





# Enhancing Quality of Life Through Special Needs Trusts

*Christi Romero-Roseth*

Director of Community Relations

Colorado Fund for People with Disabilities

# Today's Presentation

## CFPD Services

What's a Trust and Who Needs One?

## Types of SNTs and Trustees

ABLE Act

## Representative Payee

Real-Life Scenarios

## Questions and Answers



# CFPD

The Colorado Fund for People with Disabilities (CFPD) was established by a volunteer Board of Directors in 1994 to develop a **supplemental needs trust or SNT**. The purpose of the trust is to protect a person's Supplemental Security Income (SSI) and Medicaid from being impacted should they receive funds that would make them ineligible for these or other public benefits.



# Our Services



## Supplemental Needs Trusts

(Pooled and Individual)

A way to set aside some extra money and still qualify for Social Security and Medicaid benefits



## Conservatorships

Court-ordered money management with compassion



## Case Management Services

Expert guidance on an as-needed basis



## Representative Payee

Bills paid accurately and on time



## Mission Supports

Connection to services for Denver residents with I/DD who are homeless

# CFPD Program Info

- CFPD is nonprofit
  - Founded in 1994
  - Established by EDs of collaborative agencies
  - All volunteer Board of Directors and Committee Members
- CFPD serves statewide
  - Offices near I-25 and Colorado Blvd. in Denver
  - Independent Contractors serve out-of-metro areas
- People served yearly
  - Pooled Trust: over 1,380 beneficiaries served since 1994; over 600 at present
  - Private Trust Group: 100+ beneficiaries/clients
  - Conservatorships: 20+ protected persons
  - Representative Payee: Over 300 people served to date
  - Mission Supports – 62 people served to date
  - Sole Trustee – Newest, fastest growing





# SNTs Defined

- A special needs trust is drafted specifically so trust assets are considered not to be "available resources" in calculating the disabled person's resources.
- The Social Security Administration describes a discretionary trust as “a trust in which the trustee has full discretion as to the time, purpose and amount of all distributions.”
- If the beneficiary has no discretion over the distributions, the trust is not counted for SSI eligibility.

# Social Security Benefits

SSI	SSA	SSDAC	SSDI
Supplemental Security Income	Social Security	Social Security Disabled Adult Child	Social Security Disability Income
Disability	Retirement	Disability (must be determined before age 22)	Disability
No work history required	Work history required	No work history required	Work history required
Income Cap - \$771/month (2019)	Income Cap – Depends on work record	Income Cap – Depends on work record	Income Cap – Depends on work record
Resource Cap - \$2,000	No Resource Cap	No Resource Cap	No Resource Cap
Always Medicaid	Typically Medicare	Typically Medicare	Typically Medicare





# Who Needs an SNT?

- People with disabilities who are preparing to go on benefits (SSI/Medicaid)
- People on benefits who need to leave funds to a disabled child
- People unable to personally handle any sums of money or may be vulnerable to exploitation
- People who may receive benefits in the future



# Who Needs an SNT?

*People on benefits who receive funds exceeding \$2,000*

- Inheritance
- Back-payment of Social Security
- Personal Injury Settlement
- Car Accident
- Gift from Family/friends
- Worker's Compensation
- Medical Malpractice
- Liquidation of Personal Assets
  - Sale of Home
  - Excess resource each month

# Special Needs Trust Comparison

	Individual (First Party) Private Trust 42 USC § 1396p(d)(4)(A) C.R.S. § 15-14-412.8	Pooled (First Party) Trust 42 U.S.C. §1396p(d)(4)(c) C.R.S. § 15-14-412.9	Individual Third Party Private Trust	Pooled (Third Party) Trust
Administration	Family member, professional fiduciary, bank	Non-Profit organization	Family member, professional fiduciary, bank	Non-Profit organization
Age	Must be under 65	No age restrictions per se, but at the age of 65 and over the Beneficiary must be reasonable able to spend down the funds in their expected lifetime.	Can Be of any age	Can be of any age
Transfer Penalty	None	Maybe under some circumstances for persons over age 65. None for persons under 65.	None	None
Annuities	Must name Medicaid as a beneficiary	Trustee may be named as a beneficiary	Do not need to name Medicaid or trustee as a beneficiary	Do not need to name Medicaid or trustee as a beneficiary
Definition of Disability	Must meet definition of disabled for the purposes of the SSI program	Must meet definition of disabled for the purposes of the SSI program	ADA definition is used	ADA definition is used
Distributions	Supplemental Needs for the Sole Benefit of the Beneficiary	Supplemental Needs for the Sole Benefit of the Beneficiary	Supplemental Needs for the Sole Benefit of the Beneficiary	Supplemental Needs for the Sole Benefit of the Beneficiary
Costs	Set up by private attorneys, cost varies. Administration costs vary	No attorney fees. Non-profit sets fees to establish and administer	Set up by private attorneys, cost varies. Administrative cost vary	CFPD: Cost to set up is \$250.00 plus 2% of amount contributed to establish trust fund. 1% annual; Case Mgmt fees
Remainder Interests (when Primary Beneficiary dies)	Medicaid must be paid first.	Will be paid back to the State Medicaid Agency to the extent it is not retained by the pooled trust.	A beneficiary can be named. (Medicaid has no claim on third-party funds)	A beneficiary can be named. (Medicaid has no claim on third-party funds)
Portability	May need to pay back Medicaid if moved out of state or terminated from Medicaid benefits.	Trust is for life. Can move to any state with similar law of pooled trusts or "ported" to new pooled trust.	Trust is for life. Can move to any state with similar law	Trust is for life. Can move to any state with similar law of pooled trusts or "ported" to new pooled trust.
Medicaid Approval	Must be approved by Medicaid in all non-SSI cases.	Pre-approved by Medicaid, but Medicaid must be notified.	Must be approved by Medicaid in all non-SSI cases.	Pre-approved by Medicaid, but Medicaid must be notified.
Social Security	Must approve all SSI cases.	Pre-approved by SSA, but SSA must be notified.	Must approve all SSI cases.	Pre-approved by SSA, but SSA must be notified.
Flexibility	Depends on document.	Streamlined process in place.	Depends on document.	Streamlined process in place.

# What A Trust Typically Can't Pay For

## *Primary Needs*

- A regular monthly housing cost: rent, mortgage, some HOA fees
- Food
- Primary Utilities: water, sewer, gas, trash and electric
- Medical costs otherwise covered by Medicaid

# What an SNT can pay for



## RECREATION



Vacations



Companionship Services



Entertainment

Subscriptions



Memberships



Pets



Cable TV

## MEDICAL CARE (NOT COVERED BY BENEFITS)

Dental Work



Glasses



Hearing Aids



Massage



Hair Care



Co-Pays

Personal Supplies

Vitamins/Supplements

# What an SNT can pay for



## HOUSEHOLD

Home Purchase



Home Maintenance



Clothing



Telephone

Appliances



Furniture



Home Insurance

Accessibility Upgrades

## TRANSPORTATION

Public Transportation



(Bus Passes, Light Rail, Etc.)



Vehicle Purchase



Vehicle Maintenance



Gasoline

Auto Insurance



# What an SNT can pay for

## EDUCATION



Public/Private Education

Training



Computer



Software

Books

Vocational Training

Wi-Fi

## SERVICES

Attorney Fees



Alternative Therapies



Guardian Fees



Conservator Fees

Burial Plan

# ABLE— Achieving A Better Life Experience

## 10 Quick Facts

1. A Better Life Experience (ABLE) was passed in the US Congress and **signed into law Dec, 2014.**
2. ABLE has to then be passed in each state. **In CO**, the enabling legislation has been brought forth by College Invest and passed in 2015. ABLE accounts became available in CO in 2017.
3. ABLE is akin to 529 plans. It is now **529a of the Internal Revenue Code.**
4. ABLE is limited to people with disabilities who were **disabled before the age of 26.** However, they may contribute at any age.
5. **Individuals with disabilities, their family and friends** can contribute to **ONE account** for each individual.
6. **Annual contributions** (from all sources) are limited to the gift tax amount, currently \$15,000 in 2019. 2017 change in tax law allows working account holders to save more.
7. **The total value of the account** cannot exceed \$100,000 for SSI recipients and \$450,000 for all other account holders in Colorado.
8. **Distributions** are different than SNT's. They must be related to the individual's blindness or disability. Allowable expenses: Education, Housing, Transportation, employment training and support, assistive technology and personal support services, health, prevention and wellness, financial management and admin services, legal fees, expenses for oversight and monitoring, funeral and burial. (Note, no vacation, recreation is limited, etc.)
9. The **account holder manages their own distributions.** The administrator (like CollegeInvest) has no discretion.
10. **The remainder is paid to Medicaid** (even third party contributions) upon the death of the beneficiary.



- **Who Runs ABLE Accounts**

- Existing 529 Plan Administrators
- States may contract with other states

- **Portability**

- Open in state of residence for beneficiary or any other state,
- Can transfer accounts in other states



- **Contribution Limits**

- Tied to Gift Exclusion amount (\$15k in 2019)
- Total lifetime contributions tied to states' 529 savings limits (about \$450k in CO)
- The contributions from ALL sources are limited to \$15K/year total
- Per the Tax Cuts and Jobs Act, individuals who are working can contribute additional funds, up to another \$11,770, to the ABLE account

- **Ownership/Contributions**

- Always owned by beneficiary
- Parents, grandparents, guardians can start accounts
- Anyone (Individual, family members) may contribute

- **Tax Benefits**

- In Colorado: None at time of contribution; post-tax dollars
- Some states allow tax benefits in their states
- No tax on earnings when distributions are qualified

- **Benefit Protection**

- Up to \$100k accrual in account without SSI impact or Medicaid impact
- State-run, income-based programs – Still unclear; not all have formed rules

- **Payback Provisions**

- Funds remaining at the death of the beneficiary return to the state Medicaid
- ALL contributors' funds are subject to payback



# Housing Expenses

The Social Security Administration recently directed that distributions from an ABLE account for Housing will not count as either Income OR as In-Kind Support and Maintenance (a 1/3 deduction) for Supplemental Security Income (SSI) Beneficiaries..



***Practice note: The distribution for housing MUST be spent within the month of receipt. If it carries over to the next month it will count towards the RESOURCE limit for SSI.***

However, apply normal SSI resource counting rules and exclusions to assets or other items purchased with funds from an ABLE account.

Stephen Dale, Attorney, <https://www.youtube.com/watch?v=tuvoN1g57QA>,  
<http://achievingindependence.com/>

# Odds and Ends

- **Type of Contribution**

- “Cash” only (*cash, check, credit card, money order*)
- No stocks, properties etc.

- **Rollovers**

- Can go to another family member who is also ABLE-qualified
- Member must meet 529-A eligibility requirements
- Per the Tax Cuts and Jobs Act, roll-overs from a 529B (college) plan are permitted into ABLE up to the maximum contribution cap/year.

- **Reimbursements**

- Allowable, even for beneficiary

- **Number of Accounts**

- Only one allowed per beneficiary
- All must contribute to same account

- **Surtax on Unqualified Expenses**

- 10% surtax



# Who Qualifies for 529-A

- If you meet the age criteria (onset by age 26) and are also receiving benefits already under SSI and/or SSDI, you are **automatically eligible** to establish an ABLE account.
- If you are not a recipient of SSI and/or SSDI, but still meet the age of onset disability requirement, you **could still be eligible** to open an ABLE account if you meet Social Security's definition and criteria regarding significant functional limitations and receive a letter of certification from a licensed physician.
- You need not be under the age of 26 to be eligible for an ABLE account. You could be over the age of 26, but must have had an age of onset before the individual's 26 birthday.

# Best Candidates for 529-A

- Those with disabilities prior to age 26
- People who can manage day-to-day finances with little or no help
  - *Wages can be direct-deposited*
  - *Freedom to access funds without intervention*
  - *Self-determination is supported*
- Families who want to contribute financially to a beneficiary who are comfortable with the potential payback provision
- Individuals with specific savings goals (vehicle, home repair)
- Families managing the expense of raising a child with a disability while maintaining benefits
- Individuals now over age 65 affected by lifetime disability



# Representative Payee

A **representative payee**, or substitute **payee**, is a person who acts as the receiver of United States Social Security Disability or Supplemental Security Income for a person who is not fully capable of managing their own benefits, i.e., cannot be their own **payee**.

Can also serve DFAS, OPM, and PERA clients but NOT VA clients.



# Rep Payee Essentials

Collect and disburse income benefits with priority on primary needs (housing, groceries, utilities, first-line medical, clothing)

With remaining funds, provide personal needs money (pocket money).

Assure legal and safe use of funds when selecting/paying vendors





# CFPD Rep Payee Program

Performing an initial intake with the client and his/her representatives by phone, in person or Skype to:

- Learn about the client's present and past financial concerns; his/her experiences with money-handling; goals for saving and spending; who to include or exclude from communications about the client (support network)
- Develop a budget with the client based on known income and expenses
- Identify areas where client could be saving money by changing services; help identify services the client currently lacks and make referrals
- Review policies and procedures; gain agreement from client and RP
- Provide instructions on how to have all bills transferred to our mailing address and give us authorization to discuss accounts
- Present program options offered by CFPD for no-contract cell phone plans; using reloadable grocery cards; using Walmart or other gift cards to manage spending
- Determine whether the client could benefit from using a debit card vs. handling paper checks



# CFPD Rep Payee Program

- Paying all regularly-scheduled bills that have been provided to the RP in a timely and accurate fashion including rent, food, utilities, medical costs and other ongoing expenses
- Handling new or emergent requests for special or one-time payments
- Communicating with Social Security to address any changes in income or benefits
- Alerting Social Security of any changes as required (e.g., a change in residence, admission to hospital, incarceration, etc.)
- Monitoring account balance to assure compliance with income and resource limits
- Sending annual accountings to client and to SSA; providing accountings as-needed for entry into new programs, eligibility redetermination, etc.



# CFPD Rep Payee Program

- Documenting interactions with clients and their myriad service providers
- Making reports to Adult Protective Services (APS) and other monitoring agencies if it seems the client is at risk of financial abuse (or any type of abuse we're made aware of); advising clients of their rights and referring to legal assistance when needed
- Advocating for clients whose income or bills are incorrect
- Negotiating payment plans with creditors/collection agencies
- Alerting appropriate people/authorities when clients' capacity to make financial decisions is in serious question; providing referrals regarding powers of attorney or court-ordered decision-making



# Your Scenarios

**Remember to stay HIPAA-safe**

**Pose hypothetical questions**

**We may have to take more  
complex conversations off-line**



# Questions?

*Christi Romero-Roseth*  
*Director of Community Relations*

**CFPD**

[www.cfpdtrust.org](http://www.cfpdtrust.org)

[crr@cfpdtrust.org](mailto:crr@cfpdtrust.org)

(303) 476-6322