



**COMMUNITY FUND**  
**O H I O**

**Protect the Present, Fund the Future**  
The Special Needs Trust Advisor Since 1993

# Special Needs Trusts, STABLE Accounts, and Grants – Oh My!

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June 14, 2022


# Most Common Means-Tested Government Benefits

- SSI
- Medicaid
  - Aged, Blind, and Disabled (ABD)
  - MAGI
- Waiver
- Subsidized Housing
- Food Assistance
- We're planning not only for today but for the future too

# Common Government Benefits

	Health Insurance	Cash Benefit
Means-Tested	Medicaid, Waiver	Supplemental Security Income (SSI)
Not Means-Tested	Medicare	Social Security Disability Insurance (SSDI)

# Special Needs Planning Options

- Third-Party Trust
  - Medicaid Payback Trust (Self-Settled)
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- “Special Needs Trusts”
- ABLE Account / STABLE Account (Ohio)
    - Not a trust but an investment account
  - Guardianship
    - Unlikely to preserve government benefit eligibility in most instances but is a financial management option

# Planning for the Future

Person or couple want to provide for a loved one with a disability

- Unsure of future government programs
- Not clear on loved one's future needs as they mature

# Planning for the Future

Understand that directly giving funds to the person with a disability could . . .

- Disqualify them for means-tested government benefits
- Force them to “spend down” on unnecessary items (second gazebo story!)
- Result in the need for guardianship/probate court involvement if the loved one is not competent to manage the assets
- Risk losing the funds if the loved one is easily influenced

# What Are Some of the Options?

STABLE Account

Disinherit the individual

Give the individual's share to someone else and hope they don't predecease or misuse the funds

Gift assets directly or through a Will to the individual and understand they may lose eligibility for government benefits

Third-Party Special Needs Trust

# Third Party Trust

- Typically used when a parent, grandparent, or sibling of a person with special needs wants to create a trust for their loved one without jeopardizing government benefit
- Created by anyone other than the beneficiary
- If properly drafted, do not count as a resource or as income to the beneficiary for means-tested government benefit eligibility



# Third Party Trust

- No Medicaid payback at the beneficiary's death
- Requires a trustee who cannot be the beneficiary
- If revocable (can be changed), the trust income is included on the income tax return of the person who set it up (grantor)
- If irrevocable (cannot be changed), the trust income is typically reported on a trust income tax return (1041)

# Third Party Trust

- No minimum or maximum needed to fund a trust and each family has different funding goals
- Can be funded immediately or in the future
- Can receive life insurance or other assets
- Cannot be funded with the beneficiary's own assets
- Community Fund offers a third-party pooled trust called our "Master Trust"

# Funding a Third-Party Trust

- Lifetime gifts
- Identify the Trust as a beneficiary in your Will or Trust
- Beneficiary designation such as life insurance or Payable on Death (POD) bank account
- Share information with your loved ones other than the beneficiary so they can contribute too

# What if Someone is Over Resources?

A person with a disability who receives means-tested government benefits can lose those benefits if his/her resources exceed the maximum threshold

How could this happen?

- Improperly drafted trusts, direct gifts, inheritance, accrual of wages, accrual of SS income, too much money in resident account, personal injury settlement, back payment from SS, etc.

# First-Party Trusts / Self Settled

- Established by a parent, grandparent, guardian, court, or competent beneficiary
- Two types
  - Medicaid Payback Trust
  - Pooled Medicaid Payback Trust
    - Community Fund offers such a trust which we call our “Pooled Medicaid Payback Trust”

# Medicaid Payback Trust

Reimburses state Medicaid agencies with Trust assets at the Beneficiary's death

- Exception: Pooled Medicaid Payback Trusts may allow the grantor to leave the funds to the nonprofit. Community Fund uses those retained funds to make grants to individuals with disabilities and to fellow nonprofits.

# Pooled Medicaid Payback Trust

- Community Fund also has partnerships with The Arc of Ohio, ADD, Jewish Federation of Cleveland, and Hattie Larlham so grantors can name those organizations to receive the remainder at the beneficiary's death.

# How a Pooled Medicaid Payback Trust is different from a Medicaid Payback Trust

- Pooled trust is administered by a nonprofit Trust Advisor
- Attorney does not draft the trust as the nonprofit provides a “joinder agreement” and maintains the trust agreement
  - Attorney is still needed for planning and completing forms



# How a Pooled Medicaid Payback Trust is different from a Medicaid Payback Trust

- Funds remaining at the death of a beneficiary may be retained by the nonprofit (differs according to state law and nonprofit policies)
- Under current Ohio law, pooled trusts may be established and funded for someone over 64 years old, whereas d4A may only be established or funded for someone 64 or younger

# Distributions from Trusts

- What does the trust agreement allow or prohibit?
  - When planning for a beneficiary with a disability, the trust language is usually broad, gives the trustee discretion (decision-making authority), and doesn't require specific distributions of principal or income
    - AVOID
      - Mandatory payment of income to the beneficiary
      - An "ascertainable standard" such as the beneficiary's health, education, maintenance, and support

# Distributions from Trusts (Cont'd)

- What benefits does the beneficiary receive?
  - If the beneficiary receives Medicaid (including Waiver) or SSI, then the Trust cannot pay for food, shelter (defined as 10 things like water, sewer, electric), gift cards, gifts to others, and any other prohibited item
  - The Trustee cannot give the beneficiary cash

# Distributions from Trusts (Cont'd)

- What can the Trust pay for (if not prohibited and not paid directly to the beneficiary)?
  - Internet
  - Cell phone, landline
  - Medical expenses including insurance, elective procedures, and dental/vision
  - Reasonable vacations for the beneficiary and possibly one aide if necessary for travel (food if overnight, lodging, transportation, attractions)

# Distributions from Trusts (Cont'd)

- What can the Trust pay for?
  - Renter's insurance
  - Homeowner's insurance (if there's no mortgage)
  - Hobbies (video games, gym membership)
  - Transportation (vehicle, Uber, bus)
  - Pet care
  - Travel if a guardian or caregiver to visit the beneficiary
  - Much more!

# Trusts and ABLE Accounts

- Trusts may contribute to ABLE Accounts if not prohibited in trust agreement
- Ohio calls its ABLE Account a “STABLE Account”
  - <https://www.stableaccount.com/>

# Comparison of STABLE and Trusts

## STABLE

Not a Trust

Funded with anyone's assets (including Beneficiary's assets)

Person with disability has direct access

Used for qualified disability expenses, which can include housing

## TRUST

Trust

Who can fund it depends on what type of trust it is

Person with disability cannot have direct access (may serve role)

Used to supplement the income the beneficiary receives; watch ISM and other prohibited distributions

# Comparison of STABLE and Trusts

## STABLE

Limit on annual contributions based on STABLE policies

Lifetime contribution limits

Account balance over \$100,000 is treated as resource by SSI but not by Medicaid

Repayment to State for Medicaid expenses since establishment

## TRUST

No minimum or maximum contribution limits

No lifetime contribution limits

Properly drafted trust is not a countable resource by SSI or any other agency

Repayment to State for Medicaid expenses provided over lifetime



# SUMMARY

<b>Third Party Assets</b>	<b>Beneficiary's Own Assets</b>
Third-Party Trust	Medicaid Payback Trust
Pooled Third-Party Trust (e.g., Master Trust)	Pooled Medicaid Payback Trust
STABLE Account	STABLE Account

# Special Needs Trust Attorneys

How many special needs trusts have you drafted?

Do you serve as trustee? Why or why not?

Do you represent people appealing denials by Medicaid or SSI/SSDI?

How frequently do you read POMS?

What organizations do you belong to?

How do you stay updated on law changes?

# Resources

Special Needs Alliance

- [www.specialneedsalliance.org](http://www.specialneedsalliance.org)

National Academy of Elder Law Attorneys

- [www.naela.org](http://www.naela.org)

Academy of Special Needs Planners

- [www.specialneedsanswers.com](http://www.specialneedsanswers.com)

# Community Fund Offers Grants

- Nonprofits that serve Ohio residents with disabilities
- Ohio residents with disabilities

# Eligibility for Individuals

- Ohio resident
- Individual with a disability
- Request is for disability-related expense

# 3 Types of Individual Grants

- **Former Community Fund Ohio trust beneficiary**
  - \$1,500 lifetime maximum
- **Special Needs Grant with Financial Hardship**
  - \$5,000 lifetime maximum
  - Grant Applicant must receive SSI, ABD Medicaid, MAGI Medicaid, Healthy Start/Healthy Families, Medicaid Buy-In for Workers with Disabilities, or Waiver
  - Provide documentation as required on the application
- **Special Needs Grant**
  - \$1,500 lifetime maximum
  - Provide documentation as required on the application

# Examples of disability related expenses

- Home modifications
- Vehicle modifications
- Educational expenses
- Camp
- Therapy not fully covered by insurance (e.g., hippotherapy or music therapy)
- Communication devices

# Examples of non-disability related expenses

- Utility bills
- Rent or mortgage
- Contribution towards vehicle that is not wheelchair accessible and has no other modifications
- Home repairs unrelated to a disability
- General spending money
- Anything that could cause the recipient to lose eligibility for Medicaid or SSI



# How to Apply

- Complete an application
  - Download our application from our website at [www.communityfundohio.org](http://www.communityfundohio.org)
  - Call our office and request a hard copy be mailed to you
- Fax or mail the grant application and all supporting documentation to our office (no email please)
  - Reviewed quarterly but accepted any time

# Grant Contact Information

Community Fund Ohio  
Attn: Grants  
17900 Jefferson Park, Suite 102  
Middleburg Heights, OH 44130


216.736.4540 ext 104  
216.867.9783 Fax

[info@communityfundohio.org](mailto:info@communityfundohio.org)  
[www.communityfundohio.org](http://www.communityfundohio.org)

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Questions about setting up a Community Fund Trust:  
[joinderanddeposit@communityfundohio.org](mailto:joinderanddeposit@communityfundohio.org)



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