

STABLE Accounts and Special Needs Planning *Participant Manual*



THE SUPREME COURT *of* OHIO
JUDICIAL COLLEGE

THE SUPREME COURT *of* OHIO

STABLE ACCOUNTS AND SPECIAL NEEDS PLANNING

PARTICIPANT MANUAL



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STABLE ACCOUNTS AND SPECIAL NEEDS PLANNING

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SUPREME COURT OF OHIO JUDICIAL COLLEGE
Adult Guardianship Continuing Education: STABLE Accounts and Special Needs Planning

Session Agenda

Welcome & Introductions

Judicial College Staff

Ohio STABLE Accounts

Doug Jackson

Office of the Ohio Treasurer of State

Break

Special Needs Planning

Jennifer L. Lile

Krugliak, Wilkins, Griffiths &
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Adjourn

FACULTY BIOGRAPHIES

DOUG JACKSON has been dedicated to the field of developmental disabilities for over 20 years and works with a passion to serve people with disabilities and their families through improving the support system and the support staff. **Doug's experience includes managing the services of a direct support agency, executive administration in Ohio's County Board of DD system, teaching human services classes at Wright State University, and guiding a state-operated developmental center as the Superintendent.** Doug joined the Office of the Ohio Treasurer of State to help administer Ohio's STABLE Accounts, a financial plan for people with disabilities.

JENNIFER LILE, Esq. is a director with Krugliak, Wilkins, Griffiths & Dougherty Company, L.P.A. Her practice focuses on the areas of estate and special needs planning, trust, probate and elder law. Jennifer graduated summa cum laude from Kent State University with a B.S. in Secondary English Education and cum laude from the University of Akron School of Law in 2000. Jennifer is a member of the American Bar Association, as well as the Ohio State and Stark County Bar Associations. In 2007, she was elected to the Executive Committee of the Stark County Bar Association. She is currently serving as Co-Chairperson of the Stark County Bar Association Elder Law committee and is an active member of the Probate Practice Committee. Jennifer is a member of the Special Needs Alliance, a national, non-profit organization committed to helping individuals with disabilities and their families. She serves as **President of the Board of Trustees of the Greater East Ohio Chapter of the Alzheimer's Association** and is also a member of the Board of Directors of the Golden Key Center for Exceptional Children. During law school, Jennifer clerked with Judge R.R. Denny Clunk at the Stark County Probate Court and Judge Sara Lioi at the Stark County Court of Common Pleas, General Division. After becoming licensed as an attorney, she was appointed magistrate at the Stark County Probate Court under Judges Clunk (2000-2003), Horowitz (2003), and Park (2004-2005). Jennifer has served as an adjunct professor of Advanced Legal Writing and Research at Kent State University, and was a legal writing instructor from 2000-2003 at the University of Akron Law School. She frequently speaks to community groups on topics such as estate planning, special needs planning and elder law and is a frequent lecturer to attorneys and other professionals through organizations such as the National Business Institute and various Bar Associations. She is also a contributing author to articles published in the Probate Law Journal of Ohio. Jennifer has been recognized as an "Ohio Rising Star" (2010) by Cincinnati Magazine Ohio Super Lawyers® – Rising Stars Edition and superlawyers.com (top lawyers under 40). Jennifer has been the featured speaker on Guardianship Law at the American Bar Association's "Skills Training for Estate Planners" in New York City.

Ohio STABLE Accounts

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Doug Jackson
Office of the Ohio Treasurer of State



**OHIO'S
ABLE PLAN**

stableaccount.com


WHAT IS ABLE? ABLE Act of 2014 created savings and investment accounts for individuals with disabilities

ABLE Accounts **do not affect** eligibility for benefits programs

SSI


Medicaid

WHAT IS ABLE? ABLE Accounts have hybrid functionality




529 College Savings

+



Checking Account

+



Special Needs Trust

WHAT IS STABLE?

- STABLE is Ohio's ABLE Plan
- Administered by the Ohio Treasurer's office
- Launched June 1, 2016
- First and Largest ABLE Plan in the nation



BENEFITS OF STABLE ACCOUNTS



OWNERSHIP

Account is owned by the individual with the disability



FINANCIAL INDEPENDENCE
New Investment Opportunities



TAX BENEFITS

May qualify for multiple tax benefits each year

ELIGIBILITY

To see who qualifies for a STABLE Account, take our eligibility quiz at stableaccount.com

Individuals with disabilities that occurred prior to age 26

PLUS ONE OF THE FOLLOWING:




- Eligible to receive SSI or SSDI due to disability; or
- Condition listed on SSA's "List of Compassionate Allowances Conditions"; or
- Self-certification

WHAT IS SELF-CERTIFICATION?

ELIGIBILITY

- 1 Need diagnosis of a physical or mental impairment that causes **“marked and severe functional limitations”**
- 2 Condition has lasted or is expected to last for at least 1 year
- 3 Do not need to send in written diagnosis, but must have on hand

ENROLLMENT

-  Free online enrollment
-  Quick & easy – approx. 20 minutes
-  \$50 minimum opening deposit

Can be done by either:

Individual with disability (Beneficiary)

or

Authorized Legal Representative
(parent, guardian, power of attorney)



Travis Dresbach
STABLE Account Enrollee

STABLE ACCOUNT

Questions & Answers

- What is a STABLE Account
- Eligibility
- Enrollment

FUNDING YOUR ACCOUNT

EFT
ELECTRONIC FUNDS
TRANSFER

CHECK




STABLE ACCOUNT
DIRECT DEPOSIT

STABLE DIRECT DEPOSIT CHANGES LIVES
FOR EMPLOYEES WITH DISABILITIES AND THEIR FAMILIES

<p>INCLUSION »</p> <p>BENEFITS FOR YOUR COMPANY</p> <ul style="list-style-type: none"> » Adds a no-cost benefit for your company and employees » Provides every employee the opportunity to save and invest for their future » Promotes inclusion and brings financial parity to your workforce 	<p>EMPOWERMENT »</p> <p>BENEFITS FOR YOUR EMPLOYEES</p> <ul style="list-style-type: none"> » Employees with disabilities can now save more money and keep public benefits » Easily set up direct deposit for themselves or family members with disabilities » STABLE Account offers diverse saving and investment options
<p>"Establishing direct deposit for my child's STABLE Account means peace of mind for my family and financial security for my son."</p> <p>— CAROL A. (COLUMBUS, OH)</p>	

FIRST
FUNDING YOUR ACCOUNT


STABLE+ ACCOUNT

<p></p> <p>IF NOT EMPLOYED \$15,000 per year from all sources</p>	<p></p> <p>IF EMPLOYED Up to \$27,490 per year</p>	<p></p> <p>LIFETIME LIMIT \$482,000 balance limit</p>
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System automatically rejects excess contributions

FIRST
FUNDING YOUR ACCOUNT

STABLE+ ACCOUNT




IF NOT EMPLOYED
\$15,000 per year from all sources

System automatically rejects excess contributions

FIRST
FUNDING YOUR ACCOUNT

STABLE+ ACCOUNT



IF EMPLOYED
Up to \$27,490 per year
\$15,000 + wages up to an additional \$12,490

System automatically rejects excess contributions

FUNDING YOUR ACCOUNT

LIFETIME LIMIT
\$482,000 balance limit

System automatically rejects excess contributions

eGift EVENTS An eGift event sends out emails to friends and family for special events

SEND
Send request to friends and family for special events

RECEIVE
Contributions go directly into STABLE Account

ADVANTAGES
Gifts will not affect benefits

RECORD KEEPING
System tracks contributors for sending thank you notes

INVESTMENT OPTIONS

Choose from:

- Four Vanguard mutual funds that range from aggressive to conservative
- One principal-protected FDIC-Insured option

<input type="text"/>	<input type="text"/>	<input type="text"/>
GROWTH <input type="text"/>	GROWTH <input type="text" value="20%"/>	GROWTH <input type="text" value="10%"/>
MODERATE GROWTH <input type="text"/>	MODERATE GROWTH <input type="text" value="20%"/>	MODERATE GROWTH <input type="text" value="25%"/>
CONSERVATIVE GROWTH <input type="text"/>	CONSERVATIVE GROWTH <input type="text" value="20%"/>	CONSERVATIVE GROWTH <input type="text" value="5%"/>
INCOME <input type="text"/>	INCOME <input type="text" value="20%"/>	INCOME <input type="text" value="40%"/>
BANKSAFE <input type="text" value="100%"/>	BANKSAFE <input type="text" value="20%"/>	BANKSAFE <input type="text" value="20%"/>
TOTAL ALLOCATIONS <input type="text" value="100%"/> ✓	TOTAL ALLOCATIONS <input type="text" value="100%"/> ✓	TOTAL ALLOCATIONS <input type="text" value="100%"/> ✓

Questions & Answers

- Funding an account
- eGift
- Saving & investing options

SPENDING YOUR FUNDS

Withdrawals must be used on
"Qualified Disability Expenses"

Must relate to the disability + Help maintain or improve health, independence, or quality of life



Housing & Rent



Basic Living Expenses



Transportation



Education



Assistive Technology



Financial Management



Health & Wellness



Legal Fees

and many more...

SPENDING FROM YOUR ACCOUNT

Free Withdrawals + No Limits



CHECKING & SAVINGS

Transfer to personal checking or savings



THIRD-PARTY

Pay with a Third-Party Check

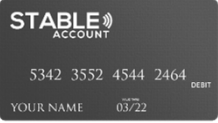



THE STABLE CARD

Transfer onto STABLE Card

STABLE will not ask what you spend on, but benefits agencies and IRS can





**THE
STABLE CARD**





STABLE CARD

The STABLE Card is a loadable/prepaid debit card that can be used anywhere Visa is accepted

<div style="border: 1px solid black; padding: 5px; margin-bottom: 10px;">  LOADABLE Does not pull directly from account </div> <div style="border: 1px solid black; padding: 5px;">  TRACKS EXPENSES Online spending records and annotated expenses </div>	<div style="border: 1px solid black; padding: 5px; margin-bottom: 10px;">  PROTECTIONS No overdraft, no cash access, limiting of merchants </div> <div style="border: 1px solid black; padding: 5px;">  ALERTS Notifications to monitor spending, low balances </div>
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SSI CONSIDERATIONS

Supplemental Security Income

- 1

Balances over \$100,000 count as a resource – but SSI merely suspended, not terminated
- 2

If you hold on to the money from one calendar month to the next, then housing expenditures count as resources
- 3

Beneficiary's own wages still count as income even if contributed to STABLE Account

Questions & Answers

- Qualified Disability Expenses (QDEs)
- Spending from the account
- SSI Considerations

IF ACCOUNT HOLDER **PASSES AWAY**

Account will pass to the account holder's estate



The estate administrator notifies STABLE and can take over account access

No designated transfer upon death

If the beneficiary does not have a will then account will go through normal probate process

MEDICAID SERVICES

Money in a STABLE Account is better protected from Medicaid payback than money in other accounts

Medicaid can ask for payback **in some cases**, but there are protections:



LIMITATIONS

Medicaid Payback is only from date the account was opened



DEDUCTIONS

Deduct Medicaid Buy-In premiums you paid



OUTSTANDING BILLS

Pay any outstanding bills for QDEs



FUNERAL EXPENSES

Pay for funeral and burial expenses

ACCOUNT COST There is a minimal cost for owning a STABLE Account

Monthly Maintenance Fees	Asset-Based Fees
Ohio Residents \$2.50 (\$30 Annually)	Ohio Residents Between 0.19% and 0.33%
All other states \$3.50 (\$42 Annually)	All other states Between 0.45% and 0.59%

STABLE ACCOUNT & SPECIAL NEEDS TRUSTS

Complementary tools that can be used together	Unique STABLE Account benefits
<ul style="list-style-type: none"> ✓ Trusts can be written or amended for distributions to STABLE Accounts ✓ Trusts can accept unlimited cash and non-cash assets 	<ul style="list-style-type: none"> ✓ Broader spending power (i.e. housing and food) ✓ State tax deduction for STABLE contributions ✓ No federal or state income tax on earnings ✓ Can be established, administered and owned by an individual with a disability

STABLE
ACCOUNT

Questions & Answers

- Medicaid
- Account costs
- Special Needs Trusts



WE'RE HERE TO HELP!

CUSTOMER SERVICE INFORMATION



1-800-439-1653
Monday - Friday
9 am - 8 pm EST



team@stableaccount.com



stableaccount.com

SPREAD THE MESSAGE



Find us on Facebook
[@stableaccount](https://www.facebook.com/stableaccount)



Find us on Twitter
[@stableaccount](https://twitter.com/stableaccount)



FINALLY... YOU CAN SAVE MONEY AND KEEP YOUR BENEFITS

STABLE Accounts allow individuals with disabilities the ability to save and invest without losing benefits such as Medicaid or SSI.

GETTING STARTED...

Go to **stableaccount.com** and follow the steps below:



CREATE AN ACCOUNT

Open your account online at
www.stableaccount.com



FUND YOUR ACCOUNT

Open your account with
as little as \$50



SAVE, INVEST & SPEND

Balances and distributions do not
affect needs-based financial aid
such as Medicaid or SSI

Subject to some limitations

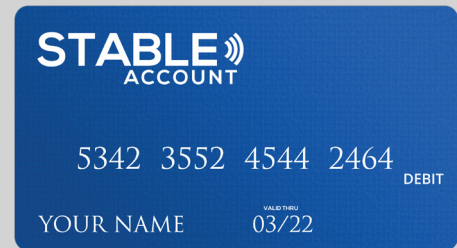
Enroll online at stableaccount.com



For more information, visit stableaccount.com or call 1-800-439-1653

THE STABLE CARD

Participants can request their own STABLE Card that can be used to spend STABLE funds and track qualified expenses.



ELIGIBILITY

Individuals who developed disabilities before the age of 26 may be eligible to open an account.

Take our **Eligibility Quiz** on stableaccount.com to see if you or someone you know qualifies.

SAVING AND INVESTING

DIVERSE CHOICES

You can put your money in up to five different saving and investment options, including four mutual fund based options and a FDIC-insured savings option.

TAX-FREE EARNINGS

Investment earnings are tax-free when used to pay for qualified expenses.

EASY ONLINE ACCESS

Monitor your investments, make contributions, and request withdrawals all online.

QUALIFIED EXPENSES

Use the money in your STABLE account to pay for disability-related expenses.



Basic Living Expenses



Housing



Transportation



Assistive Technology



Employment Training



Education



Health & Wellness



Financial Management



Legal Fees

STABLE Accounts are not guaranteed or insured by the Ohio Treasurer's Office, the State of Ohio, any state agency or subdivision thereof, or their authorized agents or affiliates. You could lose money by investing in a STABLE Account. Consider investment objectives, risks, charges and expenses before investing. Non-Ohio taxpayers or residents should consider whether their home state plan offers any benefits not available through STABLE Account. Before you open an account, you should carefully read and understand the STABLE Account Plan Disclosure Statement and Participation Agreement.

Enroll online at stableaccount.com



What is STABLE?

- A STABLE Account is an investment account that allows qualified individuals with disabilities to save and invest money without losing eligibility for certain public benefit programs including, but not limited to, Medicaid or SSI.
- STABLE Accounts are made possible by the federal Achieving a Better Life Experience (ABLE) Act passed by Congress in 2014.
- STABLE Accounts, administered by the State of Ohio Treasurer's Office, launched June 1, 2016. Ohio was the first state in the nation to launch an ABLE program.
- STABLE Accounts are similar to a 529 college savings account and can work alongside Special Needs Trusts. They also function similar to a regular checking account.

What are the 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 losing 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.
- Account funds are used on Qualified Disability Expenses including: education, housing, transportation, healthcare, assistive technology, employment needs, basic living expenses, etc.
- Earnings on a STABLE Account grow tax-free and are not subject to federal income tax, so long as they are spent on Qualified Disability Expenses.

Who is Eligible?

- An "Eligible Individual" is someone whose disability began before 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 do one of the following: 1. Be eligible for SSI or SSDI; 2. Have a condition listed on the Social Security Administration's List of Compassionate Allowances Conditions; or 3. Self-Certify their diagnosis.
- Visit stableaccount.com/eligibility/ to take the quick and easy eligibility quiz to learn more.

What is the STABLE Card?

- The STABLE Card is a debit card 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 debit card. Individuals can take specific amounts of money from their STABLE Account and load it onto their STABLE Card for Qualified Disability Expenses.

How do I Enroll?

- A STABLE Account can be opened by a qualifying person with a disability or an Authorized Legal Representative (ALR). An ALR is a parent, guardian of an eligible individual, or a designated Power of Attorney.
- Online enrollment is free. Account set up and enrollment is done online at stableaccount.com.

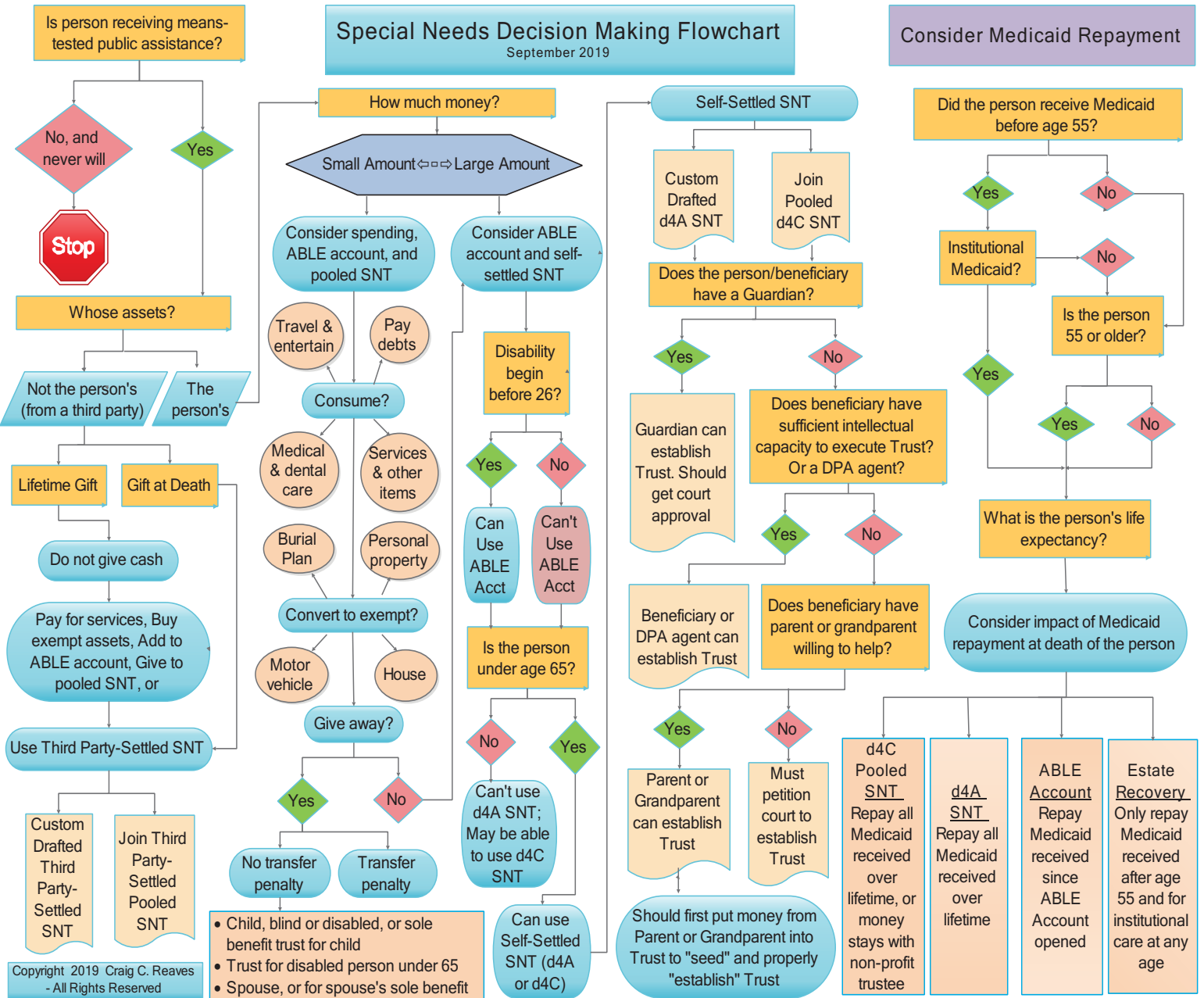
Special Needs Planning

Special Needs Decision Making Flowchart.....1
Powerpoint Outline.....2

Other Resources:

Special Needs Alliance, *Administering a Special Needs Trust, A Handbook for Trustees (2020 Edition)*, <https://www.specialneedsalliance.org/wp-content/uploads/2018/01/2018-Trustee-Handbook.pdf> (accessed January 13, 2021).

Jennifer L. Lile
Krugliak, Wilkins, Griffiths & Dougherty
Company, L.P.A.



SNTs & Federal Law

Federal law is the basis upon which **exempt** SNTs are created. Non-exempt SNTs that are **not countable** resources of their beneficiaries are based upon common law trust principles and state statutes and are always third party-settled.

Under the federal “availability” principle, a third party-settled trust cannot be treated as a countable resource of its beneficiary if that beneficiary cannot compel a distribution from the trust to pay for the beneficiary’s support and maintenance.

TYPES OF SPECIAL NEEDS TRUST

Self-Settled (“First” Party) SNTs

- **Individual SNT** - 42 U.S.C. §1396p(d)(4)(A); O.R.C. §5163.21(F)(1); O.A.C. §5160:1-3-05.2(C)(3)(a)
- **Qualifying Income Trust (“QIT”)** - 42 U.S.C. §1396p(d)(4)(B); O.A.C. §5160:1-3-04.3
- **Pooled SNT** - 42 U.S.C. §1396p(d)(4)(C); O.R.C. §5163.21(F)(3)(a); O.A.C. §5160:1-3-05.2

“Third” Party-Settled SNT

- **Ohio’s Wholly Discretionary Trust** – O.R.C. §5801.01(Y) & common law
- **Sole Benefit Trust** - 42 U.S.C. § 1396p(c)(2)(B)(iii) and (iv); O.A.C. §5160:1-6-06(C)(6)
- **Supplemental Services Trust** - O.R.C. §5815.28

Self-Settled d(4)(A) Trusts

The Law: 42 U.S.C. §1396p(d)(4)(A) exempts self-settled individual SNTs and as amended in 2016, states as follows:

“(4) This subsection shall not apply to any of the following trusts:

(A) A trust containing the assets of an individual **under age 65** who is disabled (as defined in section 1382c(a)(3) of this title) and which is established for the benefit of such individual **by the individual, a parent, grandparent, legal guardian of the individual, or a court** if the **State will receive all amounts** remaining in the trust upon the death of such individual up to an amount equal to the total medical assistance paid on behalf of the individual under a State plan under this subchapter.”

(Emphasis added)

Who Can Establish a d4A Trust

In addition to a parent, grandparent, legal guardian of the individual, or a court, the individual beneficiary was added as a permissible grantor effective December 13, 2016, pursuant to the Special Needs Trust Fairness Act.

Advice. A (d)(4)(A) SNT should be funded only with the assets of the beneficiary (i.e. excess income, settlement money, money directly inherited). Third parties can place assets in a (d)(4)(A) SNT, but then entire trust will be subject to the mandatory Medicaid payback provision, therefore, a Wholly Discretionary Trust is better for third party gifts.

Don't Co-Mingle Funds

A trust with even \$1 of the beneficiary's money is considered a self-settled SNT, though reformation may be a way to divide and reform a tainted third-party trust.

Payback Requirement

When the beneficiary dies, assets remaining in the d(4)(A) trust may be used for allowable administrative expenses as set forth in POMS SI 01120.203E.1, then the Trustee is required to use any remainder to reimburse, or “**pay back**”, the State(s) to the extent that Medicaid benefits have been received by the beneficiary during his or her lifetime.

Stinking Dead Body Rule

The POMS do not include permission to pay funeral expenses prior to payback to the State, which has led practitioners to criticize the “stinking dead body” rule. Only after payment of administrative expenses and reimbursement to the State may any other expenses or distributions to the trust's remainder beneficiaries be made.

Advice. Prepay burial and funeral arrangements from a self-settled trust while the beneficiary is alive, as these are permitted expenditures.

Self-Settled d(4)(C) Trusts

Who Can Establish a d4C Trust

A self-settled pooled (d)(4)(C) SNT may also be created for the benefit of a disabled person, who is any age under Ohio law (note: in some states the beneficiary must be under 65), and may be “established” by **the beneficiary, the beneficiary's parent, grandparent, legal guardian or a court.**

Who Can Administer a d4C Trust

All (d)(4)(C) SNTs must be administered by a **qualified non-profit organization.** Each beneficiary's trust funds remain in a segregated account, but investment of the pool of sub-accounts is done collectively by a professional corporate trustee.

Ohio Pooled Trust Options

Several Non-Profits which administer pooled (d)(4)(C) trusts in Ohio are: Charities Pooled Trust, Commonwealth Community Trust, Community Fund Management Foundation, The Disability Foundation, National Foundation for Special Needs Integrity, Secured Futures, and The Center for Special Needs Trust Administration, Inc.

Payback Options

In lieu of payback for Medicaid benefits under a pooled trust, upon the death of the beneficiary, the funds may be retained by the non-profit administering the trust, and remain in the pooled trust for the benefit of other disabled beneficiaries (non-profit options vary by company).

Wholly Discretionary Trusts (Third Party-Settled SNTs)

The Law:

On January 1, 2007, the Ohio Trust Code came into effect, at which time Wholly Discretionary Trusts became sanctioned by **statute** in O.R.C. §5801.01 (Y).

Third Party-Settled pure discretionary trusts were also officially recognized and affirmed in the **common law** by the Ohio Supreme Court in *Pack v. Osborn*, 117 Ohio St.3d 14 (2008) as not being countable resources of their beneficiaries.

WDT Requirements

A Wholly Discretionary Trust is a trust to which all of the following apply:

- The trust is irrevocable.
- Distributions of income or principal from the trust may or shall be made to or for the benefit of the beneficiary only at the trustee's discretion.
- The beneficiary does not have a power of withdrawal from the trust.
- The terms of the trust use "sole," "absolute," "uncontrolled," or language of similar import to describe the trustee's discretion to make distributions to or for the benefit of the beneficiary.
- The trust does not contain distribution "standards" for the trustee in exercising its discretion to make distributions to the beneficiary (i.e. it should not include instructions to distribute "for health, maintenance and support").
- The beneficiary is not the settlor, the trustee, or a co-trustee.
- The beneficiary does not have the power to become the trustee or a co-trustee. (Note: a trust may be a wholly discretionary trust if the beneficiary is, or has the power to become, a trustee only with respect to the management or the investment of the trust assets, and not with respect to making discretionary distribution decisions.)

Pooled WDTs

- O.R.C §5163.21(G)(1)-(5) permits this variation of a WDT.
- Pooled trust companies which administer exempt Medicaid payback pooled SNTs (d4C trusts) may administer a third party-settled pooled WDT (sometimes called a "Master Trust").

- Similar to a privately created WDT, the pooled WDT:
 - Must be established and funded with assets of someone other than the beneficiary;
 - Has no Medicaid payback requirement;
 - Allows the settlor to designate individuals or charities as remainder beneficiaries; and,
 - May be revocable until the settlor's death or its funding.

Sole Benefit Trusts – 42 U.S.C. §1396p(c)(2)(B)(iv)

Ohio Law

Sole Benefit Trusts are a subcategory of Third Party-Settled Trusts authorized under Ohio law in O.R.C. §5163.21(G) and O.A.C. §5160:1-3-05.2(C)(4).

Purpose of Sole Benefit Trusts

Sole Benefit Trusts enable individuals who are seeking Medicaid eligibility for themselves, to transfer their assets in trust to provide for a disabled beneficiary, free of any Medicaid transfer penalties, such as the five year look back rule.

Sole Benefit Trusts – Planning Tips

Close relatives, such as parents or grandparents of a person with special needs may wish to have, as part of their estate plan, a durable power of attorney which gives power to the agent to establish and fund a sole benefit trust, in case that parent or grandparent needs Medicaid assistance to pay for attendant care or nursing home services in the future.

If an adult ward (who has a child, grandchild or sibling with a disability) is already under guardianship of the estate, and would benefit by Passport Waiver, Assisted Living Waiver or Skilled Nursing benefits through Medicaid, an application may be filed with the probate court seeking permission to establish and fund a Sole Benefit Trust.

Sole Benefit Trust Requirements

Who Can Establish an SBT

The trust should contain the assets of an individual (regardless of age) who is otherwise eligible for state medical assistance.

Who Can be the Beneficiary of an SBT

The trust must be for the sole benefit of **another individual under age 65**, who is **disabled**, as defined under the Social Security Act (no relationship required, but typically used for a descendant of the settlor).

Other Requirements of an SBT

The trust must provide that the trustee is to expend the entire trust corpus for the benefit of the beneficiary over the beneficiary's life expectancy on an actuarially sound basis.

The trust must be irrevocable.

Qualifying Income Trusts (QITs)

Brief History

A Qualifying Income Trust, also called a “Miller Trust,” is a trust into which income in excess of 300% of the Federal Benefit Rate can be directed so the beneficiary is not automatically disqualified from eligibility for Medicaid benefits.

QITs are exempt trusts under 42 U.S.C. §1396p(d)(4)(B).

QITs gained greater importance in Ohio on July 1, 2016, when the state terminated the 209(b) option and became a 1634 state for purposes of determining Medicaid eligibility.

Becoming a 1634 state means that, among other changes, Medicaid eligibility will now be based on SSI eligibility criteria, one of which is a monthly income cap or threshold.

- Recipients who earn more than \$2,349 per month (300% of the FBR in 2020) in Social Security, pension benefits, Veteran’s benefits, or other income, must establish a QIT to become eligible for Medicaid coverage.
- O.A.C. 5160:1-6-03.2, provides that payments from a QIT shall be made in the following order:
 - Monthly personal allowance (\$50) for the beneficiary;
 - Maintenance allowance for beneficiary’s spouse or dependents (if applicable);
 - Medical expenses (including patient liability portion of long-term care facility charges) incurred by the beneficiary; and
 - Up to \$15 for bank fees, attorney fees or other administrative costs.

QIT Requirements

- A QIT must be irrevocable.
- The QIT may only receive income from the beneficiary (i.e. pension, Social Security, or other forms of income) and the source of the income must be identified.
- Income of the beneficiary cannot be assigned to the QIT, but must be physically (or electronically) paid from the beneficiary’s personal account to a QIT account.
- No third party assets or principal assets of the beneficiary may be added to the QIT.
- A Medicaid payback provision must be included in the QIT.

Purpose

QITs are merely a pass-through tool to prevent a beneficiary who is otherwise eligible for Medicaid, but for exceeding the income threshold, from being deemed ineligible. Virtually all funds paid to a QIT during the month will be paid back out of the QIT in the same month for the beneficiary's care and medical expenses.

Supplemental Services Testamentary Trusts

- These trusts are uniquely authorized by statute under O.R.C. §5815.28 and should not be confused with generically titled "Supplemental Needs" Trusts.
- Supplemental Services Trusts are "testamentary" so they must be created by the **Will** of a third party, therefore, a probate court will have ongoing jurisdiction over its administration (with similar filing requirements as guardianship of the estate of an individual).
- **With the availability of WDTs now, the use of a Supplemental Services Testamentary Trusts is very limited in light of the strict contribution rules (\$250,000 maximum in 2020) and the Medicaid payback requirement.**

ABLE Accounts & SNTs

Under the "Stephen Beck, Jr., Achieving a Better Life Experience Act of 2014", Congress amended §529 of the IRS Code of 1986, to add 529A, and established the authority for disabled individuals to open an ABLE account, which is another type of exempt resource for purposes of SSI and Medicaid eligibility.

IMPORTANT NOTE: ABLE (Ohio STABLE) accounts are not trusts.

Requirements for ABLE Accounts

- The account must be owned by a disabled person who was **disabled or blind before the age of 26**.
- A disabled person may only have **one** (1) ABLE account.
- An ABLE account can be established by the beneficiary, the beneficiary's parent, guardian or agent under a power of attorney.
- Any person can contribute to an ABLE account. Because this is a tax law, "person" can mean an individual, trust, estate, partnership, association, company or corporation.
- The **annual contribution limit is \$15,000 or \$27,490 if employed** (total annual limit per beneficiary, not a limit per contributor).
- Contributions are not tax deductible, though they do qualify for the annual exclusion for gift tax purposes.

- The **overall contribution limit** must match the state limit for 529 accounts. (There is no limit to how high the value of the account may grow, only to how much can be contributed.)
- Excess contributions must be returned to the contributor to avoid a 6% penalty.
- ABLE account earnings are tax free, and qualifying distributions from the account are not subject to income taxation.
- Qualified Disability Expenses are set forth in the Social Security Administrations POMS SI 01130.740. In general, qualified disability expenses are expenses that relate to the beneficiary's disability, and are for the benefit of the beneficiary, in maintaining or improving the beneficiary's health, independence, or quality of life.
- SSI eligibility is suspended once an account exceeds \$100,000; however, this cap does not apply to Medicaid, SNAP, or other public benefits.
- The ABLE account is **subject to payback** to the state in an amount equal to the Medicaid benefits provided to the beneficiary, but only for the amount of benefits paid following the establishment of the ABLE account.

ABLE Qualified Disability Expenses

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

Top 10 Tips for Special Needs Planning

1. Don't Disinherit & Don't Give Outright

- Leaving assets to another beneficiary with a "moral understanding" is fraught with problems.
- Outright distributions to a disabled beneficiary limit the planning options to only self-settled payback trusts (requiring any remainder to be returned to the state) and ABLE accounts (which also have annual contribution limits).

2. Know the Difference Between Benefit Programs:

SSI – Needs based. If living with parent, consider deeming issue.

SSDI – Eligible based on own or parent's work history

Medicaid - Needs based

Medicare – Eligibility automatic two years after starting SSDI

3. Choose a Trustee Carefully

A Trustee needs to:

- Understand the special personality and needs of the beneficiary
- Understand government benefit programs & the effect of trust distributions
- Be honest and reliable
- Possess financial acumen
- Have no conflict of interest (remainder beneficiary?)

4. Prepare a Letter of Intent

Consider documenting your beneficiary's aptitudes, behaviors, interests, employment prospects, housing preferences, socialization needs, medical particulars, religious affiliations, and final arrangements.

5. Use a Power of Attorney that Authorizes SNT Creation and Funding

Your Power of Attorney for Property document should be customized to allow the agent to create and fund a sole benefit SNT or any other type of third party wholly discretionary SNT.

6. Review Titling of Assets & Beneficiary Designations

It is that no assets pass directly to the disabled beneficiary, but are instead directed to a trust to avoid a possible disruption in benefits.

7. Parents should Focus on the Asset Allocation Among Children

Realistically consider the potential needs of your descendants. There is no law requiring you to treat each child equally. Also, it is more tax efficient to allocate tax deferred assets (such as IRA's and 401k's) to non-disabled beneficiaries or charities.

8. Consider Life Insurance to Fund a Special Needs Trust

Second-to-die policies may be an inexpensive option to generate funds for an SNT and allow tax deferred monies (such as IRAs) to pass to other beneficiaries.

9. Coordinate Planning with Other Family Members

Family members such as grandparents, aunts and uncles may wish to name a special needs individual as a beneficiary in their estates. A cost effective way to preserve means-tested benefits, is to establish a third party stand-alone SNT which can be named as beneficiary of other's assets (i.e. life insurance, retirement accounts).

10. Remember a Child's Own Planning Needs

Parents lose decision-making power for a child once he or she turns 18. To the degree such child has cognitive capacity, certain basic documents are advisable:

- a health care power of attorney
- power of attorney for property
- HIPAA release
- Will.

Note: The level of capacity needed to execute a Will is generally a lower threshold than the capacity determination for guardianship.

FINAL TAKEAWAYS FOR GUARDIANS

- To establish a Special Needs Trust with funds belonging to your ward, you **will** need to apply to the Probate Court, and work with an attorney to create the trust.
- To establish a Wholly Discretionary Trust (i.e. a third party special needs trust) with funds belonging to you or others who wish to give a gift or inheritance to your ward, you do **not** need Probate Court authority, but you will need to work with an attorney to create the trust.

The information contained in this program is a general summary of the law and should not be used to solve individual problems as slight changes in the fact situation may require a material variance in the applicable legal advice.

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