

## Crowdfunding in Special Needs Planning

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## Means Tested Government Benefits

- Medicaid
  - Jointly funded federal and state program
  - Health insurance for the elderly, disabled and impoverished
- Supplemental Security Income (“SSI”)
  - Eligibility is based on disability, and the program is structured to provide a monthly stipend to cover shelter. The current resource allowance to establish financial eligibility is \$2,000.
  - Someone who is eligible for SSI is categorically eligible for Medicaid.
  - The current stipend amount is \$967 (for an individual who lives alone).
    - Certain states offer a supplement to this amount.

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## New Jersey Medicaid, By the Numbers

|                                               |                    |
|-----------------------------------------------|--------------------|
| • Resource Allowance                          | \$2,000            |
| • Monthly Income Cap                          | \$2,901            |
| • Community Spouse Resource Allowance Minimum | \$31,584           |
| • Community Spouse Resource Allowance Maximum | \$157,920          |
| • Monthly Maintenance Needs Allowance Minimum | \$2,643.75         |
| • Monthly Maintenance Needs Allowance Maximum | \$3,948            |
| • Excess Shelter Allowance                    | \$793.13           |
| • Utility Allowance                           | \$878              |
| • Penalty Divisor                             | \$12,283.57 /month |

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| New York Medicaid, By the Numbers                                                                            |           |
|--------------------------------------------------------------------------------------------------------------|-----------|
| • Resource Allowance (65+, blind, disabled)                                                                  | \$32,396  |
| ▪ For those under 65 and no Medicare, there is no resource allowance                                         |           |
| • Income Allowance in the Community                                                                          | \$1,800   |
| ▪ This number shifts for those under 65 and not receiving Medicare                                           |           |
| • Maximum Community Spouse Resource Allowance                                                                | \$157,920 |
| • Minimum Community Spouse Resource Allowance                                                                | \$74,820  |
| • Monthly Maintenance Needs Allowance                                                                        | \$3,948   |
| • Regional Rate for calculation of penalty                                                                   |           |
| ▪ \$14,273 in NYC                                                                                            |           |
| ▪ \$14,165 in Northern Metropolitan (Rockland, Westchester, etc.)                                            |           |
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| Florida Medicaid, By the Numbers                                                                               |                 |
|----------------------------------------------------------------------------------------------------------------|-----------------|
| • Resource Allowance                                                                                           | \$2,000         |
| • Monthly Income Cap                                                                                           | \$2,901         |
| • Community Spouse Resource Allowance Minimum                                                                  | \$31,584        |
| • Community Spouse Resource Allowance Maximum                                                                  | \$157,920       |
| • Monthly Maintenance Needs Allowance Minimum                                                                  | \$2,555         |
| • Monthly Maintenance Needs Allowance Maximum                                                                  | \$3,948         |
| • Shelter Allowance                                                                                            | \$766           |
| • Penalty Divisor                                                                                              | \$10,438 /month |
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| Georgia Medicaid, By the Numbers                                                                               |                 |
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| • Resource Allowance                                                                                           | \$2,000         |
| • Monthly Income Cap                                                                                           | \$2,901         |
| • Community Spouse Resource Allowance Minimum                                                                  | \$31,584        |
| • Community Spouse Resource Allowance Maximum                                                                  | \$157,920       |
| • Monthly Maintenance Needs Allowance                                                                          | \$3,948         |
| • Penalty Divisor                                                                                              | \$10,965 /month |
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## Massachusetts Medicaid, By the Numbers

|                                               |                    |
|-----------------------------------------------|--------------------|
| • Resource Allowance                          | \$2,000            |
| • Monthly Income Cap                          | \$2,901            |
| • Community Spouse Resource Allowance Minimum | \$31,584           |
| • Community Spouse Resource Allowance Maximum | \$157,920          |
| • Monthly Maintenance Needs Allowance Minimum | \$2,643.75         |
| • Monthly Maintenance Needs Allowance Maximum | \$3,948            |
| • Shelter Allowance                           | \$793.13           |
| • Penalty Divisor                             | \$13,450.50 /month |

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## More Means Tested Government Benefits

- Developmental Disabilities
  - Enrollment is necessary to obtain the Home and Community Based Waiver, which covers services and supports in the community including residential placement.
- Section 8 Housing
  - Housing assistance reduces the monthly rental obligation to the landlord.
- SNAP
  - Monthly benefit to be used for food and other household groceries for low income families, the elderly and the disabled.

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## Special and Supplemental Needs Trusts

- A Special Needs Trust is funded with assets from the beneficiary, such as an inheritance or a settlement from a lawsuit (called a first party or self-settled trust)
- A Supplemental Needs Trust is funded with assets from someone else (called a third party trust).
- Distributions from the trust are made in the sole and absolute discretion of the trustee, and cannot be made directly to the beneficiary.
- The funds held in the trust should **supplement, not supplant** any means-tested government benefits. This means that distributions are to be made to cover expenses not otherwise covered by Medicaid or SSI.

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### First Party Trusts

- The trust must:
  - Be for the benefit of a disabled individual (as defined in the Social Security Law) under the age of 65;
  - Be established by the individual (if he/she has capacity), a parent, grandparent, legal guardian or the Court;
  - Include a payback provision which states that upon the beneficiary's death, any funds remaining in the trust will be used to pay back Medicaid for medical assistance provided during the beneficiary's lifetime; and
  - Must be funded with the beneficiary's assets (common sources of funding include a windfall from inheritance or a court settlement).

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### First Party Trusts

- Medicaid and SSA must be notified upon the creation and funding of the trust.
  - The trust is reviewed to ensure that it comports with existing federal and state law, and that the State's remainder interest is protected.
- The trust can be funded with resources and/or income of the beneficiary (and is often used to shelter surplus income).
- Trust is created pursuant to federal law so the draftsman must ensure compliance with the federal statute.
- Trusts should also be compliant with the state regulations.
- There is a requirement to produce an annual accounting for Medicaid.

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### Third Party Trusts

- This trust is funded with assets from anyone other than the beneficiary. If there is another family member or friend who wishes to leave something to the disabled beneficiary, then the trust should be drafted as an irrevocable trust and should provide that the trustee can accept additions to the trust from other sources other than the Grantor.
- There is no pay-back provision since it is funded with the assets of a third party.
- Draft with flexibility. If there is significant wealth in the family, then the parents may consider a pot trust/sprinkle provision to allow for distributions to others. Trigger provisions may also be appropriate in the event there is potential that another beneficiary has or will have special needs.
- Powers of Appointment and Crummey rights of withdrawal should not be included for the disabled beneficiary.

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### Third Party Trusts

- “Rule of thumb” in drafting: trust should be drafted in such a way that the trustee’s discretion is restricted from making distributions that may impact the beneficiary’s eligibility for benefits.
- The trustee can be provided with authority to make shelter distributions even if such a distribution would impact the beneficiary’s eligibility for benefits, so long as such a distribution is in the beneficiary’s best interest. It is up to the draftsman to include this language.
- There should be an “opt out” provision – if the trustee is given this broad discretion, and if an agency decides that the discretion renders the trust available, then the trustee’s discretion to make these distributions will cease.

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### Third Party Trusts

- There is no “right” amount for funding a supplemental needs trust.
- It is important not to underfund the trust so that the disabled individual has sufficient funds for his or her lifetime to meet his or her needs.
- Be careful not to overfund the trust. If the beneficiary’s daily living expenses and care costs are covered by government benefits, then an equal share of the estate, especially if it is a wealthy family, may be too much.
- Using life insurance may be a good way to fund the trust. It is best to use non-retirement accounts to fund the trust. If the client must use retirement assets, then the draftsman must be sure to set up the trust to qualify as a designated beneficiary.

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### Pooled Trusts

- The trust must be managed and administered by a not-for-profit organization.
- A pooled trust can be either a first party or a third party trust.
  - The same payback provisions apply to first party trusts.
  - Many pooled trust companies permit a distribution to remainder beneficiaries upon the disabled beneficiary’s death, but will require a percentage of the trust to remain with the pooled trust organization.

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### ABLE Accounts

- An individual who is disabled prior to the age of 26 and who is receiving SSI or SSDI (or who has a disability certification from the SSA) is eligible to contribute to an ABLE account on his or her own behalf.
  - This is increasing to “disabled prior to the age of 46” on January 1, 2026
- Individual must be disabled at the time the account is established and when contributions/distributions are made.
- Third parties can contribute to an ABLE account for the benefit of a disabled individual as well, but these contributions are considered completed gifts for tax purposes.
  - There is a pay-back provision here.

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### ABLE Accounts

- Funds held can cover Qualified Disability Expenses, such as basic living expenses and housing costs.
  - taxes are deferred and distributions are on an income tax free basis if made for qualified disability expenses.
- It is important to be mindful of the annual exclusion amount (\$19,000 in 2025) and the contribution limit of the state in which the account is established.
- \$100,000 is disregarded for SSI purposes.

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### Effect of Distributions from SNT on Means-Tested Government Benefits

- Distributions should not be made to the disabled beneficiary, and cash should not be given to him or her as such distributions will be considered income and may jeopardize eligibility for Medicaid.
- Distributions that are used for food or shelter will result in a reduction of the SSI benefit by a maximum of one-third.
- Recurring distributions for household expenses may be considered income for purposes of Section 8 housing, even if expenses are paid directly to the vendor.
- Payments directly to the vendor will preserve SNAP benefits.

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### What is Crowdfunding?

- Crowdfunding is a platform for individuals looking to raise money for themselves or others.
  - Kickstarter
  - GoFundMe
  - Fundable
- Different sites offer crowdfunding for different life events
  - Starting a business
  - Medical expenses
- Some sites are geared to small donors, and others to large contributors.

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### What Are the Risks?

- Beneficiary's access to the funds raised or outright distributions of the contributed funds
  - Recall income and asset limits
  - Medicaid and SSI may consider these accounts "available"

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### What Are the Benefits?

- Assistance with medical expenses not covered by Medicaid or SSI
- Costs covered for handicap accessible modifications (home, car, etc.)
- Purchase of assistive technology devices
- Contribution to education or recreational expenses

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| <p><b>What Can We Do Instead?</b></p> <ul style="list-style-type: none"> <li>• First Party SNT</li> <li>• Pooled Trust</li> <li>• ABLE Account</li> <li>• Third Party fundraising</li> <li>• Spend down</li> <li>• Direct payment to vendors</li> </ul> |
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| <p><b>Examples</b></p> <ul style="list-style-type: none"> <li>• Bonnie, a woman in her 80s undergoing cancer treatment. Certain medications were not covered by her insurance and her daughter started a GoFundMe to help.</li> <li>• Italo, a man in his 20s, who was confined to a wheelchair and wanted to raise funds for a new electric wheelchair.</li> </ul> |
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| <p><b>QUESTIONS?</b></p>                                                                                                                                               |
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