

National Alliance on Mental Illness (NAMI)
Family Support Group
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POTPOURI OF OPTIONS FOR ADULT CHILDREN WITH DISABILITIES

- I. Understanding Social Security Disability (SSDI) and Supplemental Security Income (SSI)
- A. **Social Security Disability Income (SSDI)** is for individuals who work under the Social Security system, and their dependents and survivors. These individuals can receive Social Security *Insurance* benefits including retirement, disability, wife's and husband's, child's, adult disabled child's, widow's and widower's, divorced spouse, and so on. These are all *entitlement* programs. Eligibility is based strictly on work credits, family relationship, and sometimes dependency requirements. Assets and other sources of income (other than certain governmental pensions) have no effect on the Social Security Insurance benefits.

An individual receiving SSDI for approximately 2 ½ years will then be eligible for Medicare benefits. The 2 ½ year gap is a big problem for many disabled adults. Medicaid, the Affordable Care Act, or staying on a parent's insurance may be an option for some families.

- B. **Supplemental Security Income (SSI)** is a monthly cash payment for the food and shelter of the beneficiary. It is administered by the Social Security Administration. Many states supplement SSI, so there are two parts of SSI, the Federal Benefit Rate (FBR) which in 2021 is **\$794** per month for an individual, and many states include a State Supplement Payment (SSP) which is added to the FBR. **Virginia does not have a SSP.**

Participation in SSI is determined by documenting needs based on disability and financial necessities. SSI is intended to pay for food and shelter. That is it - nothing more than food and shelter. This is a challenge in Virginia to provide for one's food and shelter on \$794/month [for year 2021].

Qualifying an individual for SSI benefits can be very challenging, but if you approach eligibility as a three-part test, much of the program will begin to make sense. The first test is that the disability recipient must meet the definition of disability. The second test is an income test, which determines how much money the benefits recipient will receive. The third test is the resource test, which determines whether or not the individual is eligible.

Test 1 – Meeting the Definition of Disability

Under the Social Security rules: An individual will meet the criteria of disability for SSI and SSDI if that individual is “unable to engage in substantial gainful activity (SGA). A person who is earning more than a certain monthly amount (net of impairment-related work expenses) is ordinarily considered to be engaging in SGA. The amount of monthly earnings considered as SGA depends on the nature of a person’s disability. The Social Security Act specifies a higher SGA amount for statutorily blind individuals; Federal regulations specify a lower SGA amount for non-blind individuals. Both SGA amounts generally adjust with changes in the national average wage index.”

For 2021, the amount for a non-blind individual is **\$1,310** per month. If the non-blind individual is unable to consistently earn more than \$1,310 per month as a result of a physical or mental impairment that is likely to last at least a year or end in death, than that individual meets the definition of disability. The concept is that if a person is able to earn more than \$1,310 a month [for 2021], he or she is able to participate in Substantially Gainfully Activity (SGA) and, therefore, does not require financial or medical assistance. If the Social Security Administration determines that the benefits recipient is able to participate in Substantially Gainfully Activity, then under their determination, the recipient is not considered disabled.

Test 2 – Income Test

Once the benefits recipient meets the disability test, the individual must meet the income test to determine the amount of benefits he or she will receive. Think of SSI as a supplement to what a benefits recipient receives as income up to the maximum SSI rate. SSI classifies income into three categories: unearned income; earned income; and in-kind support and maintenance (ISM). The purpose of these categories is to analyze how much income the benefits recipient will actually receive.

- Unearned Income

The first category is “Unearned Income.” SSI defines unearned income as any cash or gift the SSI recipient receives, or is entitled to receive, from annuities, pensions, alimony, **support payments**, dividends, interest, **rent**, litigation awards or settlements, or payments from other programs. If an SSI recipient receives unearned income from anywhere, it will reduce the individual’s SSI benefits amount dollar for dollar after the first \$20. **A benefits recipient of SSI cannot receive cash without affecting his or her SSI amount or eligibility.**

- Earned Income

The second category of income is “Earned Income.” Earned income is exactly that— income that is earned in the form of wages, salary, or compensation for work performed. The basic rule is that after the first \$65, SSI benefits will be reduced one dollar for every two dollars earned.

For example, let's say that Bob has a part-time job at a local grocery store and he earns \$265 in the month of November. Social Security will not count the first \$65 of Bob's earnings, but it will reduce his SSI benefits for November by \$100, which will be applied to his SSI check two months later. [$\$265 - \$65 = \$200 / 2 = \100] [$\$794 - \$100 = \$694$]

- “In-kind Support and Maintenance” (ISM)

The third category of income is “In-kind Support and Maintenance” (ISM). In-kind support and maintenance is non-cash assistance to a benefits recipient which helps the recipient secure food and/or shelter (or something that can be used to get one of these things). The other piece of ISM is the Presumed Maximum Value (PMV) rule. Instead of determining the actual value of ISM, Social Security presumes that its value is not more than an amount equal to one-third of the applicable FBR plus \$20.

For example, if Mr. and Mrs. Smith's daughter, Sandy, a disabled adult, lives in their home and Sandy is unable to pay fair market rent or her share of household expenses, Mr. and Mrs. Smith are providing ISM and Sandy's SSI will be reduced dollar for dollar for the value of the assistance she is receiving capped at \$284.66 ($\$264.66 + \20) [for 2021][$\$794 - \$284.66 = \$509.34$]

The federal benefits rate (FBR) for 2021 is \$794 per month. The federal portion generally goes up every year based on a cost-of-living adjustment. It was originally intended to provide one-third for food, one-third for clothing and one-third for shelter. The clothing restriction ended in March of 2005, but this 1/3 concept makes the program easier to understand. SSI's reasoning behind the \$284.66 reduction is that if an SSI recipient is not paying his or her fair share for rent from his or her benefits, then SSI should not have to provide the maximum amount. SSI, therefore, reduces the benefits dollar for dollar of support for food or shelter, provided that it is capped at one-third of the federal contribution, plus \$20.

For example, if a family member allows an SSI recipient to live in his or her home rent free, SSI benefits will be reduced dollar for dollar capped at \$284.66 – even if the value of the assistance is worth much more. For 2021, the SSI recipient will receive $\$794 - \$284.66 = \$509.34$ per month in SSI benefits.

PARENT TIPS:

1. The safest way to assist your child is to distribute the goods and services directly to the beneficiary personally. Example: Buy a television and deliver it personally.
2. Direct payment to a provider. Example: Buy a television from an appliance store and have the store deliver it to the beneficiary.

3. Give the beneficiary a credit card to buy the television set and have the Special Needs Trust pay the bill. Do not allow the beneficiary to use the card to obtain cash either from an ATM or by selling goods obtained by using the card, as these will be considered as countable income. Look at TRUELINK cards.
4. Be careful in giving gift certificates or vouchers or airline tickets which are refundable. These may be considered income to the beneficiary.

Test 3 – Resource Test

For purposes of SSI eligibility, income determines how much the benefits recipient will receive, while resources determine whether the individual is eligible. A resource as defined by SSI is anything you can convert into cash or support. If a benefits recipient's resources exceed \$2,000 on the first moment of the first day of the calendar month, the benefits recipient is not eligible for benefits that month. Yet, there are a number of exceptions to the \$2,000 resource rule—items that Social Security considers excluded from the resource calculation. These items are called “exempt resources.” These include:

For SSI the following are resources that are not counted if owned by the benefits recipient:

- A home the SSI recipient lives in and the land it is on;
- Household goods and personal effects (e.g., your wedding and engagement rings);
- Burial spaces;
- Burial funds valued at \$1,500 or less;
- Life insurance policies with a combined face value of \$1,500 or less; and
- One vehicle, regardless of value, if it is used for transportation for you or a member of your household.

C. BRIEF DESCRIPTION OF DAC/CDB

Child Disability Benefits (DAC/CDB) is based upon the Social Security contributions of the parent, as long as the child meets the definition of disability **before the age of 22**. This is why I recommend to my clients that they apply for SSI upon the child turning 18.

Benefits from the CDB program are not payable until the “sponsoring” parent dies, retires, or the parent becomes disabled. Upon the disability or retirement of the parent, the eligible child will receive an amount equal to one-half of the parent's benefit. Upon the death of a parent, an eligible child will get an amount equal to three-quarters of the parent's Social Security benefit. Qualifying for this benefit does not reduce the Social Security payments to either the parent or the parent's spouse.

For example, Karen has been disabled from birth and is receiving \$794 monthly from SSI. Karen's father, Earl, retires and he begins to receive \$1,400 a month of Social Security Retirement benefits. Karen will then receive \$700 a month under the CDB program.

How does this payment affect Karen’s SSI eligibility? The CDB payment is considered unearned income, and, therefore, Karen’s SSI would be reduced dollar for dollar after the first \$20 received. This means she would receive \$114 a month of SSI and \$700.00 a month of CBD benefit, effectively increasing her overall cash benefits by \$20 a month. Upon Earl’s death, Karen would receive an amount equal to receive ¾ of Earls Social Security Benefit or \$1,050 a month which would completely eliminate her SSI.

Qualifying for CDB also qualifies the benefits recipient for Medicare, but not for two years following the initial CDB qualification. Medicare is a federal health insurance program for people who are over 65, or for disabled people under 65 two years from the disability determination.

Let's return to our example: After Earl retires, Karen receives \$114 of SSI and \$700 from Social Security. Because she continues to receive at least some SSI, she will continue to be categorically eligible for Medicaid. Two years later she will begin to receive Medicare.

In many ways, Medicare is a better program than Medicaid, not only because it covers basic medical needs, but because more providers accept it. It does not, however, provide residential care nor does it provide comprehensive mental health treatment, Waiver Services, or long-term care. Despite its shortcomings, Medicare provides beneficiaries with comprehensive acute care health coverage which is superior to Medicaid, and is a truly valuable benefit for most benefits recipients.

	Needs Based Benefits	Benefits Based on Entitlement
Cash Assistance	Supplemental Security Income (SSI)	Social Security Disability (SSDI) Childhood Disability Benefits (CDB)
Medical Assistance	Medicaid	Medicare

II. Earnings Limitations

If your adult child is receiving SSI and Medicaid, earned income from a job will affect his or her benefits. Employment starts with Department of Aging & Rehabilitative Services (DARS). DARS provides Pre-Employment Transition Services to all students with disabilities. Start in Junior Year of High School.



DOWNLOAD AND READ SOCIAL SECURITY'S RED BOOK

Unearned income applies a \$20 general income exclusion against unearned income. For earned income, the first \$65 of wages are excluded and then only takes into account ½ of your remaining wages. This means that less than one-half of your earnings are counted in figuring out your next SSI payment amount.

Students under the age of 22 who regularly attend school can exclude a certain amount of income each month.

During the trial work period – there are no limits on one's earnings.

Impairment Related Work Expenses (IRWE) – SSA deducts from your gross earnings the cost of certain impairment related items and services that you need to work. Such as attendant care services, certain transportation costs, medical devices, service animals, medications, and residential modifications.

Planning for Achieving Self Support (PASS) allows an individual to set aside unearned or earned income to achieve an occupational objective. This money can be over the \$2,000 resource limit.

Virginia's Medicaid Works (VMW) a Medicaid plan that enables workers with disabilities to earn higher income and retain more in savings, or resources, while ensuring continued Medicaid coverage. This plan allows enrollees to have annual earnings up to the federal 1619(b) income threshold. In 2021 that amount is \$41,399.

Ticket to Work Program (TTW) If you receive SSI or SSDI benefits but believe you may be able eventually to earn enough money to support yourself and get off the benefit rolls, consider the Ticket to Work Program. You will not automatically lose benefits. Benefits will start back up if you have to stop working and you can continue to receive healthcare benefits.

Resource: The ARC of Northern Virginia's Transition Points "Entering the World of Work" or "Securing a Future." Social Security's Red Book.

Irene works and earns \$1,000 per month. She also only receives SSI. Her income would be calculated as follows $\$1,000 - \$65 / 2 = \$467.50$. Irene's SSI gets reduced by \$467.50. $\$794 - \$467.50 = \$326.50$.

III. Continuing our Young Adults (ages 18+-30+) on a Parent's Health Insurance

As a result of the Affordable Care Act, your health insurance coverage must continue for your young adult until the age of 26. It depends upon the particular Health Insurance Carrier whether they will continue to provide coverage after the age of 26. It is a good idea to request the information in writing from your Health Insurance Carrier in advance of your child turning 26.

IV. Social Security Representative Payee

A representative payee is a person or an organization. Social Security appoints a payee to receive the Social Security or SSI benefits for anyone who cannot manage or direct the management of his or her benefits. A payee's main duty is to use the benefits to pay for the current and future needs of the beneficiary AND to save any benefits NOT NEEDED to meet current needs. Benefits should be used for food, clothing, shelter, utilities, dental and medical care, and personal comfort items. A payee must keep records of expenses. When Social Security requests a report, the payee must provide an accounting to us of how he or she used or saved the benefits.

A representative payee MUST report any changes or events which could affect the beneficiary's eligibility for payments

What type of account should you set up – a checking account that prints checks at the end. Must be titled to be clear that the money belongs to the beneficiary. Social Security usually sends you a letter on how to name the account and most banks are familiar with setting up representative payee accounts.

V. Power of Attorney vs. Guardianship Pros & Cons

Guardianship	Conservatorship	Advance Medical Directive	Durable General Power of Attorney
Principal does NOT get to choose who acts on his/her behalf	Principal does NOT get to choose who acts on his/her behalf	Principal gets to choose who acts on his/her behalf	Principal gets to choose who acts on his/her behalf
Restrictions on Principal's Ability to Act Apply	Restrictions on Principal's Ability to Act Apply	Lesser Restrictive Alternative	Lesser Restrictive Alternative
Expensive	Very Expensive	Less Expensive	Less Expensive
Is NOT revocable	Is NOT revocable	Is revocable	Is revocable
Principal can NO longer act for him or herself	Principal can NO longer act for him or herself	Principal can still act! Designed for time when principal can no longer act	Principal can still act for him or herself



- A. Power of Attorney – a writing that grants authority to an agent to act in the place of the principal. The agent takes care of business between the principal and others (financial institutions, business associates, pay bills, banking, manage personal property, memberships, investments, taxes, gifting)
- General or Special/Limited
Special/Limited by task (Special Power of Attorney to Sell Real Estate; Power of Attorney for Term of 6 Months from Date of Signing)
 - Durable or Non-durable
Durable means not terminated by the principal’s incapacity;
 - Immediate or Springing
Springing means it is not exercisable until the principal has been determined to be incapacitated; an immediate power of attorney is exercisable immediately upon signing.
 - Incapacity means inability of an individual to manage property or business affairs because the individual: 1. Has an impairment in the ability to receive and evaluate information or make or communicate decisions even with the use of technological assistance; or 2. Is missing or outside the United States and unable to return. [§64.2-1600. Definitions.]

Process:

A signed, notarized writing. No need for witnesses.

Agent’s duties:

- Notwithstanding provisions in the power of attorney, an agent who has accepted appointment shall [§64.2-1612(A)]:
 1. Act in accordance with the principal's reasonable expectations to the extent actually known by the agent and, otherwise, in the principal's best interest;
 2. Act in good faith; and
 3. Act only within the scope of authority granted in the power of attorney.
- Except as otherwise provided in the power of attorney, an agent that has accepted appointment shall [§64.2-1612(B)]:
 1. Act loyally for the principal's benefit;
 2. Act so as not to create a conflict of interest that impairs the agent's ability to act impartially in the principal's best interest;
 3. Act with the care, competence, and diligence ordinarily exercised by agents in similar circumstances;
 4. Keep a record of all receipts, disbursements, and transactions made on behalf of the principal;



5. Cooperate with a person that has authority to make health care decisions for the principal to carry out the principal's reasonable expectations to the extent actually known by the agent and otherwise act in the principal's best interest; and

6. Attempt to preserve the principal's estate plan, to the extent actually known by the agent, if preserving the plan is consistent with the principal's best interest based on all relevant factors, including:

Considerations for Use:

- It is a less restrictive alternative to a court appointed surrogate (like a guardian and/or conservator);
- A lot less expensive than a conservatorship;
- It is revocable;
- Doesn't prohibit principal from acting on his/her own at the SAME TIME;
- Does the principal have the capacity to execute a Power of Attorney?

B. Advance Medical Directive

Definition: a document by which a person makes provision for health care decisions and treatment preferences in the event that, in the future, he/she becomes incapable of making an informed decision.

"Incapable of making an informed decision" means the inability of an adult patient, because of mental illness, intellectual disability, or any other mental or physical disorder that precludes communication or impairs judgment, to make an informed decision about providing, continuing, withholding or withdrawing a specific health care treatment or course of treatment because he is unable to understand the nature, extent or probable consequences of the proposed health care decision, or to make a rational evaluation of the risks and benefits of alternatives to that decision. For purposes of this article, persons who are deaf, dysphasic or have other communication disorders, who are otherwise mentally competent and able to communicate by means other than speech, shall not be considered incapable of making an informed decision.

Process:

- ❖ A written advance medical directive shall be signed by the individual in the presence of two subscribing witnesses and may specify the health care the individual does or does not authorize; appoint an agent to make health care decisions; and specify an anatomical gift.
- ❖ A written advance medical directive may be submitted to the Advance Health Care Directive Registry (www.connectvirginia.org)
- ❖ Any adult capable of making an informed decision who has been diagnosed by his attending physician as being in a terminal condition may make an oral advance medical directive.

Authority of Agent:

The agent has the authority as specified in the advance medical directive and priority over:

- i. a guardian for the patient; or
- ii. the patient's spouse (except where a divorce action has been filed and is not final); or
- iii. an adult child; or
- iv. a parent; or
- v. an adult sibling; or
- vi. any other relative of the patient in the descending order of blood relationship; or
- vii. ANY ADULT {except in cases in which the proposed treatment recommendation involves the withholding or withdrawing of life-prolonging procedure}, except any director, employee, or agent of a health care provider currently involved in the care of the patient, who (i) has exhibited special care and concern for the patient and (ii) is familiar with the patient's religious beliefs and basic values and any preferences previously expressed by the patient regarding health care, to the extent that they are known!
- viii. The statute (§54.1-2986) goes on to allow a quorum of a patient care consulting committee of the facility, or two physicians who are not currently involved in the care of the patient and are not employed by the facility, and do not practice medicine in the same professional business entity.

Considerations for Use:

- o The individual gets to pick the person who will make his/her medical decisions;
- o A lot less expensive than a guardianship;
- o It is revocable!
- o Even if a guardianship is made, the agent takes precedence over the guardian (unless revoked in the guardianship order);
- o The individual doesn't lose any rights (right to vote, sign contracts, driver's license, and firearms).

C. Guardian

1) Definition of a Guardian: a person who is given the legal power and duty by a court to take care of and manage the **personal and medical** affairs of another person who, due to incapacity, is considered unable to manage his or her own affairs.

2) Definition of incapacitated person under Virginia law:

"Incapacitated person" means an adult who has been found by a court to be incapable of receiving and evaluating information effectively or responding to people, events, or environments to such an extent that the individual lacks the capacity to (i) **meet the essential requirements for his health, care, safety, or therapeutic needs without the assistance or protection of a guardian** or (ii) manage property or financial affairs

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or provide for his support or for the support of his legal dependents without the assistance or protection of a conservator. A finding that the individual *displays poor judgment alone* shall not be considered sufficient evidence that the individual is an incapacitated person within the meaning of this definition. A finding that a person is incapacitated shall be construed as a finding that the person is "mentally incompetent" as that term is used in Article II, Section 1 of the Constitution of Virginia and Title 24.2 unless the court order entered pursuant to this chapter specifically provides otherwise.

Process:

When the court gets involved the court is looking at three things:

- 1) the nature of the condition impairing capacity;
 - 2) the extent of an individual's capacity to make and communicate decisions; and
 - 3) the necessity for a guardian in light of availability of lesser restrictive alternatives like family, friends, other supports like powers of attorney, advance medical directives, and/or trusts.
- The court is required to decide: whether it will be a plenary (full) or limited guardianship and the duration of the guardianship (will this be perpetual).

What Things Are Called

- Petition – the name of the document with certain required information filed in court to pursue a guardianship/conservatorship.
 - Respondent – the alleged incapacitated person. Once the Order of Appointment has been signed by the Judge, the Respondent becomes the “Ward.”
 - Petitioner – the person filing the petition.
 - Guardian *ad litem* – the court's investigator. The eyes and ears for the judge; often called the “G” “A” “L” or GAL.
- Remember: The guardian can be the same person as the conservator, or the guardian can be a different person from the conservator; you can have more than one guardian and conservator. You can have a standby guardian and a standby conservator.

Court Procedures:

- 1) Filing the Petition.

A petition for the appointment of a guardian and conservator is filed in the circuit court of the county or city where the respondent:

- Is a resident or is located; or
- Resided immediately prior to becoming a patient, voluntarily or involuntarily in a hospital, or resident in a nursing facility, nursing home, convalescent home, assisted living facility as defined in Va. Code 63.2-100, or other similar institution.

- 2) Petition must have an Evaluation Report.
- 3) After the Petition is filed, the court appoints the Guardian *ad litem* (means “guardian for the lawsuit”).
- 4) The GAL investigates the allegations in the petition, personally serves the respondent, advises the respondent of his/her rights, and makes recommendations to the court about the necessity of a guardian/conservator, the suitability of the proposed guardian/conservator, and bonding.
- 5) Petitioner’s counsel prepares an order for the hearing as approved by the GAL.
- 6) The Hearing – Judge signs the Order of Appointment and dismisses GAL.
- 7) Qualification before the Clerk.

Authority of Guardian:

- Guardian prepares annual reports with the Department of Social Services;
- The ward loses the right to enter into contracts, to make gifts, to accept/reject medical treatment, to decide where to live, to manage his or her own financial affairs; and
- Most importantly: the ward loses the right to vote, to a driver’s license, to carry a handgun, and the right to marry/divorce.

Powers & Duties of Guardian

- Only those powers enumerated in the court order;
- A guardian stands in a fiduciary relationship to the incapacitated person for whom he or she was appointed and may be held personally liable for a breach of any fiduciary duty to the incapacitated person; [A guardian is not liable for the acts of the incapacitated person, unless the guardian is personally negligent.]
- A guardian is not required to expend personal funds on behalf of the incapacitated person;
- The guardian may receive compensation from the estate of the incapacitated person. CAVEAT: Fairfax County has guidelines on how much a guardian may charge; and
- A guardian’s duties and authority shall not extend to decisions addressed in a valid advance directive or durable power of attorney previously executed by the incapacitated person. A guardian may seek court authorization to revoke, suspend, or otherwise modify a durable power of attorney. A guardian may seek court authorization to modify the designation of an agent under an advance directive, but such modification shall not in any way affect the incapacitated person’s directives concerning the provision or refusal of specific medical treatments or procedures.
- Guardian must maintain sufficient contact with the incapacitated person to know of his or her capabilities, limitations, needs, and opportunities;
- Guardian shall, to the extent feasible, ***encourage the incapacitated person to participate in decisions, to act on his or her own behalf***, and to develop or regain the capacity to manage his or her personal affairs. In making decisions, the guardian shall

- consider the expressed desires and personal values of the incapacitated person to the extent known, and shall otherwise, act in the incapacitated person's best interest;
- Guardian has authority to make arrangements for the funeral and disposition of remains; and
 - Guardian must file an annual report with the department of social services where the incapacitated person resides.
 - A guardian cannot, without prior court authorization, change the incapacitated person's residence to another State, terminate or consent to terminate the person's parental rights, or initiate a change in the person's marital status.

Considerations for Use:

1. Copy of Order of Appointment – raised seal; and Certificate of Qualification (copies in materials).
2. The individual has not signed an advance medical directive and no longer has the capacity to do so;
3. The individual has signed an advance medical directive, but the agent is not acting in the individual's best interest;
4. The individual has a signed advance medical directive and it is insufficient (not witnessed, 1 witness);
5. The individual has special needs and is unable to sign an advance medical directive or would be vulnerable to abuse and needs the protection of a guardian (autistic child turning 18)

D. Conservator

Definition of a Conservator: a person who is given the legal power and duty by a court to take care of and manage the estate and financial affairs of an incapacitated person.

- 1) Process: see process of appointing guardian above.
- 2) Authority of Conservator:

- A Conservator must prepare an inventory of assets, and then annual accountings with the Commissioner of Accounts (The Commissioner of Accounts is a court's auditor).
- A Conservator shall exercise reasonable care, diligence, and prudence, and shall act in the best interest of the incapacitated person, to the extent known to him or her, the conservator *shall consider the expressed desires and personal values* of the incapacitated person.
- Must consider the size of the estate, probably duration of the conservatorship, the incapacitated person's accustomed manner of living, other resources known to the conservator, and recommendations of the guardian.



- Conservator is a fiduciary to the incapacitated person and may be held personally liable for a breach of any fiduciary duty. Unless otherwise provided in the contract, a conservator is personally liable on a contract entered into in a fiduciary capacity in the course of the administration of the estate unless he or she reveals the representative capacity and identifies the estate in the contract.
- Conservator has the following powers in managing the incapacitated person's estate without prior court authorization (except as otherwise specifically provided in the court's order of appointment):
 - Ratify or reject a contract entered into by the incapacitated person;
 - Pay any sum distributable for the benefit of the incapacitated person;
 - Maintain life, health, casualty and liability insurance for the benefit of the incapacitated person;
 - Manage the estate following termination of the conservatorship until its delivery to the incapacitated person, or successors in interest;
 - Execute and deliver all instruments;
 - Borrow money (including mortgages);
 - Initiate a proceeding to revoke a power of attorney and to make an augmented estate election; and
 - For real estate, the court may impose requirements to be satisfied by the conservator prior to the conveyance of any real estate.
 - The conservator must comply with the fiduciary filing requirements under the Virginia code, including filing an inventory within 4 months of the date of appointment, filing a first account within 6 months of the date of appointment, and an annual account thereafter.

Considerations for Use:

1. The individual has not signed a power of attorney and no longer has the capacity to do so;
2. The individual signed a power of attorney, but the document is insufficient in some way(s);
3. The individual signed a power of attorney, but the agent is not acting in the individual's best interest.

VI. ABLE Accounts & SNTs

Remember that earlier we discussed ISM and PMV for SSI recipients and how unearned income and earned income affect an individual receiving SSI. This can cause problems if someone else pays for the disabled individual's housing. But, ABLE Accounts for shelter do not cause an ISM reduction for SSI recipients. Social Security recently directed that distributions from an ABLE account do not count as income regardless of whether the distributions are for non-housing QDEs, housing QDEs, or non-qualified expenses. How

does using an ABLE Account avoid an ISM reduction?

As an example, let's look at Irene who has been disabled from birth, receives \$794/month in SSI, and wants to live in an apartment that costs \$900/month. How does this affect Irene's SSI payments?

Scenario 1: Irene's parents pay her \$900/month. This will be counted as unearned income and Irene's SSI will get completely eliminated.

Scenario 2: Irene's parents pay the landlord directly. This counts as ISM to Irene. Irene's benefits will be reduced by PMV or \$284.66, so she will only receive \$509.34/month from SSI.

Scenario 3: Irene's parents contribute \$900/month to Irene's ABLE Account. The landlord gets paid the \$900/monthly rent directly from the ABLE Account. Irene's SSI is not reduced at all.

Types of SNTS (exemption trusts)

- 1st Party Special Needs Trusts
- 3rd Party Special Needs Trusts
- Pooled Trusts

A. 1st Party Special Needs Trusts AKA: Self-Settled Trust, 42 U.S.C. 1396p(d)(4)(A) Trust, (d)(4)(A) Trust, or Payback Trust

Protects the resources of individuals with disabilities without sacrificing their government benefits;

- Must be in writing;
- Must be irrevocable;
- Must be *Inter-Vivos*.
- 1st Party Special Needs Trusts are created for the **sole benefit** of an individual with disabilities **when such an individual is under the age of sixty-five (65)**.

PARENT TIPS

1st Party Special Needs Trusts Gifts to this type of trust should NOT be made by third parties!
Sole Benefit Rule: the disabled individual must be the sole beneficiary of the trust during his/her lifetime. Only do 1 SNT for 1 Individual.

Payback Provision: funeral expenses cannot be paid after death;

Multiple states = pro rata

Why do it?

Reimbursement is only for Medicaid, not all public benefits get reimbursed.

Reimbursement is based on the actual Medicaid expenditures, not prevailing market costs, (so there is no interest on the reimbursement)

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Not all services are covered by Medicaid. It can really enhance the life of your disabled child.

B. 3rd-Party Special Needs Trusts

- The 3rd-Party SNT direct corpus at death of the beneficiary to any individual (no payback!)
- Not described in any federal statute
- Designed to supplement, rather than supplant, government benefits for which the individual is otherwise eligible

Why do it?

Improves the quality of life of an individual with disabilities

Medicaid has no right of recovery/No payback requirement

Can be *Inter-Vivos* or Testamentary

Can be for the benefit of an individual of **any** age

At death of the beneficiary, any remaining money can go to other family members