



DECISION-MAKING

When your child turns 18, he or she is presumed by law to be capable of making his or her own decisions.

<u>Guardianship / Conservatorship</u>	<u>Alternatives</u>
<ul style="list-style-type: none"> • Guardianship – over the person <ul style="list-style-type: none"> ○ Where to live & medical decisions ○ Lose right to marry, drive, vote, sign contracts, own firearm ○ May be limited ○ Rights to drive and vote can be retained ○ Rights can be restored ○ Standby guardians can be appointed • Conservatorship – over finances <ul style="list-style-type: none"> ○ Pay bills, open accounts ○ Protect from bad influences ○ Typically not needed – as Representative Payee, you will control income ○ Annual/triennial accounts to Commissioner of Accounts • Both are court proceedings <ul style="list-style-type: none"> ○ Can be combined • Guardian / Conservator supervised by court <ul style="list-style-type: none"> ○ Annual/triennial review hearings <ul style="list-style-type: none"> ▪ Court can waive ○ New visitation requirements ○ New procedure for restricting visitation 	<ul style="list-style-type: none"> • Advance Directive for Healthcare <ul style="list-style-type: none"> ○ Includes medical power of attorney and HIPAA release ○ Not as certain as guardianship • Power of Attorney for Education <ul style="list-style-type: none"> ○ Help make decisions at IEP meetings • Representative Payee <ul style="list-style-type: none"> ○ For SSI / SSDI payments • Durable Power of Attorney (finances) <ul style="list-style-type: none"> ○ Adult child with capacity ○ Gives you the right to manage finances ○ Takes away no rights ○ Can monitor spending, get alerts • Joint accounts <ul style="list-style-type: none"> ○ But consider asset limitations for benefits • Special Needs Trust <ul style="list-style-type: none"> ○ Trustee manages money left as inheritance

TO LIVE AS INDEPENDENTLY AS POSSIBLE

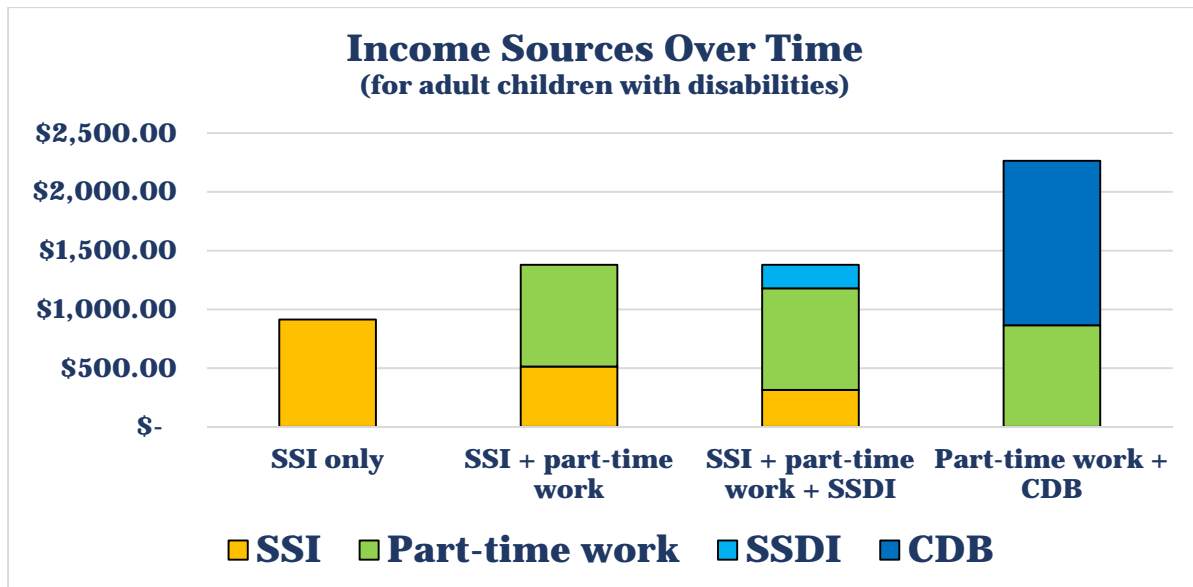
Although these topics are not part of my presentation, I list them here as other parts of special needs planning that are important considerations.

<p style="text-align: center;"><u>Medicaid Waiver Services</u></p> <ul style="list-style-type: none"> • Get on the waiting list • Key to independent living after you are gone • NOTE: same \$2,000 asset limit applies here as with SSI and Medicaid 	<p style="text-align: center;"><u>Continuing Education</u></p> <ul style="list-style-type: none"> • ACE-IT at VCU • PAVE at J. Sergeant Reynolds • Mason LIFE - GMU • On-line courses
<p style="text-align: center;"><u>Employment Training and Supports</u></p> <ul style="list-style-type: none"> • Northstar Career Center • WWRC • DARS & job coaches • Consider self-employment 	<p style="text-align: center;"><u>Long-Term Living Arrangements</u></p> <ul style="list-style-type: none"> • Perhaps the most difficult issue • Think in terms of a long-term transition plan • Third-Party Trusts can own homes and condos

INCOME SOURCES

<p><u>Supplemental Security Income (SSI)</u></p> <ul style="list-style-type: none"> • Disabled, blind or age 65 and over • Low income (< \$1,470 per mo. for 2023) • Countable resources < \$2,000 • Parental income and assets deemed to be child's <ul style="list-style-type: none"> ○ Deeming ends at age 18 • Maximum monthly benefit of \$914 (2023) • Meant to pay for room and board <ul style="list-style-type: none"> ○ Charge rent to avoid SSI reduction • Unearned income reduces benefit \$ for \$ <ul style="list-style-type: none"> ○ Unexpected inheritance can = ineligibility 	<p><u>Part-Time Work</u></p> <ul style="list-style-type: none"> • Earned income reduces SSI benefit • BUT exclusions apply to reduce effect <ul style="list-style-type: none"> ○ - \$ 65 earned income exclusion ○ Then only ½ remainder applies • Result: always make more per month <ul style="list-style-type: none"> ○ See column 2 below • Other work incentive may also apply <ul style="list-style-type: none"> ○ Impairment Related Work Expenses ○ Subsidies and Special Conditions ○ Plan to Achieve Self-Support ○ Student Earned Income Exclusion
<p><u>Social Security Disability Insurance (SSDI)</u></p> <ul style="list-style-type: none"> • Same disability criteria as SSI • Have to be working and paying payroll taxes • Eligibility based on work history and credits <ul style="list-style-type: none"> ○ Annual income of \$5,640 to max credits (4) ○ Typically eligible after 4-5 years of p/t work • Benefit based on adult child's work record • Considered unearned income for SSI purposes <ul style="list-style-type: none"> ○ \$ for \$ reduction in SSI benefit ○ BUT no reduction in overall income ○ See column 3 below 	<p><u>Childhood Disability Benefits (CDB)</u></p> <ul style="list-style-type: none"> • Disabled before the age of 22 • Unmarried • Parent becomes disabled, retires or dies • Benefit based on parent's work record • Considered unearned income for SSI purposes <ul style="list-style-type: none"> ○ Typically displaces SSI benefit ○ BUT total income increases ○ See column 4 below

NOTES:



HEALTHCARE SOURCES

<p><u>Parents' Employer Provided Healthcare</u></p> <ul style="list-style-type: none"> • Until age 26 by law • After age 26 for adult children with disabilities <ul style="list-style-type: none"> ○ Depends on policy, check with HR • Always primary payor 	<p><u>Medicaid</u></p> <ul style="list-style-type: none"> • Disabled, blind or over age 65 • Low income • Countable assets < \$2,000 <ul style="list-style-type: none"> ○ 5 year look back period for transfers ○ Transfers for < full value may = period of ineligibility up to 36 months • Considered disabled if receiving SSI or SSDI • Always payor of last resort
<p><u>Medicare</u></p> <ul style="list-style-type: none"> • Automatically eligible after 2 years of SSDI • Automatically eligible with CDB • Four parts: A, B, C, and D • Secondary payor to private insurance • Primary payor to Medicaid • NOTE: Medicare does NOT pay for long-term nursing care, Medicaid does. 	<p><u>TRICARE (military families)</u></p> <ul style="list-style-type: none"> • Incapacitated child over 21 <ul style="list-style-type: none"> ○ Disabled before 21 (23 if full-time student) • Depends on you for > 50% of support • Adult-child can have Medicare, Medicaid and TRICARE at the same time • Medicare typically pays first <ul style="list-style-type: none"> ○ TRICARE can pay co-pays, deductibles • TRICARE pays if services are from a military hospital

NOTES:

SPECIAL NEEDS ESTATE PLANNING

Planning for federal estate and gift tax avoidance is no longer necessary for most people because the individual exemption (unified credit) is \$12.92 million (2023) per person.

<p style="text-align: center;"><u>Non-Probate Assets</u></p> <ul style="list-style-type: none"> • Investments with beneficiary designations <ul style="list-style-type: none"> ○ Life insurance policies ○ Retirement accounts ○ Annuities ○ Pensions ○ Brokerage accounts ○ Stocks / Bonds • Beneficiary designation takes precedence <ul style="list-style-type: none"> ○ <u>Assets transfer automatically upon death</u> ○ Disruption to SSI/Medicaid eligibility if paid directly to beneficiary • Name Special Needs Trust as beneficiary <ul style="list-style-type: none"> ○ Instead of person with disability 	<p style="text-align: center;"><u>Probate Assets</u></p> <ul style="list-style-type: none"> • Personal property • Accounts without beneficiary designations <ul style="list-style-type: none"> ○ Checking, banking etc. • Real estate (if solely owned) • Vehicles • <u>Assets pass by Last Will & Testament</u> <ul style="list-style-type: none"> ○ Make arrangements to pay final debts, taxes ○ Leave inheritance to SSI/Medicaid recipient by naming special needs trust as beneficiary • If no Will, then assets pass by state law <ul style="list-style-type: none"> ○ Problem for SSI/Medicaid eligibility
<p style="text-align: center;"><u>Third-Party Special Needs Trust¹</u></p> <ul style="list-style-type: none"> • Created by a parent, grandparent etc. • Funded by parents, grandparents, family <ul style="list-style-type: none"> ○ No funds from disabled beneficiary ○ Typically empty until you pass away • Protect eligibility for SSI/Medicaid <ul style="list-style-type: none"> ○ Name as beneficiary on accounts & policies ○ Name as beneficiary in Will • Provide supplemental support <ul style="list-style-type: none"> ○ For expenses other than room and board • Trustee manages finances instead of beneficiary • You decide what happens to assets after the beneficiary passes • Trust can own real estate and vehicles • NOTE: most important determination is naming the successor Trustee who takes over after you 	<p style="text-align: center;"><u>Pooled Third-Party Special Needs Trust</u></p> <ul style="list-style-type: none"> • Trust Administrators in VA: <ul style="list-style-type: none"> ○ Commonwealth Community Trust (CCT) ○ The ARC of Northern Virginia • Each has hired a professional trust co. to manage funds • Initial set up fee, annual fees, management fees <p style="text-align: center;"><u>ABLE Account</u></p> <ul style="list-style-type: none"> • Not counted as an asset for SSI/Medicaid <ul style="list-style-type: none"> ○ \$17,000 (2023) max each yr., all sources ○ \$100,000 max exclusion • Similar to 529(b) college savings plans • <u>Payback provision</u>, so best used as a savings vehicle for SSI/Medicaid beneficiary's money
<p style="text-align: center;"><u>Military Survivor Benefit Plan (SBP)</u></p> <ul style="list-style-type: none"> • Service members can elect to provide eligible beneficiaries a percentage of their retirement • Paid as a monthly annuity; if paid directly to adult-child with a disability, problem for SSI/Medicaid Waiver Services <ul style="list-style-type: none"> ○ Medicaid probably not an issue due to availability of TRICARE • Can now direct payment to First-Party Special Needs Trust <ul style="list-style-type: none"> ○ Doesn't count as income or assets for eligibility purposes 	

NOTES:

¹ As opposed to a First-Party Special Needs Trust, which is funded by the SSI/Medicaid beneficiary's money.