trustee—The person, or institution, that manages the trust.

Beneficiary—The person that receives funds from the trust.



Special Needs Trusts and
STABLE Accounts are tools
for benefits preservation.



Special Needs Trusts Overview

- Four types of Special Needs Trusts exist in Ohio that will not disqualify a person from benefits, even if over the asset limit for government benefits (\$2,000.00 for SSI and Medicaid)
- Of the four types, three require a “payback,” and one does not require any “payback.”



1. Discretionary Special Needs Trust

- Funds belong to a **3rd party**
- Trust created by the **3rd party** (e.g., Tim and Nancy create it for Jane's benefit)
- Trustee has absolute discretion in determining how the assets are to be distributed
- **No state payback.** Funds remaining can go to another child, grandchild, or anyone else – Trust Maker decides
- Doesn't require that beneficiary be "disabled"
- No age or funding limitation
- Usually includes "poison pill" provision to ensure qualification as a non-countable resource

2. Supplemental Services Trust

- Funds belong to a **3rd party**
- Trust created by a **3rd party**
- Beneficiary must qualify for services through the State Department of Disabilities or the County Board of Developmental Disabilities
- Maximum principal contribution is \$242,000 in 2015
- Distributions only for supplemental services—See OAC 5122-22-01
- At **beneficiary's** death, 50% of remaining balance must be paid back to the state

3. Special Needs Trust

- Funds belonging to a **3rd party** or **beneficiary**
- Created by Parent, Grandparent, Guardian, or Court (e.g., inheritance, life insurance, child support)
- Created so that individual receiving benefits can continue to receive benefits without being disqualified
- Beneficiary must be age 65 or younger and qualify for benefits
- The trust **must include a state payback provision**
- At **beneficiary's** death, State reimbursed for total amount of medical assistance paid (100%) on behalf of beneficiary, if funds available
- Trustee only authorized to pay for things that public benefits do not cover



Often called (d)(4)(a) trust after the Federal Legislation that created it (42 U.S.C. 1396p(d)(4)(A))

4. Pooled Trust

- Funds belong to **3rd party** or **beneficiary**
- Designed for “small” asset amounts
- By a Parent, Grandparent, Guardian, or the Court
- Non-profit organization–501(c)(3)designation–serves as the trustee (e.g. Community Fund Management Foundation)
- No age limitation
- Master Trust, Separate Accounts
- At **beneficiary’s** death, 100% of remaining balance goes to charity

Determining the Right Special Needs Trust

Who is the Source of the Funds?

If funds belong to anyone, besides the person with special needs (**3rd Party**), choose from the following:

- Discretionary Special Needs Trust
- Supplemental Needs Trust
- Special Needs Trust
- Pooled Trust

If funds belong to the person with special needs for whom the trust is created (**beneficiary**), choose from the following:

- Special Needs Trust
- Pooled Trust

What is the ABLE Act?

Why would someone need a STABLE Account?



Special Needs Trusts vs. STABLE Accounts

ISSUES	STABLE ACCOUNT	THIRD PARTY SNT	MAIN DIFFERENCE
Who can use?	Only persons disabled before age 26	Any person with a disability	STABLE is limited; 3rd Party SNT can be used by anyone
Who can fund?	Anyone, including person with disability	Anyone, except person with a disability (must use 1 st Party SNT)	Unlike the 3 rd Party SNT, STABLE can be funded with assets of the person with disabilities
How many can a person have?	One	Unlimited	Person can only have one STABLE account, but unlimited SNTs
Who can control?	Person with a disability and likely their legal guardian, conservator or agent	Trustee, anyone except the person with a disability and their spouse	STABLE allows person with a disability to retain control, while 3 rd Party SNT requires someone else to be in charge
How much can be paid into per year?	\$14,000	Unlimited	STABLE is limited in how much can be funded, while 3 rd Party SNT allows unlimited funding

Special Needs Trusts vs. STABLE Accounts

(Continued)

ISSUES	STABLE ACCOUNT	THIRD PARTY SNT	MAIN DIFFERENCE
Is funding gift-tax free?	Yes	No	STABLE can be funded gift-tax free; Ohio income tax deduction of \$2000.00 (2016) for STABLE 3 rd Party SNT is subject to gift tax (if funded during lifetime)
Is there a cap on how much can be in the account?	Yes, currently \$100,000 limitation for SSI recipients. Amounts over \$100,000 are included as resources. (State 529 plan limitations.)	No	STABLE cannot contain assets over \$100,000 without those assets over \$100,000 being included as resources, while the 3 rd Party SNT can contain any amount
How is income taxed?	No income tax	Taxed as non-grantor trust	3 rd Party SNT will be taxed on income earned, while STABLE account will not
What type of distributions can be made?	“Qualified disability expenses” as defined by government	No limitation so long as they don’t displace government benefits, and certain disbursements may reduce SSI	STABLE has limitations on how funds can be used
Who inherits on death of person with disability?	Medicaid Payback – Medicaid first, then can go to heirs	No Medicaid Payback – funds can go to other individuals	3 rd Party SNT has no Medicaid payback, but STABLE does

Allowable Expenses of STABLE

- Basic Living Expenses
- Housing
- Transportation
- Education
- Assistive Technology
- Employment Training
- Personal Support Services
- Legal Fees
- Health and Wellness
- Financial Management

Visit www.stableaccount.com for a complete listing.



STABLE Accounts should be considered
a potential piece to an overall special needs plan.

Because of the restrictions and other provisions of the
ABLE Act, STABLE accounts will not replace 3rd Party
Special Needs Trusts for most families and individuals.

Tax Consequences and Benefits Preservation

What Benefits?

- Social Security
 - SSI
 - Childhood Disability Benefit (sometimes called Disabled Adult Child Benefit)
- Medicaid

Tax Consequences

- High tax rate on income over \$12,000
- Qualified Disability Trust
 - Requirements
 - Income spent on Beneficiary is taxable income by Beneficiary

Planning

- Paying for Rent with STABLE
- Graduation gifts
- Saving Income Tax with STABLE
- Life Insurance
- When parents should take Social Security Retirement Benefits

Thank you for your time and attention.

Please feel free to contact me if you'd like to discuss this program,
or other Estate and Special Needs Planning topics in more detail.

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