



## 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><b>Guardianship / Conservatorship</b></u>	<u><b>Alternatives</b></u>
<ul style="list-style-type: none"> <li>• Guardianship – over the person               <ul style="list-style-type: none"> <li>○ Where to live &amp; medical decisions</li> <li>○ Lose right to marry, drive, vote, sign contracts, own firearm</li> <li>○ May be limited</li> <li>○ Rights to drive and vote can be retained</li> <li>○ Rights can be restored</li> <li>○ Standby guardians can be appointed</li> </ul> </li> <li>• Conservatorship – over finances               <ul style="list-style-type: none"> <li>○ Pay bills, open accounts</li> <li>○ Protect from bad influences</li> <li>○ Typically not needed – as Representative Payee, you will control SSI/SSDI</li> <li>○ Annual accounts to Commissioner of Accounts (like endless probate)</li> </ul> </li> <li>• Both are court proceedings               <ul style="list-style-type: none"> <li>○ Can be combined</li> </ul> </li> <li>• Guardian / Conservator supervised by court               <ul style="list-style-type: none"> <li>○ Annual/triennial review hearings                   <ul style="list-style-type: none"> <li>▪ Court can waive</li> </ul> </li> <li>○ New visitation requirements</li> <li>○ New procedure for restricting visitation</li> <li>○ TRAINING REQUIREMENT 7/1/2025</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Medical Power of Attorney               <ul style="list-style-type: none"> <li>○ Includes a HIPAA release</li> <li>○ No loss of rights</li> <li>○ Not as certain as guardianship</li> </ul> </li> <li>• Durable Power of Attorney (finances)               <ul style="list-style-type: none"> <li>○ Adult child with capacity</li> <li>○ Gives you the right to manage finances</li> <li>○ No loss of rights</li> <li>○ Can monitor spending, get alerts</li> </ul> </li> <li>• Power of Attorney for Education               <ul style="list-style-type: none"> <li>○ Help make decisions at IEP meetings</li> </ul> </li> <li>• Representative Payee               <ul style="list-style-type: none"> <li>○ For SSI / SSDI payments</li> </ul> </li> <li>• Joint accounts               <ul style="list-style-type: none"> <li>○ But consider asset limitations for benefits</li> </ul> </li> <li>• Special Needs Trust               <ul style="list-style-type: none"> <li>○ Trustee manages money left as inheritance</li> </ul> </li> </ul>

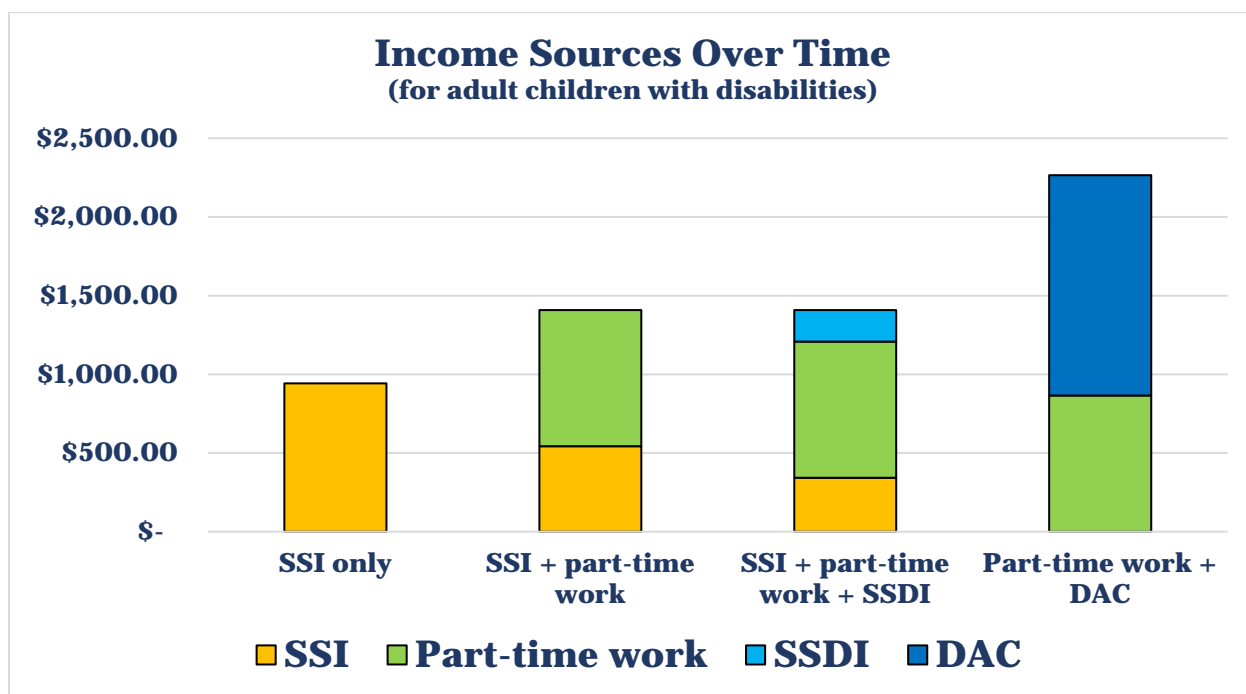
## TO LIVE AS INDEPENDENTLY AS POSSIBLE

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

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

## INCOME SOURCES

<p><b><u>Supplemental Security Income (SSI)</u></b></p> <ul style="list-style-type: none"> <li>• Disabled, blind or age 65 and over</li> <li>• Low income (&lt; \$1,690 per mo. for 2026)</li> <li>• Countable resources &lt; \$2,000</li> <li>• Parental income and assets deemed to be child's             <ul style="list-style-type: none"> <li>◦ Deeming ends at age 18</li> </ul> </li> <li>• Maximum monthly benefit of \$994 (2026)</li> <li>• Meant to pay for living arrangements             <ul style="list-style-type: none"> <li>◦ Charge fair share to avoid SSI reduction</li> </ul> </li> <li>• Unearned income reduces benefit \$ for \$             <ul style="list-style-type: none"> <li>◦ Unexpected inheritance can = ineligibility</li> </ul> </li> </ul>	<p><b><u>Part-Time Work</u></b></p> <ul style="list-style-type: none"> <li>• Earned income reduces SSI benefit</li> <li>• BUT exclusions apply to reduce effect             <ul style="list-style-type: none"> <li>◦ - \$ 65 earned income exclusion</li> <li>◦ Then only ½ remainder applies</li> </ul> </li> <li>• <b>Result: always make more per month</b> <ul style="list-style-type: none"> <li>◦ See column 2 below</li> </ul> </li> <li>• Other work incentive may also apply             <ul style="list-style-type: none"> <li>◦ Impairment Related Work Expenses</li> <li>◦ Subsidies and Special Conditions</li> <li>◦ Plan to Achieve Self-Support</li> <li>◦ Student Earned Income Exclusion</li> </ul> </li> </ul>
<p><b><u>Social Security Disability Insurance (SSDI)</u></b></p> <ul style="list-style-type: none"> <li>• Same disability criteria as SSI</li> <li>• Have to be working and paying payroll taxes</li> <li>• Eligibility based on work history and credits             <ul style="list-style-type: none"> <li>◦ Annual income of \$7,560 to max credits (4)</li> <li>◦ Typically eligible after 2-3 years of p/t work</li> </ul> </li> <li>• Benefit based on <b>adult child's</b> work record</li> <li>• Considered unearned income for SSI purposes             <ul style="list-style-type: none"> <li>◦ \$ for \$ reduction in SSI benefit</li> <li>◦ BUT no reduction in overall income</li> <li>◦ See column 3 below</li> </ul> </li> </ul>	<p><b><u>Disabled Adult Child Benefits (DAC)</u></b></p> <ul style="list-style-type: none"> <li>• Formerly known as childhood disability benefit</li> <li>• Disabled before the age of 22</li> <li>• Unmarried</li> <li>• Parent becomes disabled, retires or dies</li> <li>• Benefit based on <b>parent's</b> work record</li> <li>• Considered unearned income for SSI purposes             <ul style="list-style-type: none"> <li>◦ Typically displaces SSI benefit</li> <li>◦ BUT total income increases</li> <li>◦ See column 4 below</li> </ul> </li> </ul>



## HEALTHCARE SOURCES

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

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 \$15 million (2026) per person.

<p style="text-align: center;"><b><u>Non-Probate Assets</u></b></p> <ul style="list-style-type: none"> <li>• Investments with beneficiary designations <ul style="list-style-type: none"> <li>◦ Life insurance policies</li> <li>◦ Retirement accounts</li> <li>◦ Annuities</li> <li>◦ Pensions</li> <li>◦ Brokerage accounts</li> <li>◦ Stocks / Bonds</li> </ul> </li> <li>• Beneficiary designation takes precedence <ul style="list-style-type: none"> <li>◦ <u>Assets transfer automatically</u> upon death</li> <li>◦ Disruption to SSI/Medicaid eligibility if paid directly to beneficiary</li> </ul> </li> <li>• Name Special Needs Trust as beneficiary <ul style="list-style-type: none"> <li>◦ Instead of person with disability</li> </ul> </li> </ul>	<p style="text-align: center;"><b><u>Probate Assets</u></b></p> <ul style="list-style-type: none"> <li>• Personal property</li> <li>• Accounts without beneficiary designations <ul style="list-style-type: none"> <li>◦ Checking, banking etc.</li> </ul> </li> <li>• Real estate (if solely owned)</li> <li>• Vehicles</li> <li>• <u>Assets pass by Last Will &amp; Testament</u> <ul style="list-style-type: none"> <li>◦ Make arrangements to pay final debts, taxes</li> <li>◦ Leave inheritance to adult-child with SSI/Medicaid recipient by naming special needs trust as beneficiary instead</li> </ul> </li> <li>• If no Will, then assets pass by state law <ul style="list-style-type: none"> <li>◦ Problem for SSI/Medicaid eligibility</li> </ul> </li> </ul>
<p style="text-align: center;"><b><u>Third-Party Special Needs Trust<sup>1</sup></u></b></p> <ul style="list-style-type: none"> <li>• Created by a parent, grandparent etc.</li> <li>• Funded by parents, grandparents, family <ul style="list-style-type: none"> <li>◦ No funds from disabled beneficiary</li> <li>◦ Typically empty until you pass away</li> </ul> </li> <li>• Protect eligibility for SSI/Medicaid <ul style="list-style-type: none"> <li>◦ Name as beneficiary on accounts &amp; policies</li> <li>◦ Name as beneficiary in Will</li> </ul> </li> <li>• Provide supplemental support</li> <li>• Trustee manages finances instead of beneficiary</li> <li>• You decide what happens to assets after the beneficiary passes</li> <li>• Trust can own real estate and vehicles</li> <li>• NOTE: most important determination is naming the successor Trustee who takes over after you</li> </ul>	<p style="text-align: center;"><b><u>Pooled Third-Party Special Needs Trust</u></b></p> <ul style="list-style-type: none"> <li>• Trust Administrators in VA: <ul style="list-style-type: none"> <li>◦ Commonwealth Community Trust (CCT)</li> <li>◦ The ARC of Northern Virginia</li> </ul> </li> <li>• Each has hired a professional trust co. to manage funds</li> <li>• Initial set up fee, annual fees, management fees</li> </ul> <p style="text-align: center;"><b><u>ABLE Account</u></b></p> <ul style="list-style-type: none"> <li>• Not counted as an asset for SSI/Medicaid <ul style="list-style-type: none"> <li>◦ \$20,000 (2026) max each yr., all sources</li> <li>◦ \$100,000 max exclusion</li> </ul> </li> <li>• Similar to 529(b) college savings plans</li> <li>• <u>Payback provision</u>, so best used as a savings vehicle for SSI/Medicaid beneficiary's money</li> </ul>
<p style="text-align: center;"><b><u>Military Survivor Benefit Plan (SBP)</u></b></p> <ul style="list-style-type: none"> <li>• Service members can elect to provide eligible beneficiaries a percentage of their retirement</li> <li>• 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"> <li>◦ Patient Pay</li> </ul> </li> <li>• Can now direct payment to First-Party Special Needs Trust <ul style="list-style-type: none"> <li>◦ Doesn't count as income or assets for eligibility purposes</li> </ul> </li> </ul>	

NOTES:

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