SPECIAL NEEDS FINANCIAL PLANNING STRATEGIES

When you have a family member with special needs, it is critical to make plans for their future, with a focus on financial and estate planning. Let Gries Financial Partners (GFP) act as your comprehensive guide to navigate the tools and services which are available to people with physical and intellectual disabilities while protecting assets and eligibility for means-tested government benefits (Supplemental Security Income (SSI) and Medicaid). GFP was founded in 1978 on the premise of providing conflict-free advice with integrity, objectivity and service intensity.

What follows below is a basic overview of various tools that can be leveraged in conjunction with a comprehensive special needs financial planning strategy:

Figure 1 https://www.cdc.gov/ncbddd/disabilityandhealth/infographic-disability-impacts-all.html

STABLE Accounts

A STABLE Account is a tax-advantaged investment account available to eligible individuals with disabilities. STABLE Accounts are made possible by the federal Achieving a Better Life Experience ("ABLE") Act. STABLE Accounts allow individuals with the onset of a disability prior to age 26 to save and invest money without losing eligibility for certain public benefits programs, like Medicaid or SSI. Earnings in a STABLE Account are not subject to federal income tax if the funds are spent on "Qualified Disability Expenses." Qualified Disability Expenses (QDE) are any expense that helps to maintain or improve the health, independence, or quality of life of the account beneficiary. QDEs include basic living expenses, housing, transportation, assistive technology, employment training, education, health & wellness, financial management, legal fees, and much more.

STABLE Account Benefits

STABLE Accounts provide financial independence and empowerment for individuals with disabilities by dramatically increasing the ability to save and invest. Before, individuals with disabilities could only save $2,000 before impacting needs-based benefits. Now, STABLE Accounts allow individuals with disabilities to save and invest up to $15,000 annually without affecting eligibility for certain public benefits programs.

In addition, if the account owner is working, earned wages up to the federal poverty line of the previous year can be contributed in addition to the $15,000 annual contribution limit. In 2020, this additional amount of earned wages that can be deposited into STABLE Account is $12,480. This would be a combined annual of contributions limited to $27,480.

The maximum lifetime balance limit is currently $482,000. Earnings on a STABLE Account grow tax-free and are not subject to federal or state income tax, so long as they are spent on Qualified Disability Expenses. [1]

Eligibility

An "Eligible Individual" is someone whose disability onset occurred prior to the age of 26, has been living with their disability for at least one year, or expects their disability to last for at least a year. An individual must also meet any <u>one</u> of the following:

- Be eligible to receive SSI or SSDI (although it is not necessary to be receiving the benefit that they qualify for);
- Have a condition listed on the Social Security Administration's List of Compassionate Allowances Conditions; OR
- Self-Certify their diagnosis (have a medical professional that has diagnosed the condition as a "marked and severe functional limitation" or something similar / comparable to this phrase)

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[1] Note: A STABLE Account offers the most protection from Medicaid recovery for money that is counted as funds owned by the person with a disability (in this case, only applicable if/when a STABLE Account beneficiary passes away and after all qualified disability expenses are paid, including funeral and burial). Other options for protecting money not owned by the person with a disability, such as the parent's money for the benefit of their child with a disability, may be better protected from Medicaid recovery in a third-party trust. In addition, if a STABLE Account beneficiary receives Supplemental Security Income (SSI) and attains a STABLE Account balance of $100,000, the amount over $100,000 will be considered a countable resource and SSI payments could be suspended by the Social Security Administration. However, once the STABLE Account balance goes back below $100,000, SSI payments should be reinstated.

The STABLE Card

The STABLE Card is a debit card which participants can use to easily spend money from a STABLE Account. It is available at no cost to all STABLE Account holders. The STABLE Card is a loadable prepaid debit card. Money from the STABLE Account is transferred onto the card,

allowing the available amount of money on the card to be appropriately managed / controlled. The card is accepted anywhere Visa is used.

Enrolling for a STABLE Account

A STABLE Account can be opened by a qualifying person with a disability, the parent or legal guardian of an eligible individual, or by a designated Power of Attorney. Online enrollment is free. Participants will need to deposit a minimum of $50 to open an account. Account set up and enrollment is done online at http://www.stableaccount.com

STABLE Account Costs

Setting up an account online is free (and easy). An initial $50 minimum contribution is necessary to set up the account, but this initial contribution is not a fee and is available for spending after opening the account is finalized. Nominal monthly maintenance fees and investment fees also exist according to the chart below. However, these fees have reduced and, according to STABLE Account, will continue to reduce as the program is used by more people (a planned future fee reduction is noted in the chart below).

	Current Monthly Maintenance Fees	**Asset-Based Fees (Investment Fees)**
Ohio Residents	$2.50 ($2.00 effective 7/1/21)	Between 0.19% and 0.33%
Partner States AZ, GA, KY, MO, NH, NM, OK, SC, VT, WV, WY	$3.50 ($3.00 effective 7/1/21)	Between 0.19% and 0.33%
All Other States	$3.50 ($3.00 effective 7/1/21)	Between 0.45% and 0.59%

Web Links

More information on ABLE accounts: https://www.ablenrc.org/

STABLE Account information and enrollment: https://www.stableaccount.com/

Figure 2 https://www.cdc.gov/ncbddd/disabilityandhealth/impacts/ohio.html

Special Needs Trusts

Special Need Trusts (SNTs) are irrevocable trusts that are set up to benefit individuals with disabilities. SNTs can protect a disabled person's benefits and allow them to maintain their eligibility for government benefits like Medicaid and SSI. Like all trusts, a SNT must have (1) a settlor – the person who puts assets into the trust; (2) a trustee- the person who manages the assets in the trust and (3) a beneficiary- the person who receives benefits from the trust. In the case of an SNT, the beneficiary must be a person with a disability.

Figure 3 https://www.raymondjames.com/argent/news-and-resources/2019/09/10/get-to-know-special-needs-trusts

Different Types of Special Needs Trusts

There are different types of Special Needs Trusts. The first distinction is based on where the money (or other assets) in the trust comes from. If the money comes from anybody other than the disabled person, the trust is a "a third-party trust." On the other hand, if the money is the disabled person's money then the trust is a "first-party trust" or a self-settled trust. This includes assets that the person has the legal right to, even if he or she does not actually own the asset.

Third-party trusts can be either (1) stand-alone or (2) testamentary (written into a will). First-party trusts can be either (1) stand-alone or (2) pooled (managed by a non-profit corporation). Third-party trusts are not subject to Medicaid Payback, but first-party trusts are. For this reason, most people generally would be better off with a third-party trust.

Third-Party Trusts

Third-party trusts are sometimes called “discretionary” trusts because the trustee has sole and absolute discretion in deciding whether to make distributions. This is important because if the beneficiary can demand anything from the trust, Medicaid will count the assets in the trust against the beneficiary. A beneficiary cannot unilaterally get to the money if the trustee has sole and absolute discretion.

A stand-alone third-party trust is a current document that can be funded and used at the time it is signed. A testamentary third-party trust is written into the settlor’s will but will not be funded until the death of the settlor. Stand-alone trusts are preferred because it may be years before a testamentary trust can be used for the beneficiary. It is generally better to have money available to the beneficiary now. The settlor can also write a will that “pours” his or her estate into an existing stand-alone trust. Then, you may have the best of both worlds.

Anybody but the beneficiary can be the settlor and/or trustee of a third-party trust and anybody except the beneficiary can contribute to a third-party trust.

First-Party Trusts

In certain situations, a first-party trust may be the only option. Examples of when a trust would need to be first-party include when a disabled person is awarded money in a lawsuit and when a disabled person has received an inheritance.

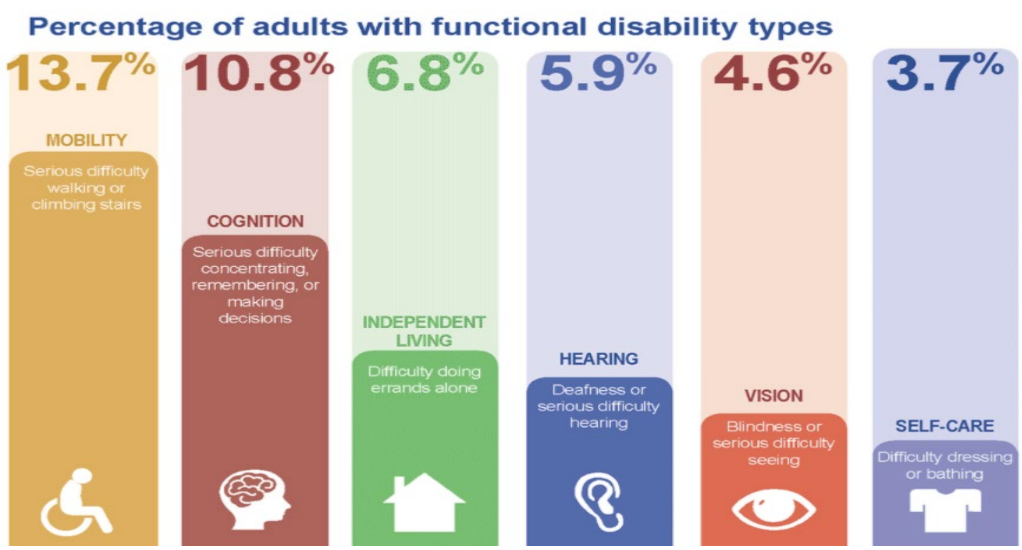

Figure 4 https://www.cdc.gov/ncbddd/disabilityandhealth/infographic-disability-impacts-all.html

Medicaid does not count assets in a first-party trust for two reasons. First, the property in the trust can only be used for the sole benefit of the beneficiary with disabilities. Second, when the beneficiary dies, the trustee may reimburse Medicaid in an amount equal to the cost of the

Medicaid benefits the beneficiary received. Therefore, these trusts are sometimes called “sole benefit” or “Medicaid payback” trusts.

The settlor of a first-party trust is limited to the beneficiary, a parent, grandparent, guardian, or a court. Like a third-party trust, a first-party trust can be a stand-alone document. It can also be a “pooled trust”. A pooled trust can be managed only by a non-profit corporation. A pooled trust takes in money from many beneficiaries and holds them in individual accounts for a beneficiary’s use. Upon the death of the beneficiary, the pooled trust can either pay back Medicaid or retain the money for its non-profit mission.

Limitations of Both Third-Party and First-Party SNTs

Any trust for the benefit of someone receiving means-tested public benefits (like Medicaid waivers and SSI) has some limitations. If trust funds are used to pay for certain expenses, the beneficiary may lose public benefits or have them reduced. The general rule is that if you have a way to pay for things (typically things that the government will pay for), then you are not allowed to “shelter” money in a Special Needs Trust. For this reason, most SNTs limit payment for healthcare costs (that Medicaid would otherwise pay), rent, utilities, mortgage payments, and meals. These expenses are known as “shelter expenses.” Also, SNTs will limit or refuse to pay cash to the beneficiary.

Setting Up and Maintaining a Special Needs Trust

Technically, although anyone can create a Special Needs Trust, establishing the trust is complicated and it is extremely important to get the wording correct. Maintaining the trust can also be complicated. It is also important to know the responsibilities of the trustee and to understand how to pick a good trustee. We recommend consulting with an attorney that specializes in SNT’s to make sure they are set up correctly.

These are just some examples of tools that can be effectively utilized as part of a broader, comprehensive special needs financial planning strategy.

Web Link

https://www.specialneedsalliance.org/the-voice/two-different-types-of-special-needs-trusts/

ABOUT GRIES FINANCIAL PARTNERS

Gries Financial Partners (GFP) provides the highest level of conflict-free investment and wealth management counsel to a high net worth and institutional audience. As an independent, fee-only Registered Investment Advisor, Gries Financial Partners has been managing client assets globally with integrity, objectivity and service intensity since 1978. Disciplined and sophisticated in its process, Gries Financial Partners stands apart from its peers. Gries Financial is uniquely positioned to help families that can benefit from special needs financial planning strategies.

CONTACT: Lauren Rich Fine at (216)-861-1148 or at lrf@gries.com FOR MORE INFORMATION OR TO SCHEDULE AN INFORMATIONAL CONVERSATION.