

# Overcoming Barriers to Future and Financial Planning Support: Services and Financial Management

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**LIFE NAVIGATORS**  
*Your Disability Partner* EST. 1949

# Today's Topics

- ▶ Introductions
- ▶ Guardianship of Adults
- ▶ Other Decision-Making Alternatives and Supports for Futures Planning
- ▶ Special Needs Trusts Overview
- ▶ ABLE Accounts
- ▶ Questions

# Introductions

- ▶ Who are we?
  - ▶ James Giese with Wispact
  - ▶ Claire Keyes with Life Navigators
- ▶ What is Wispact?
  - ▶ Wispact Inc. is a nonprofit organization that administers pooled and community Special Needs Trusts for more than 5,000 people with disabilities across Wisconsin.
- ▶ What is Life Navigators
  - ▶ Disability Services Agency founded by parents of individuals with disabilities in 1949
  - ▶ Located in Wauwatosa, WI but some programs serve the entire state of Wisconsin
  - ▶ Programs include CLTS, Corporate Guardianship, Family Support and Special Needs Trusts



# Guardianship

- ▶ Once an individual reaches the age of 18, they are presumed to be an adult and capable of making decisions for themselves
- ▶ Parents do NOT automatically become a guardian for their son/daughter with a disability
- ▶ Requires a finding of “incompetence” by Probate Court
- ▶ Guardianship is a legal relationship

# Who Needs a Guardian? Why Should Guardianship be Considered?

- ▶ Not everyone with a disability needs a guardian
- ▶ A guardian is needed if an individual lacks ***Evaluative Capacity***
  - ▶ ***Evaluative capacity*** is the functional ability to effectively take in and evaluate information and/or to use information to make a decision
  - ▶ It is not based on making bad decisions
- ▶ Guardianship gives parents or another trusted individual the legal authority to make decisions on behalf of the individual they are guardian for
  - ▶ This can assist in protecting against exploitation
  - ▶ Also can avoid confusion in the event of a medical crisis

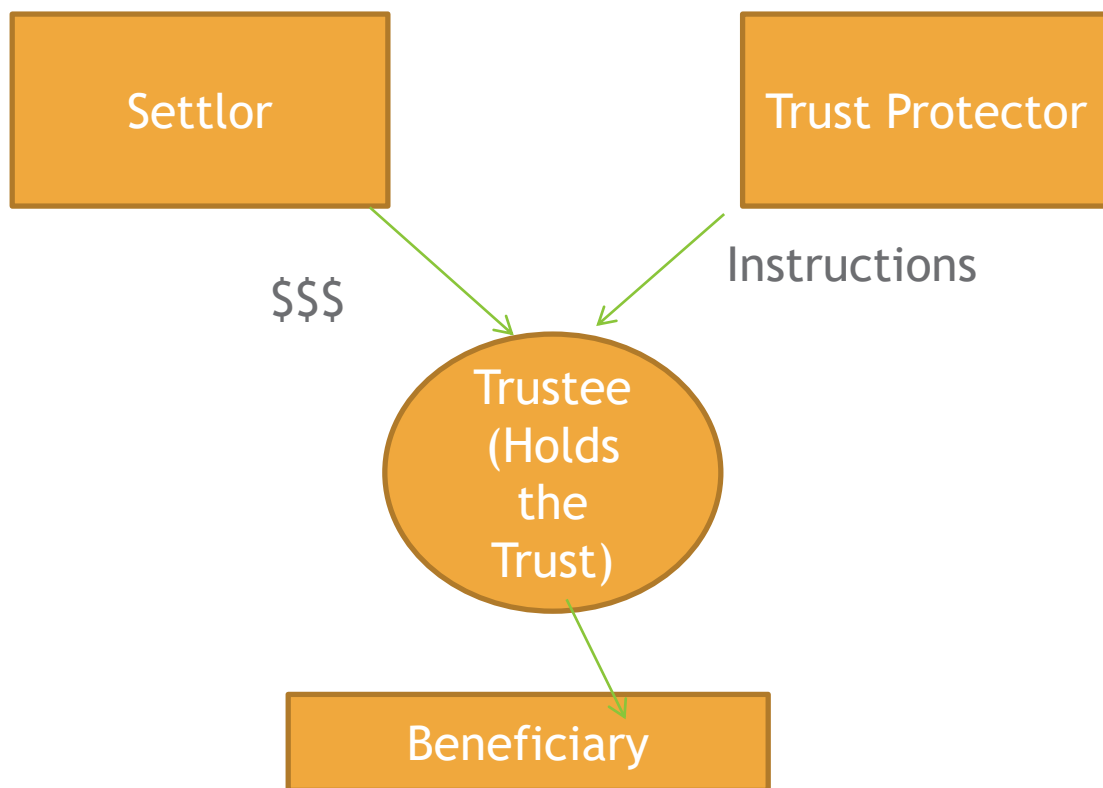
# Guardianship of Person Court Process: *A Brief Overview*

- ▶ Petition is Filed
  - ▶ Guardian or Co-Guardians are listed
  - ▶ Standby Guardian may be listed
  - ▶ Physician or Psychologist Report can be included with Petition
- ▶ Notice of Hearing Given
- ▶ Guardian Ad Litem (and possibly Defense Counsel) appointed by Court
  - ▶ Guardian Ad Litem meets with Potential Ward and advises them of rights
  - ▶ Guardian Ad Litem speaks with Potential Guardian
- ▶ Hearing
  - ▶ Evidence is Presented
  - ▶ Determination is Made

# Other Options and Supports

- ▶ Other Decision-Making Options:
  - ▶ Guardianship of Estate or Conservatorship
  - ▶ Power of Attorney Healthcare
  - ▶ Supported Decision-Making
- ▶ Supportive Services
  - ▶ Long-Term Funded Care
  - ▶ Case Management/Support Services
    - ▶ Life Navigators Family Support Program
- ▶ Other Tools Important for Futures Planning
  - ▶ Special Needs Trusts and Estate Planning
  - ▶ Letter of Intent

# What is a Trust?





# Special Needs Trusts – WHY?

Why would a person need a Special Needs Trust?

- 1) **EXEMPT**: Assets held in a Special Needs Trust are an exempt resource for Wisconsin Medicaid and SSI purposes.

- 1) See MEH 16.6.6
- 2) See POMS SI 01120.200

- 1) **NOT A DIVESTMENT**: Transferring assets to a Special Needs Trust for your own benefit is not a divestment. There are also exceptions to funding a trust for a person's disabled child – *these are very individually-specific rules and they should speak with an attorney.*

- 1) See MEH 17.13.4

# Special Needs Trust – WHY?

- ▶ Preserve excess resources while maintaining eligibility for means-tested public benefits.
- ▶ Resources held in a SNT are professionally managed and distributed per strict regulations and guidelines,
- ▶ A SNT is designed to supplement a person's basic living needs and helps improve their quality of life.

# Who is eligible to create a Special Needs Trust?

- ▶ Qualifications: Any Wisconsin resident, regardless of age, with a disability can create a Special Needs Trust.
- ▶ **NOTE:** A Special Needs Trust is a legal entity, therefore every trust application must be completed and submitted by a Wisconsin licensed attorney. Many attorneys throughout the state practice special needs and elder law, and are familiar with the trust creation process.

# What can go into a Special Needs Trust?

- ▶ Generally, only cash is accepted into a Special Needs Trust.
- ▶ Sometimes the Trustee may make exceptions for non-cash, “unique”, assets (such as real estate). This is a case-by-case basis and would need to be discussed between the attorney and Trustee prior to trust establishment. It can not be guaranteed that unique assets will be accepted into a SNT.

# Distributions from the Trust

- ▶ A Beneficiary or their legal representative can contact their trust agency or trust manager and request to use their trust.
- ▶ Wispact/Life Navigators staff review each distribution request to ensure rules and regulars are followed.
- ▶ Primary Distribution Rules:
  - 1) The “Sole Benefit Rule”
    - All distributions must be for the Beneficiary’s ‘sole benefit’ only
  - 2) Follows rules of SSI and Medicaid, if applicable in the case of the Beneficiary.
  - 3) Is the distribution practical?

# What can you use funds in a Special Needs Trust For?

## Common Distributions:

- 1) Medical and dental expenses not otherwise covered
- 2) Private room differential
- 3) Health and beauty expenses
- 4) Entertainment (books/movies/cable TV)
- 5) Travel (possibly also a travel companion)
- 6) Private caregiver

# How are bills paid?

- ▶ We cannot give a Beneficiary cash
- ▶ Receipts are always required
- ▶ How do people typically get things paid for?
  - ▶ Automatic recurring payments sent to trust agency
  - ▶ Direct payments to vendors
  - ▶ Reimbursements to reputable third parties
  - ▶ Credit card payments



# What can't you use Trust funds for?

- ▶ Common confusing SNT rules:
  - ▶ The Trust cannot buy gifts, even for holidays
  - ▶ The Trust can only pay the Beneficiary's share of household expenses.
    - ▶ If 4 people live in the house we can only pay for ¼ of the electricity bill.
  - ▶ If the person is on SSI, we generally cannot pay for shelter expenses as this is considered in-kind support and maintenance (ISM) and will reduce their SSI dollar for dollar (maxed out at 1/3 of total spent).



# What happens to the funds in the Trust when the person dies?

It depends on the type of Trust a person has:

## 1) First-Party Trust

- When a Beneficiary passes away, the Trustee notifies the Wisconsin Estate Recovery Program. If the person has an Estate Recovery Payback Claim against them, then how the trust is paid out depends on two factors – what is left in their trust and what is owed to Estate Recovery.
  - If what is left in the trust is insufficient to payback Estate Recovery, then the funds are retained by the Pooled SNT Agency's retained fund for the benefit of other individuals with disabilities.
  - If what is left in the trust is more than the payback amount, then Estate Recovery is paid and the remainder is paid to whomever was designated by the Settlor in the original trust documents.

# What happens to the funds in the Trust when the person dies?

## 2) Third-Party Trust

- As the assets were never the Beneficiary's during their lifetime, they are not subject to Estate Recovery Payback.
- The remaining funds in the trust will be paid out to those designated in the trust document.

# Using SNTs with ABLE Accounts

- ▶ ABLE Accounts are another tool that could be used in addition or in place of a SNT.
- ▶ They have some advantages and some disadvantages which may make using them together the best option.

# ABLE Account Advantages

- ▶ ABLE Accounts are self-administered or administered by the person's authorized representative (POA, parent, or conservator/guardian)
- ▶ If you receive SSI, restrictions on the use of SNT proceeds are not the same with an ABLE Account which allows for housing expenses. SSA says that distributions from an ABLE account are not income if they are used for those expenses in the same calendar month.
- ▶ Any one can contribute to the account even if it is established by the individuals themselves.

# ABLE Account Disadvantages

- ▶ ABLE Accounts limit eligibility requiring that the individual be determined disabled prior to age 26.
- ▶ ABLE Accounts are limited in regard to what can be contributed.
- ▶ In 2025, the contribution limit is \$19,000.00 per year.
- ▶ For SSI recipients, an ABLE account with a balance in excess of \$100,000.00 will count toward the \$2,000.00 asset limit;
  - ▶ However, after spend down, the SSI recipient can go back on benefits without having to reapply.
- ▶ There are lifetime contribution restrictions which can vary from state to state, approx. \$250K to \$450K
- ▶ All proceeds are subject to Medicaid Payback regardless of whether the proceeds are self-funded or third-party.

# In Conclusion...

- ▶ Futures Planning is a key part of ensuring success and independence for individuals with disabilities
- ▶ Future planning can vary based on a person, their supports, and their needs
- ▶ Special Needs Trusts are an accessible tool to help preserve current or future benefits and services
- ▶ Special Needs Trusts can be paired with ABLE accounts, or accessed individually

# Any questions?

