



2024

**ADVANCED
SALES FORUM**

Navigating the Changing Tides

Special Needs Planning and Spendthrift Trusts



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Agenda

- Life care plans
- Government benefits
- Letter of Intent
- Guardianship / Conservatorship
- Spendthrift trusts
- Special needs trusts
- Trustee responsibilities
- Expenses special needs trusts may cover
- Funding now and/or in the future
- Benefits of a special needs trust
- ABLE accounts
- Putting it all together

The Importance of Integrated Planning in Special Needs Cases

Creating a life care plan that meets everyone's needs within a family can feel overwhelming, making it all the more important to assemble a team of trusted advisors, such as...

- financial professionals with special needs training
- attorneys with special needs experience
- accountants
- bankers
- social workers and advocates
- and medical providers

Government Benefits

Entitlement Benefit vs. Public Assistance

Entitlement Benefit

- Social Security Retirement Income
- Social Security Disability Insurance (SSDI)
- Family Benefits
- Spouse and Survivor Benefits
- Children's Disability Benefit
- Medicare

Public Assistance

Supplemental Security Income (SSI)

Medicaid

Public Supports:

- Supplemental Nutrition Assistance Program (SNAP)
- Temporary Assistance for Needy Families (TANF)
- Children's Health Insurance Program (CHIP)

Note: Benefits may vary by state and jurisdiction.

Letter of Intent

- Not a legal document, but considered by court
- Current situation, as well as hopes and dreams
- Updated regularly
- **WHY** – to leave explicit and specific instructions that would familiarize anyone with the individual
- **WHEN** – this is a working document; it should be completed ASAP and updated regularly – at least once per year or as needed
- **HOW** – Templates are available, but don't be afraid to go beyond what is asked and provide more information
- **WHO** – Input from everyone, especially the caregivers, and the dependent, if applicable.

Guardianship/Conservatorship and Alternatives

- Full or Plenary Guardianship: financial, medical, residential, educational, social decisions
- Limited Guardianship
- Supported Decision-Making
- Conservatorship: financial decisions
- Medical power of attorney: medical and some residential (group home)
- Durable General Power of Attorney: financial decisions (may include education)
- If my dependent is under 18
- If my dependent is over 18

What are they and how do they work?

- Type of trust that protects a beneficiary's assets from creditors and themselves
- Trustee manages and distributes trust assets under the terms of the trust
- Can be revocable or irrevocable – focus on irrevocable
- Special needs trusts are a subset of spendthrift trusts; specific purpose is to protect a disabled person's eligibility for governmental benefits

What is a Special Needs Trust (SNT)?

- A SNT is a trust that holds funds for a loved one with special needs (the beneficiary) without impacting their financial eligibility for government benefits
- Can help address their ongoing care and needs by supplementing standard services and benefits provided by government benefits
- Must be overseen by a trustee – often the dependent’s caregiver and/or a bank trust officer
- SNTs can be set up either funded or unfunded
- Funds can be contributed gradually over the years, or the trust can be designated as a beneficiary of an inheritance or life insurance policy

Special Needs Trusts - *continued*

- Assets cannot be given directly to the beneficiary, but rather paid directly to a third-party provider for the benefit of the person with special needs
- Stipulates how the monies contributed to the Trust are used for the beneficiary
- State specific language is necessary*
- Different types of trusts suit different needs and may have different tax implications

*Recommended to work with an attorney who is familiar with the laws and regulations pertaining to SNTs of the appropriate state.

Some Reasons to Create a Special Needs Trust

- Developmental Disabilities
- Congenital Disabilities
- Traumatic Brain and/or Spinal Cord Injury
- Capacity Issues
- Debilitating Disabilities
- Medical Malpractice
- Personal Injury
- Structured Settlements

Types of Special Needs Trusts

FIRST-
PARTY,
(D)(4)(A),
SPECIAL
NEEDS
TRUST

SELF-
SETTLED
SPECIAL
NEEDS
TRUST

THIRD-
PARTY
SPECIAL
NEEDS
TRUST

POOLED,
(D)(4)(C),
SPECIAL
NEEDS
TRUST

First-Party or (d)(4)(a) Special Needs Trust

- Can be established by the parent, grandparent, legal guardian of an individual with special needs, the court, or the individual with special needs who qualifies under the Special Needs Trust Fairness Act
- The Trustee can be any individual or professional other than the individual with special needs
- The trust is funded with the assets of the individual with special needs up until they turn 65 years old
- The funds must be used for the sole benefit of the person with special needs
- There is a Medicaid payback provision

Third-Party Special Needs Trust

- Can be established by any individual, typically a caregiver or other family member, but NOT the individual with special needs
- Anyone can fund this trust except the individual with special needs
- Can be irrevocable or revocable
- Family members typically leave property in the third-party special needs trust through their estate plan (their will, trust, life insurance, or other beneficiary designation)
- Does not require Medicaid payback if properly drafted
- Trust provides for remainder beneficiary; upon death of beneficiary with special needs, monies may be left to another person or a non-profit organization
- Does not provide for basic maintenance needs like food, clothing and shelter that are otherwise provided by government benefits

Pooled or (d)(4)(c) Special Needs Trust

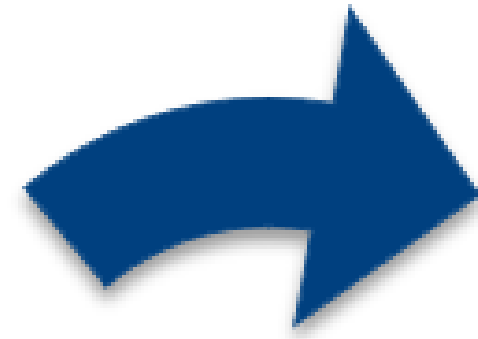
- Established and administered by a non-profit organization on behalf of an individual with special needs
- Assets are pooled together for investment from many individuals with special needs who are receiving Medicaid, and segregated into a sub-account where the funds are used for the sole benefit of each individual with special needs
- Sub-account can be established by either the individual with special needs who qualifies under the Special Needs Trust Fairness Act passed on Dec 13, 2016, their caregiver, grandparent, guardian, or a court.
- Transfer penalties may occur in some states for assets transferred to a pooled trust by individuals with special needs over age 65
- Upon death of the individual with special needs, Medicaid payback provision applies and then any remaining funds are divided between the non-profit organization that created the pooled trust, if applicable, and those designated by the individual with special needs

Note: Most non-profits no longer require that they are listed as a beneficiary

Trustee Responsibilities

Family Member

- Distribution Decisions
- Social Activities



Professional or Corporate Trustee (optional)

- Investments
- Recordkeeping
- Tax Returns



Medical Professional /Social Worker

- Treatments
- Therapy
- Medical Procedures

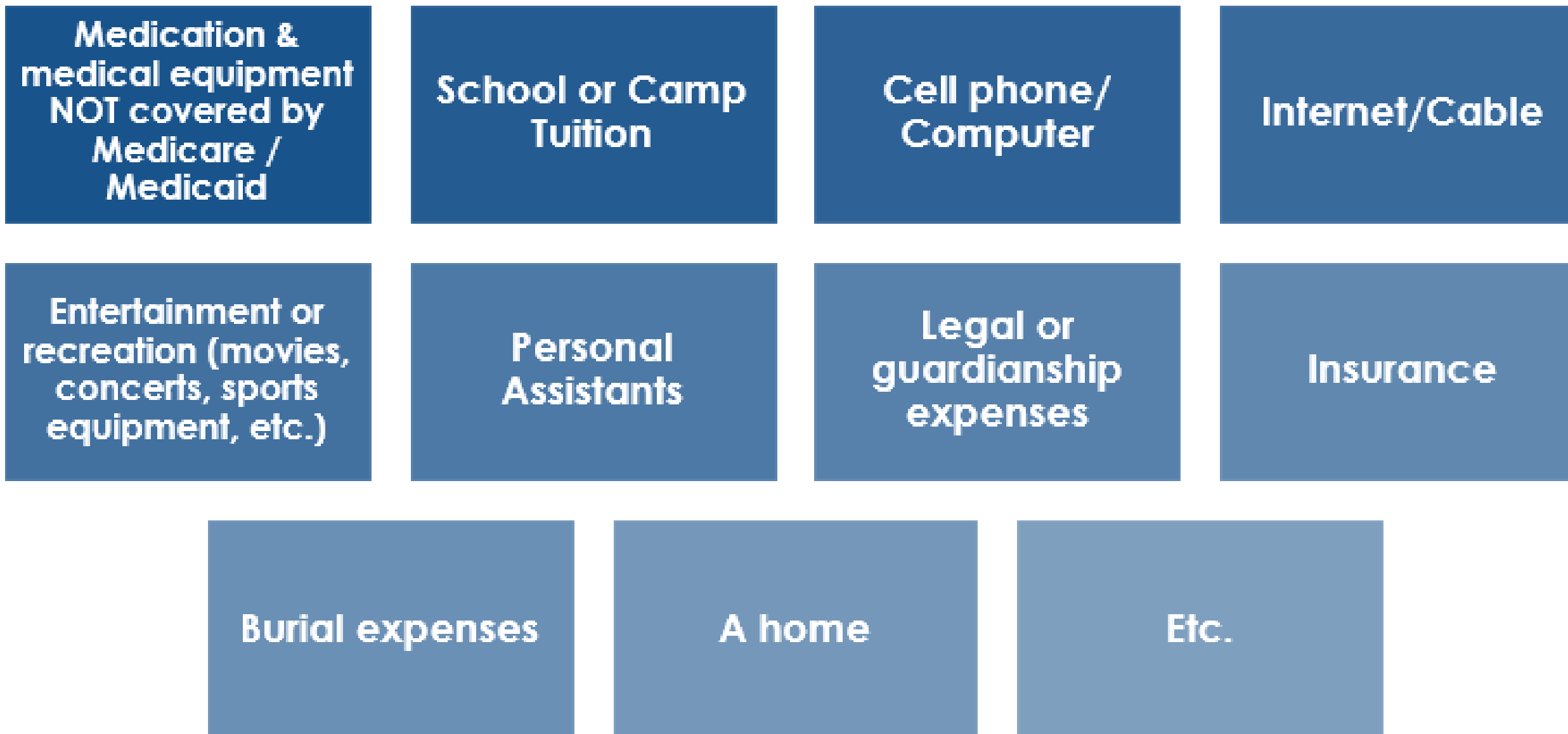


Additional Services to Expect From a Corporate Trustee

- Provides full Trust accounting and asset reporting to the donor, beneficiaries and other parties
- Prepares and files all required tax returns
- Relationship Manager is assigned as a “point-of-contact” to provide service
- Access to secure website to check financial status of the Trust

Expenses Special Needs Trusts Can Cover

SNTs can be used for expenses not already covered by government benefits, such as:



Funding: Now and Future



Now

Savings
Settlement
Inheritance



Future

From your estate
Life insurance

Benefits of a Special Needs Trust

- Individuals with special needs can receive assets, such as an inheritance, court settlement, insurance claim payment, gifts of money, or life insurance proceeds
- Protects current and future government benefit eligibility for a loved one with special needs
- SNT can pay for medical care, special equipment, education, entertainment, transportation, etc.
- ***IMPORTANT*** - work with an attorney that has experience with special needs planning

NATIONAL SPECIAL NEEDS ATTORNEY GROUPS:

The Academy of Special Needs Planners

Special Needs Alliance

National Academy of Elder Law Attorneys (NAELA)

ABLE (Achieving a Better Life Experience) Accounts

- President Barack Obama signed the ABLE Act on December 19, 2014, as part of the Tax Extenders package
- This law allows eligible individuals with disabilities to have a tax-free account; modeled after 529 college plan accounts
- Used for “Qualified Disability Expenses”, including housing.
- Non-qualified distributions are subject to federal income tax and a 10% penalty.
- Funds in an ABLE account will not affect eligibility for federally funded means-tested benefits, such as SSI (Supplemental Security Income) and Medicaid. However, SSI recipients must stay within the account limits discussed in the next slide in order to continue eligibility.

For the latest information on ABLE, including which states offer ABLE accounts, visit

www.ablenrc.org

ABLE Account Limits

- Maximum annual contributions in 2024 is \$18,000. An additional \$14,580 in 2024 can be contributed from earnings of the beneficiary
- States have set limits for total allowable ABLE savings. A state ABLE limit range from \$235,000-\$550,000
- For ABLE account owner's receiving SSI, if the account combined with their other resources exceeds \$100,000, SSI will be suspended until all their resources no longer exceed the \$100,000 limit. Does not affect Medicaid.
- Money from the beneficiary's special needs trust moved into their ABLE account will have no tax consequences, again, while staying within the ABLE annual contribution limit.
- Income earned by the ABLE account is not taxed. Contributions must be made with post-taxed dollars and is not tax deductible for federal taxes, however, some states may allow for state income tax deductions for contributions made to an ABLE account.
- Funds in a 529 college savings plan can be moved into an ABLE account without incurring tax or penalties IF both accounts have the same beneficiary or a qualifying member of the beneficiary's family. The rollover amount must be within the ABLE annual contribution limit and must occur by December 31, 2025.

Putting it all together

- Prepare Letter of Intent
- Guardianship and Alternatives
- Choose Successor Caregivers, Guardian(s) & Trustee(s)
- Estate Planning
 - Wills
 - Advanced Medical Directives
 - Durable General Powers of Attorney
 - Trusts
 - Titling – Ownership, Beneficiaries, TOD and POD
 - Special Needs Trusts (SNTs)

Thank You



Navigate With Confidence