Benefits Counseling and Discretionary Distribution Decisions

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Benefits Counseling and Discretionary Distribution Decisions

Overview: Benefits counseling and discretionary distribution decisions are distinct concepts, but often intersect in the administration of trusts, public benefits planning, and services for people with disabilities. Benefits counseling helps people with disabilities understand how employment, income, gifts, inheritances, settlements, or trust distributions may affect their eligibility for public benefits, allowing them to make informed financial decisions with confidence. For Trustees, benefits counseling provides significant value by aiding with discretionary distribution decisions, improving client outcomes, reducing the risk of unintended benefit loss, and strengthening relationships with beneficiaries, families, attorneys, and other professionals. In this program, we will discuss the “benefits” of benefits counseling for both beneficiaries and trustees, the type of benefits that should be covered, and how it can help a Trustee with discretionary decisions. Most importantly, how can your agency create their own benefits counseling team.

Benefits Counselor’s Can Provide:

- Work Incentives Guidance: Explains "work incentives", allowing work while receiving benefits.
- Informed Decision-Making: Empowers informed decisions about employment, education, and life choices.
- Financial Stability: Helps create a plan for financial stability and independence.
- Advice on Transition to Work: Helps understand how benefits are affected when returning to work.
- In essence, benefits counseling aims to remove the barriers and anxieties that disabled individuals may face when considering employment or making financial decisions.

AVAILABLE BENEFITS FOR PEOPLE WITH DISABILITIES

Social Security Disability Insurance (SSDI) - **Title II of the Social Security Act**, codified at 42 U.S.C. §§ 401–433. Social Security Disability Insurance (SSDI) federal regulations are governed by Title 20 of the Code of Federal Regulations (CFR), Part 404.

- Provides benefits to those who can't work due to a medical condition.
- Must have worked long enough and paid social security taxes.
- Inability to work must last at least a year or result in death.
- Benefits are based on the amount of money earned while working.
- Spouses and children of disabled workers can receive benefits.

Supplemental Security Income (SSI) - **Title XVI of the Social Security Act**, codified at 42 U.S.C. §§ 1381–1383f**.** Federal regulations for Supplemental Security Income (SSI) are codified under 20 CFR Part 416.

- Provides income to low-income individuals with disabilities.
- Must have limited income and resources.
- Aged, blind, and disabled people can qualify.
- Benefits are based on financial need.
- Work incentives may allow for continued benefits

Disabled Adult Child Benefits (DAC) or Childhood Disability Benefits (CDB) – **Title II of the Social Security Act,** codified at 42 U.S.C. § 402(d)). Federal regulations for these benefits are codified in the Code of Federal Regulations at 20 C.F.R. § 404.350.

- A child of a retired, disabled, or deceased parent may be eligible for benefits.
- The adult child must be unmarried and over 18.
- The child must have a disability that began before age 22.
- Benefits are based on the parent's earnings record.

Medicare - **Title XVIII of the Social Security Act**, codified at 42 U.S.C. § 1395 et seq. (Subchapter XVIII - Health Insurance for the Aged and Disabled). Medicare is a federal program primarily for the elderly and disabled, with eligibility based on age (65+) or having collected Social Security Disability Income (SSDI) for at least two years. There are no income or asset tests for Medicare itself, but there may be for assistance with premiums. It has four parts: Part A (hospital, hospice, home health care), Part B (physician services), Medicare Advantage (managed care), and Part D (prescription drugs).

Medicaid - **Title XIX of the Social Security Act**, codified at 42 U.S.C. § 1396 et seq. Specific core provisions include 42 U.S.C. § 1396a (State plans for medical assistance) and 42 U.S.C. § 1396d (Definitions), which outline federal guidelines, mandatory benefits, and state-federal cooperative requirements. Medicaid, also known as Medical Assistance (MA), is a joint state/federal program providing healthcare coverage for low-income individuals and children.

Eligibility is based on income and asset tests, and specific categories like SSI recipients, older adults, persons with disabilities, and others. Medicaid pays for a wide variety of services, including prescriptions and long-term care.

Medicaid vs. Medicare:

- **Medicare** is a federal program for elderly and disabled while **Medicaid** is a joint state/federal program for low-income individuals.
- **Medicare** eligibility based on age or disability while **Medicaid e**ligibility is based on income and assets.
- **Medicare** has no income/asset test while **Medicaid** has income/asset test required.

Other Federal Benefits for People with Disabilities

- Veterans Affairs (VA) disability benefits
- Veterans Pension
- Children's Health Insurance Program (CHIP)
- Supplemental Nutrition Assistance Program (SNAP)
- Temporary Assistance for Needy Families (TANF)
- Housing Choice Voucher Program (HCVP)
- Earned Income Tax Credit (EITC)

BENEFITS COUNSELING

- Benefits counseling helps individuals and businesses navigate complex benefit programs.
- Counselors help with benefit understanding, maximizing, and work incentive guidance for Social Security, Medicaid, Medicare and other benefits programs.
- For businesses, it provides marketing opportunities and reduces legal risks.
- Benefits counseling offers significant advantages for both individuals and businesses, particularly when navigating the complexities of social security, disability benefits, and related programs.

Who else might benefit from a Benefits Counseling program? Pooled Trusts

- Income stream: in some instances, there is the possibility of waiver payment
- Reduced Legal Risks: ensures compliance with disability-related laws for your beneficiaries
- Enhanced Social Responsibility: provides research for advocacy and advancement of mission
- Access to a broader talent pool: more diverse and inclusive workforce (hiring people who received counseling)
- Promotion and marketing: being an expert on benefits a trust is set to protect can give you a leg up in marketing your agency

Ways to Maximize a Benefits Counseling Program's Reach

- Partner with organizations serving people with disabilities.

- Offer educational workshops on trusts and estate planning.
- Create content that addresses benefits and trust services.
- Build relationships with relevant professionals like attorneys.
- Participate in community support events.
- Marketing
    - Attending industry conferences and events.
    - Offering continuing education courses.
    - Providing resources and support.
    - Web Content including Videos
    - Print Media/Advertising
    - Seminars and Speaking Engagements

<u>Building a BC Team</u>

Step One: Evaluate Current Needs. Assess the existing resources and gaps in services related to benefits counseling. Determine the size and scope of the team needed.

Step Two: Identify Necessary Expertise. Determine the specific skills and knowledge required for the team, such as expertise in SSDI, SSI, Medicare, Medicaid, and work incentives.

Step Three: Recruit and Hire Qualified Counselors. Look for individuals with experience in benefits counseling, social work, or related fields; or Train from Within. Provide opportunities for current employees to obtain benefits counseling certifications.

- Cornell University offers online certificate programs for professionals in the field of benefits counseling. These programs provide in depth knowledge on employee benefits. They also explore the role of the benefits counselor and relevant laws and regulations. Cornell currently offers a WIP-C, YOUTH-C, VET-C, and LEADERSHIP-C.
- Virginia Commonwealth University offers Certification CWIC and Community Partner Initial Training and Certification. The Community Work Incentives Coordinator (CWIC) and Community Partner Initial Training and Certification is designed for professionals who will deliver individualized work incentives counseling services to Social Security disability beneficiaries on a regular basis.

Step Four: Provide Training and Ongoing Education. Ensure that team members are knowledgeable about the latest regulations, policies, and best practices. Offer ongoing training opportunities to keep their skills up to date.

Step Five: Develop Standardized Procedures. Create clear guidelines and protocols for how counselors will interact with clients, provide information, and document their work. This should include efforts in organized record keeping.

Step Six: Establish Referral Networks. Build relationships with other organizations and professionals who serve individuals with disabilities, such as Area Agencies on Aging, Social Security offices, and vocational rehabilitation agencies as well as internal departments within your own organization.

Step Seven: Monitor and Evaluate Program Effectiveness. Track key metrics, such as the number of clients served and the outcomes of counseling sessions, to assess the team's performance and identify areas for improvement and areas and people not currently being served.

Step Eight: Secure Funding and Resources. Explore various funding sources, such as grants, contracts, and fee-for-service arrangements, to support the team's operations.

DISCRETIONARY DISTRIBUTIONS

Discretionary distributions from a pooled trust when someone receiving SSI, Medicaid, or other means-tested benefits, the key distinction is between money distributed directly to the beneficiary and the trust paying for something on the beneficiary's behalf. A trustee having **complete discretion over whether, when, and how much to distribute** does **not** by itself make distributions irrelevant to SSI. Social Security expressly distinguishes the status of the trust from the treatment of individual disbursements.

SSI - For a properly established pooled trust under **42 U.S.C. § 1396p(d)(4)(C)**, the trust itself can generally be excluded from the beneficiary's SSI resources. Federal law specifically recognizes pooled trusts as an exception to the ordinary trust-counting rules.

Distributions can still affect SSI per the Social Security Administration Rules:

Distribution	Typical SSI treatment
Cash paid directly to beneficiary	**Unearned income** in the month received
Money loaded onto beneficiary's debit card	Generally **unearned income**
Trust pays beneficiary's rent/mortgage	Can count as **in-kind support and maintenance (ISM)** and reduce SSI

Distribution	Typical SSI treatment
Trust pays for food	Since Sept. 30, 2024, food is no longer included in SSI ISM calculations
Trust pays medical expenses, education, therapy, recreation, telephone, etc. directly to a third party	Generally, **not income**
Trust buys an item that is an excluded resource	Generally, not income
Trust buys a non-excluded asset for the beneficiary	Can potentially be treated as income

For example: A pooled trust has $100,000 in the beneficiary's sub-account. The trustee has absolute discretion and decides to pay the beneficiary $500 in cash. The $100,000 may remain outside the beneficiary's countable SSI resources, **but the $500 cash distribution is generally $500 of unearned income for that month**. Conversely, if the trustee uses $500 to pay a therapist directly for services provided to the beneficiary, that payment generally isn't SSI income.

Medicaid - The federal pooled-trust exception is specifically part of the Medicaid trust statute, and states administer Medicaid under their own state rules within the federal framework. The pooled trust must meet statutory requirements, including separate beneficiary accounts, nonprofit management, and specified treatment of remaining funds at death.

The important questions are:

1. Is the pooled trust **first-party** (the beneficiary's own money) or **third-party**?

2. Is the person receiving **SSI, SSDI, Medicaid, or some combination**?
3. Will the distribution be **cash to the beneficiary**, or will the trustee pay a vendor directly?
4. What exactly is being purchased—**rent, food, medical care, transportation, education, a vehicle, etc.**?
5. What state is the beneficiary's Medicaid administered in?

How can a Benefits Counselor help with discretionary decisions?

Benefits Counselors are experts in the needs-based benefits and can assist with discretionary decisions that impact those benefits.

Benefits Counselors can also empower people with disabilities to make informed choices and plan for the future confidently.

Benefits counselors can use expertise to help make sense of various programs and understand rights, options, and responsibilities.

Benefits Counselors can deal with issues like overpayments errors, preventing costly mistakes, lead to advocacy on behalf of a person with a disability.