

## Special Needs Planning: Legal and Financial Issues and Strategies



The Northern Chapter of  
The Virginia Society of  
Certified Public Accountants

December 13, 2011

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- | More than 20 years' financial experience.
- | Quoted in: *Business Week*, *CNBC*, *Comcast CNN*, *CNN Money*, *Financial Planning magazine*
- | As past president of the Autism Society of Northern Virginia, started sensory-friendly movies at AMC for exceptional families in 2006.
- | Funded Project Lifesaver® for Arlington County Police Department in 2009.
- | Family with three boys, two of whom have Autism, was featured on *ABC World News Tonight* and in the *Washington Post*.

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## Support & strategies for the more than 54,000,000 Americans who are disabled or have special needs

- | Government Benefits including: supplemental security income (SSI); social security disability insurance (SSDI); Medicare; Medicaid including Virginia Medicaid waivers; Veterans Administration disability benefits
- | Estate planning; the different types of special needs trusts and when they are appropriate
- | Guardianship, conservatorship, and trustee considerations;
- | Special needs trust administration;
- | 529 college savings plans for beneficiaries with special needs;
- | Medicaid-compliant annuities in special needs planning.

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## CDC estimates lifetime cost to care for individual on the Autism Spectrum: \$3.2M

- | *Journal of American Medical Association (JAMA)*\* estimates **direct** medical costs: physician and outpatient services, prescription medication and **behavioral therapies** for a person with autism to be more than \$29,000/yr.
- | Direct non-medical costs: special education, camps and childcare at more than \$38,000. Annual indirect costs for children with autism and their parents range from more than \$39,000 to near \$130,000. \*

| \* In a Peter Broderick article carried in the *Journal of American Medical Association*, Dr. Michael Ganz, Assistant Professor of Society, Human Development and Health at Harvard School of Public Health

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## According to CDC

CFP & CPA w/ 1 ASD +1 PPDNOS + 1ADHD =  
SOL PDQ



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## What government benefits may be available?

### Disability and Need-Based - Income & Asset Resources Tests

- 1 **Supplemental Security Income (SSI)** is a Federal income supplement program funded by general tax revenues (not Social Security taxes): designed to help aged, blind, and disabled people, who have little or no income to meet basic needs for food, clothing, and shelter.
- 1 **Medicaid** is the health program for eligible individuals and families with low incomes and resources. It is a means tested program that is jointly funded by the state and federal governments, and is managed by the states
- 1 **Veteran Aid and Attendance** -This Improved Pension allows for Veterans and surviving spouses who require the regular attendance of another person.

Source SSA.GOV and VA.GOV

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## What government benefits may be available? Disability-Based

- | **Social Security Disability Insurance** pays benefits if you are "insured," meaning that you worked long enough and paid Social Security taxes.
- | **Medicare** - health insurance program for people age 65 or older. Certain people younger than age 65 can qualify for Medicare, too, including those who have disabilities. The program helps with the cost of health care, but it does not cover all medical expenses or the cost of most long-term care.
- | **Veterans**
  - Children's Pension Benefit – available to children disabled before age 22 for civilian, military, and some private companies
  - Dependent parents age 62 or older
    - | 1. Veteran is in receipt of compensation with a combined evaluation of at least 30 percent, or
    - | 2. Veteran is in receipt of VA educational benefits based on enrollment of ½ time or more.

7 Source CMS.GOV and VA.GOV

## Credits needed to qualify for SSDI benefits?

- | **Fully Insured**  
To be fully insured, you need at least one QC (Quarter of Coverage) for each calendar year after you turned 21 and the earliest of the following:
  - | the year before you attain age 62,
  - | the year before you die, or
  - | the year you become disabled.
- | You are permanently insured if you are fully insured *and* you will not lose your fully-insured status when you stop working under covered employment.
- | Minimum QCs needed is 6. Maximum is 40. Any year (all or part of a year) that was included in a period of disability is *not* included in determining the number of QCs you need.
- | **NOTE: Many caregivers are forced from workplace and lose coverage for themselves and their families.**

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## Basics of Social Security Disability Insurance (SSDI)

### I **Quarters + Disability = Benefits**

SSDI available worker with a "disability" as defined by the federal government and who has paid into the Social Security system for a specified amount of time.

The applicant must have a physical or mental impairment that makes it impossible for him to engage in any "substantial gainful activity," and this impairment must be expected to last for longer than one year or to result in death. The Social Security Administration generally defines "substantial gainful activity" as being able to earn more than \$1,000 a month from working.

### I **Qualifying on a Parent's Work Record**

If disabled prior to 22, the applicant must be completely disabled, his parent in the Social Security system for the required number of quarters and the

**parent must be : either dead, permanently disabled, or receiving Social Security retirement.**

The person with the disability receives an SSDI benefit in addition to the Social Security benefits that his parent is collecting.

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Source: SSA.GOV

## Basics of Social Security Disability Insurance (SSDI)

### I **SSDI Beneficiaries Receive Medicare . . . Eventually**

two years from the date that they become eligible for SSDI before they can begin to receive Medicare.

### I **Re-Starting Work Does Not Immediately Cause a Loss of Benefits**

I Fortunately, the Social Security Administration offers a program called Ticket to Work that allows an SSDI to begin working again without a loss of benefits.

I Also, a beneficiary receiving Medicare because of participation in SSDI can continue to receive free Medicare Part A services for up to four and a half years following the end of the trial period.

I Source SSA.GOV

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## Medicaid Financial Qualifications

- | 300% Supplemental Security Income (SSI)
- | (\$674 x3 = 2,022) monthly
- | \$2,000 financial assets in Virginia, and most states
- | Does not include residence, auto, personal items
  - (residence value cap 500K)

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## Transferring assets against the law?

- | As part of a 1996 Kennedy-Kassebaum health care bill, Congress made it a crime to transfer assets for purposes of achieving Medicaid eligibility. Congress repealed the law as part of the 1997 Balanced Budget bill, but replaced it with a statute that made it a crime to advise or counsel someone for a fee regarding transferring assets for purposes of obtaining Medicaid. This meant that although transferring assets was again legal, explaining the law to clients could have been a criminal act.
- | In 1998, Attorney General Janet Reno determined that the law was unconstitutional because it violated the First Amendment protection of free speech, and she told Congress that the Justice Department would not enforce the law. Around the same time, a U.S. District Court judge in New York said that the law could not be enforced for the same reason. Accordingly, the law remains on the books, but it will not be enforced, for now...
- | Source ElderLawAnswers.com

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## What is a Medicaid Waiver?

- | Under Section 1915(c) of the Social Security Act, Medicaid law authorizes waiving certain Medicaid statutory requirements. This enables States to cover home and community-based services (HCBS) as alternative to institutionalization.
- | May waive parental deeming of income and assets.
- | Waiver services may also include : attendant care, respite care, environmental modifications, medical or technological supplies, or family training
- | To be a waiver participant, an individual must be medically qualified, certified for the waiver's institutional level of care, choose to enroll in the waiver as an alternative to institutionalization, cost Medicaid no more in the community under the waiver than he or she would have cost Medicaid in an institution, and be financially eligible based on their income and assets.

Source CMS.GOV

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## Virginia Medicaid Waivers

- | Alzheimer's Assisted Living (AAL) Waiver managed by the Care Coordination Services Unit
- | Day Support
- | Elderly or Disabled with Consumer Direction (EDCD)
- | HIV/AIDS
- | Individual and Family Developmental Disabilities Supports (IFDDS)
- | Intellectual Disability (ID)
- | Technology Assisted (Tech)

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## Income Requirements for Aid and Attendance

- Receiving a VA pension may disqualify a veteran that receives Medicaid benefits..

The claimant's *countable family income* must be below a *yearly limit* set by law. *Countable Income* means income received by the claimant and his or her dependents. It includes earnings, disability and retirement payments, interest and dividends, and net income from farming or business. A claimant must report all income, but the VA will exclude any income that the law allows. Public assistance, like SSI, is not counted as part of *countable income*. The annual income limits for the Aid and Attendance program are higher than those set for the basic pension. **Maximum Annual Pension Rate (MAPR)**

<i>If you are a...</i>	<i>MAPR Amount</i>	
<i>Your yearly income must be less than...</i>		<b>Maximum</b>
<b>Monthly Pension Rates</b>		
- Single Veteran	\$19,736	\$1,645
- Veteran with Spouse/Dependent	\$23,396	\$1,950
- Two Veterans Married to Each Other	\$30,985	\$2,582
- Surviving Spouse	\$12,681	\$1,057
- Surviving Spouse with One Dependent	\$15,128	\$1,261

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## Asset Requirements for Aid and Attendance

- VA pensions are a need-based benefit, and a large net worth might affect eligibility. All personal goods are exempt from the net worth. These goods include the residence, a vehicle used for the care of the claimant, and household goods and personal effects such as clothes, jewelry and furniture. Unfortunately, there is no asset limit set by law, and the determination made at the discretion of a VA caseworker.
- As a general rule, to qualify for VA Pensions a veteran's assets cannot exceed \$80,000. The VA also allows assets to be transferred or converted to income in order to pass the "asset test". **There is no look back penalty for transferring assets as there is with Medicaid.** Meaning seniors can transfer assets out of their names and then apply without penalty.
- The Veterans' Administration does not put restrictions on how pension benefits can be used. They can be applied toward skilled nursing, assisted living, at home or adult day care or to modify the home for better accessibility and safety.

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## How people organize financial assets so they don't disqualify from otherwise eligible benefits

- | **Disinherit** – gifts of moral obligation
- | *Note: typical support trusts will disqualify individual for benefits.*
- | For many families, a **Special Needs Trust** is the most effective way to help their child with a disability. SNT manages resources while also maintaining the child's eligibility for public assistance benefits.
- | **Third-Party Special Needs Trust:** Created using the parents' assets as part of an estate plan; distributed by a will or living trust.
- | **Self-Settled Special Needs Trust:** Generally created by a parent, grandparent or legal guardian using the child's assets to fund the trust (for example, when the child receives a settlement from a personal injury lawsuit and will require lifelong care). If assets remain in the trust after the beneficiary's death, a payback to the state is required.

Source: Academy of Special Needs Planners

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## What infrastructure will do what I do?

- | Guardianship
- | Power of Attorney (durable & medical)
- | Conservator
- | Trustee
- | Representative Payee
- | Trust Protector
- | Family members?
- | Letter of Intent

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## What infrastructure will do what I do?

### I Letter of Intent

- Education
- Summary Medical Information
  - I Diet, Behavior, Safety
- Interests, Skills and Extra Curricular Activities
- Family dynamics
- Religion
- Discipline
- Therapies and providers
- Government Benefit Contacts / Case manager

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## Special Needs Trust Administration

One of the central duties of the trustee of a special needs trust is to understand what public benefits programs might be available to the beneficiary and how receipt of income, or provision of food or shelter, might affect eligibility. Because there are numerous programs, competing (and sometimes even conflicting) eligibility rules, and at least two different types of special needs trusts to contend with, the entire area is fraught with opportunities to make mistakes. Because the stakes are often so high—the public benefits programs may well be providing all the necessities of life to the beneficiary—a good understanding of the rules and programs is critically important.

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## Special Needs Trust Administration

- A. Trustee's Duties: No self-dealing, Impartiality, Delegation, Investment
- B. Bond
- C. Titling Assets
- D. Accounting Requirements
- E. Reporting to Social Security
- F. Reporting to Medicaid
- G. Reporting to the Court
- H. Modification of Trust
- I. Wrapping up the Trust

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## Special Needs Trust Administration

- INCOME TAXATION OF SPECIAL NEEDS TRUSTS
- A. "Grantor" Trusts
- B. Non-Grantor Trusts
- C. Qualified Disability Trust
- D. Seeking Professional Tax Advice
  
- Note: 35% tax bracket for trusts starts \$11,350 in 2011

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## Special Needs Trust Administration & Investment Management

- | Any trustee should be familiar with the principles of Modern Portfolio Theory, with its emphasis on risk tolerance and asset diversification. A trustee who holds himself out as having special expertise in investments or asset management will be held to a higher standard, but any trustee will be required to understand and implement prudent investment practices.
- | Courts may institute an investment policy that requires a percentage of assets to be held in fixed income investments and the remainder in securities (e.g., a 60/40 split)
- | For example, in 44 states & DC which have adopted the Uniform Prudent Investor Act, delegating investment authority pursuant to the Act will limit the trustee's liability so that he or she will only be required to carefully select and monitor the investment adviser. **Diversification is explicitly required as a duty for prudent fiduciary investing.**

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## Special Needs Trust Administration

- | Why hire a corporate trustee:  
*God is great.*  
*Beer is good.*  
*And people are crazy.*  
-Billy Currington
- | Other reasons: errors may trigger the loss of: income benefits, job supports, food subsidies, health insurance, and housing supports

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## What did you learn in college?

- | Accounting Skills vs. Adaptive Skills
- | Learn to self advocate
- | Learn to show up before cafeteria closes
- | How to deal with roommates
- | How to make friends
- | How to be independent

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## 529 college savings plans for beneficiaries with special needs

- | Eligible 529 plan expenses include tuition, fees, books, supplies and equipment required for a designated beneficiary (student) to enroll in or attend an **eligible educational institution** (check [savingforcollege.com](http://savingforcollege.com)).
- | 529 plan can also be used to purchase computer technology, equipment, or Internet access and related services if the student or the student's family will use them during any of the years the student is enrolled at an eligible educational institution.

26 Source IRS Pub 970

## 529 college savings plans for beneficiaries with special needs

- 1 If the student has special needs, the expenses incurred for special needs services in connection with enrolling in or attending an eligible educational institution are an eligible 529 plan expense.
- 1 Appropriate accommodations include providing a note taker, a scribe to record responses or complete forms, provision of adaptive equipment within the classroom or lab setting, assuring building and college accessibility. Services may include transfer from a car/van to a wheelchair; transportation to or from the classroom; administering medication; and addressing toilet, feeding or dressing.
- 1 Room and board is an eligible expense if enrolled at **least half-time**.

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Source IRS Pub 970

## PSE & ID

- 1 **Postsecondary Education (PSE)**  
Education after the high-school level. Options for students with intellectual disabilities include community colleges, four-year colleges and institutions, vocational-technical colleges, and the other various forms of adult education.
- 1 **Intellectual Disability**  
Refers to students with significant learning, cognitive, and other conditions whose disability impacts their ability to access course content without a strong system of educational supports and services. This population typically includes students who (a) take the alternative state assessment; (b) exit secondary education with an alternative diploma, such as IEP diploma or a certificate of attendance, instead of a typical high school diploma; and (c) qualify to receive services under the Individuals with Disabilities Education Act (IDEA) until they are 21.

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Source: Community Inclusion .Org

## There are approximately 110 PSE programs across 28 states

- | Programs are listed on [www.ThinkCollege.net](http://www.ThinkCollege.net)
- | The majority of programs (74%) support students with disabilities who are dually enrolled in high school and college. Thirty-three percent of the programs supported adult students with intellectual disabilities in PSE. (Some programs support both.)
- | 36% of parents of students with intellectual disabilities and other low-incidence disabilities indicated that a four-year college was their first choice. 22% of parents wanted a community college.
- | Students with intellectual disabilities with PSE more likely to
  - | obtain competitive employment
  - | required fewer supports
  - | earned higher wages
  - | increased self-esteem
  - | expanded social networks that included students without disabilities

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Source: Community Inclusion. Org

## Medicaid Compliant Annuity

- | A single premium immediate annuity (SPIA), or a deferred annuity that can be converted to a compliant SPIA). The unique aspect of a Medicaid-compliant annuity is that it must pay out over the annuitant's life expectancy (only option). The annuity must also have the following characteristics:
  - | It must be irrevocable and non-assignable
  - | It must be actuarially sound
  - | It must provide for payments in equal amounts, with no deferral and no balloon payments
  - | It must name the state Medicaid Program as the primary beneficiary to the extent that medical assistance benefits were provided to the institutionalized individual (certain exceptions may apply).

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## Medicaid Compliant Annuity

- 1 Countable assets, for Medicaid qualification, include stocks, mutual funds, CDs, money market accounts, and IRA or qualified plan money.
- 1 Married couples who have more than \$109,560 of the above-listed "countable" assets are not going to receive aid until they "spend down" their assets to meet these minimums.
- 1 Properly-structured Medicaid annuities are not countable assets; so the individual can then become eligible for Medicaid benefits.

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## Our Services

Financial Planning, Special Needs Planning  
Coordination with Attorneys, CPAs  
Coordination of Legal Documents and Financial Plan  
Investment Management  
Insurance Review & Implementation  
Retirement Planning & Analysis  
Education Planning  
Tax Consulting & Planning

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