Estate Planning and Financial Considerations for TBI Survivors and Their Families

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Our mission is to create a better future through brain injury prevention, research, education and advocacy.
Resch, Root & Philipps, LLC has been in business for over 35 years helping individuals and families with:

- Estate Planning
- Business Planning
- Special Needs Planning
- Trust and Probate Administration
Program Outline

- Medicaid and SSI Basics
- Special Needs Trusts
- Guardianship, Alternatives to Guardianships, Advance Health Care Directives
- STABLE Accounts
Who needs Special Needs Planning?

Special Needs Planning is needed for individuals who are physically or mentally disabled and receive government assistance or may need assistance in the future such as:

- Medicaid
- Medicaid Waivers
- Supplemental Security Income
- Other types of government assistance
Concerns for Families and Individuals

• “Everything will be fine as long as my loved one with a disability dies before I do.”
• “Will my other family members have to take care of my loved one with a TBI?”
• “Will I have to take care of my sister for the rest of my life?”
• “How do I make sure my loved one with a disability does not lose government benefits?”
• “How much is enough money to leave for my family member with a TBI?”
• “The TBI makes my adult child easily impressionable, will he get in trouble?”
• “Will she be taken advantage of?”
Medicaid Generally

Medicaid is a needs-based health insurance program that pays for services for elderly, blind, or disabled.

- Prescription drugs
- Adaptive equipment
- Residential programs and support

Medicaid Waivers provide funding for services outside of residential centers and institutions.
Medicaid Waiver Details (DODD)

Medicaid home and community-based waiver services allow people with disabilities and chronic conditions to receive care in their homes and communities instead of in long-term care facilities, hospitals or intermediate care facilities.

Waivers allow individuals with disabilities and chronic conditions to have more control of their lives and remain active participants in their community.

County Job and Family Services determines eligibility.
## Types of Waivers

### Level One

**Adult Day Services**

- $5,325 per year towards:
  - Personal Care
  - Community Respite (Camp)
  - Transportation
  - Informal Respite

### Self

- $25,000/year children
- $40,000/year adults towards:
  - Adult Day Services
  - Support Brokerage
  - Remote Monitoring
  - Community Inclusion
  - Residential Respite
  - Community Respite (Camp)

### Individual Options (IO)

**Day Services**

- Uncapped funding towards:
  - Adult Day Services
  - Personal Care
  - Transportation
  - Environmental Accessibility Modifications
  - Remote Monitoring
  - Remote Monitoring
  - Adaptive and Assistive Equipment
Types of Waivers (continued)

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<tr>
<th>PASSPORT</th>
<th>Ohio Homecare</th>
<th>Assisted Living</th>
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<tr>
<td>Alternative to nursing home, disabled older adults (age 60+) remain safe and independent at home.</td>
<td>For individuals (age 59 and under) who have significant health care needs due to a disabling condition.</td>
<td>Provides care for adults (age 21+) who are in need of care in an Assisted Living facility, but not a nursing home.</td>
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<td><strong>Basic Services:</strong></td>
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<td><strong>Benefits Include:</strong></td>
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<tr>
<td>• Homemaking</td>
<td>• Similar to PASSPORT Program</td>
<td>• Private room/bath</td>
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<td>• Personal Care</td>
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<td>• 24-hour on-sire response</td>
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<tr>
<td>• Meals/Nutrition</td>
<td></td>
<td>• Meals, Personal Care, Homemaking</td>
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<tr>
<td>• Nursing</td>
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PASSPORT: Ohio Homecare: Assisted Living
### MyCare Ohio
Provides comprehensive, coordinated services to Medicare and Medicaid eligible adults in 29 Ohio counties. A Managed Care Organization oversees health care.

**Basic Services:**
- Medical Care
- Long-Term Care
- Behavioral Health Services
- In-home waiver service coordination

### Specialized Recovery Services
For individuals (age 21+) with serious or persistent mental illness who are Medicaid eligible.

**Benefits Include:**
- Individualized Placement/Support finding and keeping a job
- Support from others with similar life experiences

### Home Choice
Assists older adults and individuals with disabilities to move from nursing homes to qualified home or community-based settings.

**Requirement:**
- Must have lived in a long-term care facility for at least 90 days at time of discharge
Supplemental Security Income (SSI)

Generally

SSI is a needs-based monthly subsidy for individuals with disabilities with limited countable resources and income.

- Provides assistance with food and shelter
  (rent, garbage, heating, cooling, water, property insurance, property taxes)
- Adaptive equipment
  - Residential programs and support

The amount is determined by age of individual, living arrangements in household, income of the individual from employment.

When other money is provided for the individual, SSI is reduced.
## Eligibility for Government Benefits

### Medicaid
- **Asset limit of $2,000.00.**
- Individuals who work have a higher limit but have buy in or premiums.

### SSI
- **Asset limit is $2,000.00.**
- **Income limit is $20.** (All unearned income over $20 off-sets or reduces SSI.)

**Assets do not include (among others):**
- The home you live in and the land it is on
- Household goods and personal effects
- Life insurance policies with a combined face value of $1,500 or less
- One vehicle, regardless of value, if it is used for transportation for you or a member of your household
Overview

**Trust** – An arrangement that allows a trustee, to hold assets on behalf of a beneficiary or beneficiaries.

**Trustmaker** – The person who creates the trust for the beneficiary.

**Trustee** – The person, or institution, that manages the trust.

**Beneficiary** – The person that receives funds from the trust.
Four types of Special Needs Trusts exist in Ohio that will not disqualify a person from benefits, even if over the asset limit for government benefits ($2,000.00 for SSI and Medicaid).

Of the four types, three require a “payback,” and one does not require any “payback.”

1. Discretionary Special Needs Trust
2. Supplemental Services Trust
3. Special Needs Trust
4. Pooled Trust
Determining the Right Special Needs Trust

Who is the source of the funds?

If funds belong to anyone, besides the person with special needs (3rd Party), choose from the following:

• Discretionary Special Needs Trust
• Supplemental Needs Trust
• Special Needs Trust
• Pooled Trust

If funds belong to the person with special needs for whom the trust is created (beneficiary), choose from the following:

• Special Needs Trust
• Pooled Trust
1. Discretionary Special Needs Trust

- Funds belong to a 3rd party
- Trust created by the 3rd party (e.g., Tim and Nancy create it for Jane’s benefit)
- Trustee has absolute discretion in determining how the assets are to be distributed
- **No state payback.** Funds remaining can go to another child, grandchild, or anyone else – Trust Maker decides
- Doesn’t require that beneficiary be “disabled”
- No age or funding limitation
- Usually includes “poison pill” provision to ensure qualification as a non-countable resource
2. Supplemental Services Trust

• Funds belong to a 3rd party
• Trust created by a 3rd party
• Beneficiary must qualify for services through the State Department of Disabilities or the County Board of Developmental Disabilities
• Maximum principal contribution is $242,000 in 2015
• Distributions only for supplemental services—See OAC 5122-22-01
• At beneficiary’s death, 50% of remaining balance must be paid back to the state
3. Special Needs Trust

- Funds belonging to a 3rd party or beneficiary, as in the case of a court award or settlement
- Created by Individual, Parent, Grandparent, Guardian, or Court (e.g., inheritance, life insurance, child support)
- Created so that individual receiving benefits can continue to receive benefits without being disqualified
- Beneficiary must be age 65 or younger and qualify for benefits
- The trust must include a state payback provision
- At beneficiary’s death, State reimbursed for total amount of medical assistance paid (100%) on behalf of beneficiary, if funds available
- Trustee only authorized to pay for things that public benefits do not cover

* Often called (d)(4)(a) trust after the Federal Legislation that created it (42 U.S.C. 1396p(d)(4)(A)).
4. Pooled Trust

- Funds belong to 3rd party or beneficiary
- Designed for “small” asset amounts
- By a Parent, Grandparent, Guardian, or the Court
- Non-profit organization–501(c)(3) designation–serves as the trustee (e.g. Community Fund Management Foundation)
- No age limitation
- Master Trust, Separate Accounts
- At beneficiary’s death, 100% of remaining balance goes to charity
Guardianship and Alternatives, Advance Health Care Directives

Guardianship
A court ordered relationship in which the guardian acts on behalf of the person with special needs

Alternatives to Guardianship
Less restrictive options meant to meet the disabled person’s needs without the appointment of a guardian

Durable General Power of Attorney
STABLE Accounts: Questions and Answers for Parents and Individuals

Q: What is the ABLE Act?

The ABLE Act falls under Section 529 of the Internal Revenue Code. The Act allows people with disabilities and their families to save money in a special savings account. Earnings on a STABLE Account are not taxed, and account funds are generally not considered assets for the supplemental security income (SSI) program and Medicaid.

Q: Why is it important?

Saving by and for a person with disabilities is difficult because individuals face the loss of benefits if they have savings or assets above a very low threshold for “resources” ($2,000.00 for SSI and Medicaid). STABLE Accounts attempt to alleviate some of these difficulties.
STABLE Accounts: Q&A Con’t.

Q: How do savings in a STABLE Account affect SSI or Medicaid?

The first $100,000 in a STABLE Account is exempted from the SSI $2,000 individual resource limit. If, and when, a STABLE Account exceeds $100,000, any amount over $100,000 will count as a resource towards the $2,000 SSI limit. All amounts in a STABLE Account are exempted from the Medicaid resource limit.

Q: Who is eligible for a STABLE Account?

The final version of the ABLE Act limits eligibility to individuals with significant disabilities with an age of onset of disability before turning 26 years of age.

Q: Are there contribution limits?

A qualified individual may have only one STABLE Account. The total annual contribution by all contributing individuals, including family and friends, is $15,000. The amount will be adjusted annually for inflation. The total limit over time that could be made to a STABLE Account will be subject to the individual state and their limit for education-related 529 savings accounts.
STABLE Accounts: Q&A Con’t.

Q: I have a disability that qualifies me for a STABLE Account. What happens if there’s money left in my account when I die?

Your STABLE Account will have a payback provision. This means that, when you die, Medicaid will be paid back for any services that were provided to you with funds remaining in the account. (If you still have outstanding bills for any Qualified Disability Expenses, the money in your STABLE Account can be used to pay those expenses before Medicaid is reimbursed. Your account can also be used to pay for funeral and burial costs. Importantly, Medicaid can only seek repayment from your STABLE Account for amounts it paid after you opened your STABLE Account (or, if you rolled over from another STABLE plan, after you opened that first STABLE Account).) Any remaining funds, after payback, will be distributed after your death to a beneficiary you have chosen.

Q: What expenses are allowed to be paid by STABLE accounts?

A "qualified disability expense" means an expense related to the designated beneficiary as a result of living a life with a disability. These include education, housing, transportation, employment training and support, assistive technology, personal support services, health care expenses, financial management and administrative services.
Q: How do I open a STABLE Account?

STABLE Accounts are available through the Ohio Treasurer’s Office. Visit www.stableaccount.com for more information and to open an account.

Q: What is the bottom line for families?

Because of the spending restrictions and the payback provision, STABLE Accounts should be considered as a potential component of a special needs plan that includes other savings vehicles. For most families and individuals, the STABLE Account will be used in conjunction with a third party special needs trust.
Thank you for your time!
Please feel free to contact me if you have any questions after this program.

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