

The Governor's Office of Disability Affairs  
*2025 GODA Conference*

# Protect, Preserve, Provide: How LGSI's Pooled Disability Trust Supports the Disability Community

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# **DISCLAIMER**

**This presentation is provided for informational and educational purposes only and does not constitute legal advice. While the content reflects the presenter's understanding of Louisiana law and best practices at the time of the presentation, laws and procedures may change. Viewers should consult the applicable statutes or a qualified attorney for the most current and accurate legal guidance before acting on any information contained herein.**

# La. Guardianship Services, Inc.

For over 30 years providing Louisiana citizens with professional guardianship services

## Mission Statement:

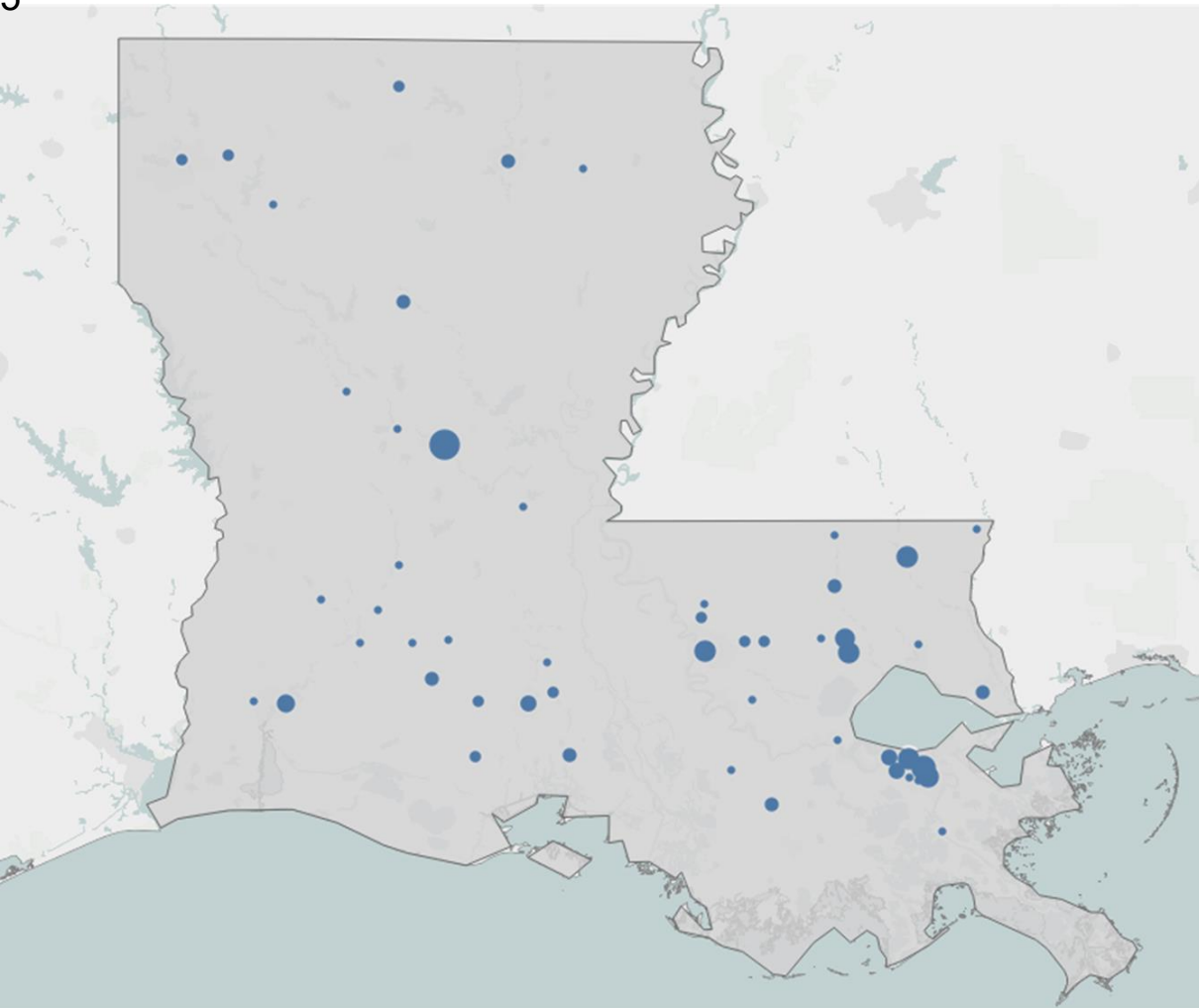
To restore dignity and peace of mind to vulnerable adults through professional guardianship and advocacy when there is nobody else.



# What We Do:

- Curatorships/Guardianships
- Family Guardian Legal Services (Low-Bono)
- Agent for Powers of Attorney
- Trust Management
- Representative Payee/Money Management
- LGS Disability Pooled Trust





# Where We Are

- 157 Clients
- 81 Cities
- 31 Parishes
- 9 Staff

# Special Needs Trust Landscape

SNT trustees provide vital specialized services to people with disabilities

## Institutional trust companies:

- Often lack public benefits expertise
  - May outsource to public benefits advisors (costly)
- SNTs require additional oversight, knowledge and time
  - Due diligence considerations: family dynamics, investments, undue influence, other fiduciaries, unique assets, acts of prior trustee, longevity
- SNTs carry increased liability
- Raising minimum account sizes and fees
  - Minimum account size, often starting at \$500,000
  - Annual minimum fees nationally: \$3,000 - \$20,000





# Special Needs Trust Landscape

SNT trustees provide vital specialized services to people with disabilities

- OCC/Dodd-Frank Act: increased oversight and regulation
- Interest rate pressure
- Shareholder expectations
- Consolidating operations, reducing perceived liabilities
- Slower to adapt new technologies

**Conclusion:** Private fiduciaries/attorneys/PSNTs may offer greater impact to the beneficiaries they serve.



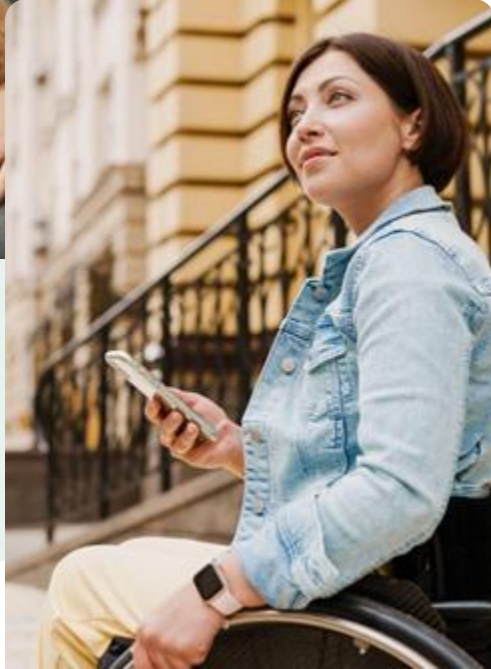
# Government Benefits

## Benefits Comparison

SSI	SSA	SSDI
Supplemental Security Income	Social Security	Social Security Disability Insurance
Disability	Retirement	Disability
No work history required	Work history required	Work history required
Income Cap - \$967/month (2025)	Income Cap – Depends on work record	Income Cap – Depends on work record
Resource Cap - \$2,000	No Resource Cap	No Resource Cap
Always Medicaid	Typically Medicare	Typically Medicare

**Other benefits include: food stamps, HUD/Section 8, CDB, etc.**





# Who Needs an SNT?

- **Persons on benefits receiving funds exceeding \$2,000**
  - Inheritance, back-payments of Social Security, gifts
    - Settlements
    - Personal Injury
    - Worker's Compensation
      - Note need for Medicare Set-Aside Trust as applicable
    - Medical Malpractice
    - Divorce
    - Liquidation of personal assets
    - Sale of home
    - Excess resources before Medicaid eligibility
- **Persons unable to personally handle sums of money or may be vulnerable to exploitation**
- **Persons who may receive benefits in the future**

# Public Benefits

## Types of SSI Income

Unearned Income	Earned Income	In-Kind Support & Maintenance
Includes cash gifts, payments from annuities and pensions, alimony & support payments, dividends, interest, rents, awards and payment from other benefit programs.	Consists of wages, royalties, net earnings from self-employment, and any honoraria received for services rendered.	Actual receipt of shelter, or something that can be used to obtain shelter.
Reduces benefits dollar for dollar after the first \$20.	Reduces benefits one dollar for every two dollars after the first \$65 earned monthly.	Reduces benefits dollar for dollar up to a maximum of \$322.33 in 2025.

# In-Kind Support & Maintenance (ISM)

When computing ISM, the following **9 items** are used in the applicable computations:



**Rent**



**Heating/Fuel**



**Electricity**

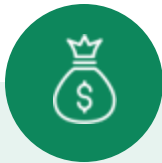


**Water**



**Mortgage**

(including property insurance  
required by the mortgage holder)



**Real  
Property Taxes**



**Gas**



**Sewage**



**Garbage Removal**

# Anatomy of an SNT

Special Needs Trusts (SNT) (also called Supplemental Needs Trusts, Disability Trusts, d(4)(a) and d(4)(c) Trusts).

## Types of Special Needs Trusts:

### First-Party Individual Trusts

- Subject to Medicaid approval (most states: under the age of 65)
- Can be created by Court, parents or guardian of beneficiary and self-created
- Payback provisions on death or termination of trust
- Income taxable to beneficiary
- Sole benefit rule

### Third-Party Individual Trusts

- Settlor/Creator = 3rd-Party (inter vivos or testamentary)
- No payback provisions
- More flexibility

### Pooled Special Needs Trusts (1<sup>st</sup>- and 3<sup>rd</sup>-Party)

- Master trust document
- Can be self created (1st-Party)
- More portability from state to state

# Anatomy of an SNT

## Required Elements:

- A Trust is a contract to control property to meet some objective for the benefit of a beneficiary.
- A Special Needs Trust is drafted specifically so trust assets are considered to not be "available resources" in determining a disabled person's eligibility for needs-based benefits.
- The funds in the Special Needs Trust may be used to meet the beneficiary's needs that are not covered by public benefits.
- Under a pure supplemental trust standard, trust assets may not be used to supplant or replace public assistance benefits in any way.

# Anatomy of an SNT

## Omnibus Reconciliation Act (OBRA) of 1993

- OBRA '93 established a penalty for individuals who give away their assets in order to qualify for Medicaid — "transfer penalty".
- OBRA '93 also authorized the use of Special Needs Trust to hold assets of the individual to permit Medicaid eligibility.

## Discretionary Standard

- Under a discretionary trust standard, the Trustee is directed to consider known income or resources available to the beneficiary, including public benefits and services, but may make any distribution that is determined to be in the beneficiary's best interest.
- A discretionary SNT discourages, but permits, distributions which could cause a reduction or elimination of public benefits, i.e. payments for shelter.



# Anatomy of an SNT

## First Party SNT / (d)(4)(a)

- Distributions must be for the sole benefit of the beneficiary

## POMS SI 01120.201F.1:

- “benefits no one but that individual, whether at the time the trust is established or at any time for the remainder of the individual’s life.”

## POMS SI 01120.201F.2:

- “purchase durable items, such as a car or a house, the deed or title must show the individual (or the trust) as the owner of the item.... Failure to do so may constitute evidence of a transfer of resources.”

## POMS SI 01120.201F.3:

- Allows for “collateral” benefit to third parties (e.g., television, house, car purchases, etc.).
- Automobile liens
- Third party service providers (e.g., family members, professionals, etc.)
- Companion services
- Third party travel expenses to accompany the trust beneficiary
- Third party travel expenses to visit a trust beneficiary



# Anatomy of an SNT

## Drafting Requirements - 1st Party SNT

### Medicaid Payback

Sample Payback Language: "This trust shall terminate upon the death of BENEFICIARY, at which time the Trustee shall pay the trust principal and undistributed income to the DEPARTMENT NAME of STATE NAME, and those government agencies of any other states providing Medicaid services, for medical assistance paid on behalf of BENEFICIARY during the lifetime of BENEFICIARY, as consistent with federal Medicaid law, up to the full amount of medical assistance paid on behalf of BENEFICIARY under the Medicaid program, to the extent such medical assistance has not already been reimbursed from any other source. Such payment or payments from the trust shall be apportioned among STATE and other vivo states in proportion to each state's share of the total medical assistance paid on behalf of BENEFICIARY."

- Generally, the state has priority over payment of all other debts and administrative expenses, except for:
  - Federal or state trust taxes
  - Reasonable administrative fees (e.g., court accounting, document filing, etc.)
  - POMS SI 01120.203B.3.a
  - Note: varies state to state
- **Drafters should consider inclusion of prepaid burial plan as an allowable discretionary distribution during beneficiary's lifetime**

# Anatomy of an SNT

## Third-Party Special Needs Trust

POMS SI 01120.200 A 17

- A **third-party** special needs trust is a trust established with property belonging to someone other than the beneficiary – a third-party – or the beneficiary's spouse.
- Social Security is always on the lookout for situations where a trust is allegedly funded by a third party, but in reality is created with the beneficiary's property.
- Can be revocable to the settlor.
- No Medicaid payback required.
- Distributions can benefit others.
- Administered by someone other than the beneficiary.
- Testamentary or *inter vivos*.
  - Estate planning

# Anatomy of an SNT

	1st Party Trust	3rd Party Trust
<b>Trustmaker/Settlor</b>	Beneficiary, Parent, Grandparent, Guardian, Court	Anyone other than Beneficiary or Spouse
<b>Beneficiary</b>	Disabled, Under 65	No Restriction
<b>Funding Source</b>	Beneficiary	Anyone other than Beneficiary
<b>Remainder</b>	Medicaid Payback	Designated Beneficiaries - No Medicaid Payback
<b>Distributions</b>	Sole Benefit of Beneficiary	Primary & Secondary Beneficiaries
<b>Revocability</b>	Irrevocable	Revocable to Grantor
<b>Tax Treatment</b>	Grantor Trust - Taxed to Beneficiary	Grantor Trust (Taxed to Grantor) While Revocable; Complex Trust When Irrevocable

# Anatomy of an SNT

## What can an SNT Pay For?

(without potential benefits implications)

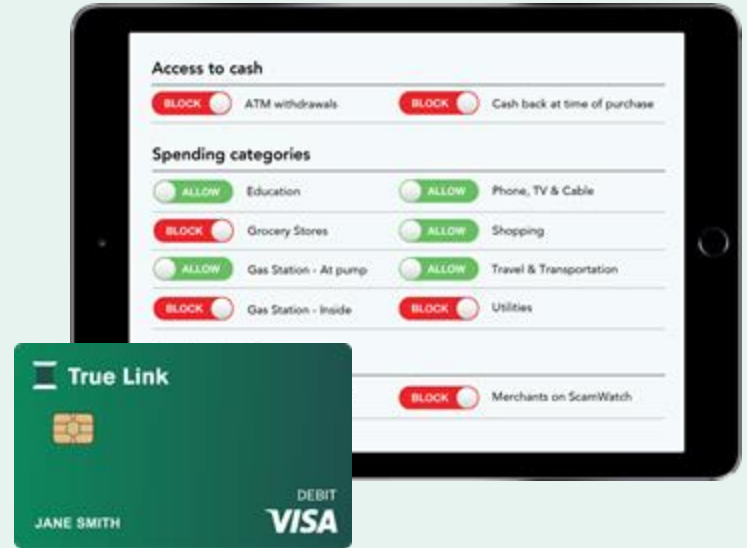
- **Recreation:** vacation, companionship services, entertainment, pets, cable TV, subscriptions
- **Medical Care (not covered by benefits):** dental, glasses, hearing aids, massage, co-pays, vitamins/supplements, hair care, personal supplies
- **Household:** home purchase, maintenance, clothing, telephone, appliances, furniture, insurance, accessibility upgrades
- **Transportation:** public services, vehicle, auto insurance, gas, vehicle maintenance
- **Education:** public/private, training, computer/software, books, vocational training
- **Services:** attorney/accountant fees, alternative therapies, conservator/guardian fees, burial plan



# Prepaid Debit Cards

- Maximization of SNT beneficiary financial independence
- SNT beneficiary empowerment
- Trustee oversight
- Ease of administration
- Benefits protection

○ **POMS SI 01120.201.1.1.e**



True Link Financial, Inc. provides the trust administration software and record-keeping platform as well as the True Link Visa® Prepaid Card and associated software platform. The True Link Visa Prepaid Card is issued by Sunrise Banks N.A., St. Paul, MN 55103, Member FDIC, pursuant to a license from Visa U.S.A. Inc. This Card can be used everywhere Visa debit cards are accepted. Use of this card constitutes acceptance of the terms and conditions stated in the Cardholder Agreement.

# Anatomy of an SNT

## Duty of Loyalty

Act in the best interest of the beneficiary — period

## Duty of Care/Prudence

Act reasonably as any prudent person would

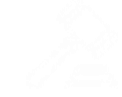
- Note: When a trustee has held themselves out as a professional in certain areas, a higher standard of care applies (esp. in litigation).
  - Consider delegation of certain duties.

## Duty to Account

Accountings / reporting to beneficiaries, remainder persons, interested parties, courts, public benefits agencies, etc.

**fi·du·ci·ar·y (fi-dōō-shē-ěr-ē):** n. "One, such as an agent of a principal or a company director, that stands in a special relation of trust, confidence, or responsibility in certain obligations to others."

*Latin: fiduciarius, from fiducia – "trust"*



# Anatomy of a Pooled Special Needs Trust

A SNT with professional administration for trust accounts of any size.

- A Special Needs Trust (SNT) designed to preserve eligibility for public benefits
- Administered by a nonprofit organization
- Combines (or “pools”) resources from many beneficiaries for investment and management
- Individual sub-accounts maintained for each beneficiary





# A new option in Louisiana: the Louisiana Guardianship Services Disability Pooled Trust

- Designed for individuals with disabilities who need trust management but lack a private trustee or the large funds required by a commercial trustee
- Administered by LGSI who has deep public benefits knowledge
- Offers a structured, professional alternative to individual trusts



## Key Benefits:

- Promotes dignity, autonomy, and quality of life
- Prevents exploitation and mismanagement
- Enables discretionary purchases without benefit loss
- Can be supported by trustee-managed prepaid cards (e.g., True Link)

# Key Advantages Over Individual SNTs

- ✓ **Lower Costs** – No large start-up or legal drafting fees
- ✓ **No Minimum Funding** – Accessible regardless of settlement/inheritance size
- ✓ **Professional Oversight** – Experienced nonprofit administration
- ✓ **Pooled Investments** – Greater efficiency and growth potential
- ✓ **Simplified Setup** – Uses a master trust document



# About ABLE

## Tax-advantaged savings accounts for individuals with disabilities

- Income and gains are non-taxable
- Contributions (up to \$18,000/year total - 2024) may be made by any "person"
- Do not count as resource for public benefits determination
- First \$100,000 is disregarded for SSI
- Limited eligibility: Onset of disability before age 26
  - **Age 46 - 1/1/2026**
- Medicaid Estate Recovery? YES (most states)
- To be used for "Qualified Disability Expenses" ("QDEs") only

**Note: Payment for housing expenses (shelter) and food allowable.**



**Achieving a Better Life Experience (ABLE) Act**



**Enacted December 19, 2014**



**Amends Section 529 of the Internal Revenue Code**



# Overview OF ABLE vs. SNTs

	ABLE Account	Non-Pooled SNT	Pooled SNT
<b>Contribution Amount</b>	\$19,000/year	Unlimited	Unlimited
<b>Taxable Income</b>	NO	YES	YES
<b>Beneficiary Eligibility Requirements</b>	Must be disabled before age 26 (age 46 - 1/1/2026)	Federal definition of disability before age 65 (3 <sup>rd</sup> party-any age)	Federal definition of disability before age 65 (3 <sup>rd</sup> party-any age)
<b>Medicaid Recovery</b>	YES: for 1 <sup>st</sup> - and 3 <sup>rd</sup> -Party funds (most states)	YES: 1 <sup>st</sup> -Party NO: 3 <sup>rd</sup> -Party	YES: for PSNT NO: 3 <sup>rd</sup> -Party
<b>Disqualification from SSI</b>	Account balance over \$100,000	NONE	NONE
<b>Abuse / Vulnerability</b>	Fraud, coercion, disqualification from benefits	MINIMIZED if administered by professional trustee	MINIMIZED

# Getting started:

**It is an easy process to get started with your LGS Disability Pooled Trust Account:**

- Step 1: Contact LGSI, 504-276-2950
- Step 2: Schedule an over the telephone meeting for us to learn more about your financial needs and plans.
- Step 3: Once a plan is designed, there will be an in-person meeting to review the plan, discuss fees, and sign the required paperwork to establish your Sub-Account (also called a "Sub-Trust") within the Louisiana Guardianship Services Disability Pooled Trust, including online access to all your account information.
- Step 4: Relax knowing your assets are being professionally administered and your public benefits have been preserved.



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# Thank You!

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