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Special Needs Trusts, ABLE Accounts, Pooled Trusts...What you need to know!

Megan Brand, Executive Director

CFPD-Colorado Fund for People with Disabilities



Established in 1994, CFPD is the largest and longest-standing locally managed **pooled trust** in Colorado. **CFPD now provides a myriad of fiduciary services** that offer protection, personalized attention, access to our network of organizations and services, financial guidance and someone on your side.



Our Services



Supplemental Needs Trusts

(Pooled and Individual)

A way to set aside some extra money and still qualify for Social Security and Medicaid benefits



Conservatorships

Court-ordered money management with compassion



Case Management Services

Expert guidance on an as-needed basis



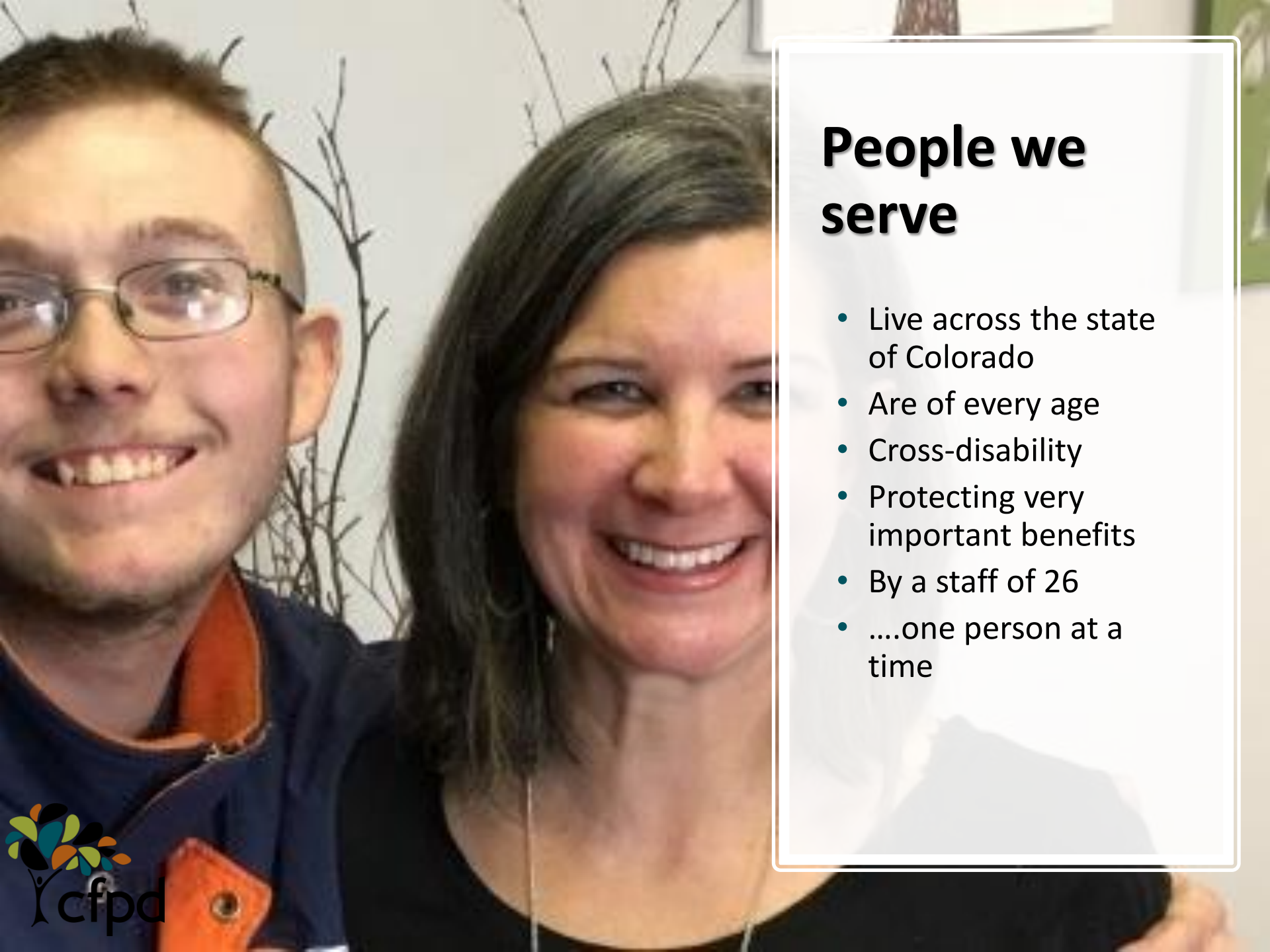
Representative Payee

Bills paid accurately and on time



Mission Supports

Connection to services for Denver residents with Intellectual/Developmental Disabilities who are experiencing homelessness



People we serve

- Live across the state of Colorado
- Are of every age
- Cross-disability
- Protecting very important benefits
- By a staff of 26
-one person at a time

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**Tell me about you by listing
your job title.**

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What is a Trust?



A trust is legal title to property held by one party for the benefit of another.

Terms:

Beneficiary: The sole person who will benefit from the funds held in trust

Grantor/Settlor: The person who sets up the trust.

Trustee: The person or entity who administers the trust

Irrevocable: Cannot be canceled or changed.

Why would someone need a trust?

- People with disabilities who are on benefits such as SSI and Medicaid that have a Resource Limit.
- People on benefits who wish to leave funds to a disabled child.
- People unable to personally handle any sums of money or may be vulnerable to exploitation
- People who may receive benefits in the future



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A Person you work with has an IDD, is on HCBS-DD & their parent died recently. They will be getting a sizable (\$25,000) back-payment in Social security. They do not want to spend it down and want to save it for a trip & dental work. Do they need a trust?

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First Party Trusts

First Party Trusts are funded by Assets belonging to the Individual/beneficiary.

1. First Party Individual Trusts (Disability Trust or d(4)(a) trust)


- a. Individual Trust Document is subject to Colorado Department of Health Care Policy and Financing (HCPF) approval.
- b. Can be settled by the individual, court, parent, grandparent or guardian of beneficiary
- c. Payback provisions on death or termination of trust (Depends on trust document)
- d. Only permitted for those under the age of 65

2. First Party Pooled Trusts

- a. Non-Profit must serve as trustee (Ex: CFPD)
 - b. Can be settled by the individual, court, parent, grandparent, or guardian of beneficiary
 - c. Master trust document—already approved by SSA and Medicaid
 - d. Allows for portability from state to state
 - e. A spending plan must be completed for individuals funding trusts age 65 and older.
- 

First Party Trusts

Trust Oversight:

- Individual trusts
 - Federally: 42 USC § 1396 (d)(4)(A)
 - Colorado: C.R.S. §15-14-412.8 and 10 CCR 2505-10 8.100.7.E.6.b
 - Individual Trust Document
 - Pooled trusts
 - Federally: 42 USC § 1396 (d)(4)(C)
 - Colorado: C.R.S. §15-14-412.9 and 10 CCR 2505-10 8.100.7.E.6.c
 - Master Pooled Trust Document
- 


Third Party Trusts

Funded by assets belonging to ANYONE except for the beneficiary. (Typically, parent or grandparent)

1. Third Party Individual Trusts (also called Special/Supplemental Need Trust)

- a. Drafted by an attorney as a stand-alone document or part of a Will.
- b. No Medicaid payback provisions required.
- c. More flexibility, especially in movement among states.

2. Third Party Pooled Trust

- a. No Medicaid payback provisions
 - b. Master trust document—already approved by SSA and Medicaid
 - c. Allows for portability from state to state
- 

Third Party Trusts

Trust Oversight:

- Individual trusts
 - Federally: POMS SI 01120.200
 - Colorado: C.R.S. §15-14-412.8 and 10 CCR 2505-10 8.100.7.E.6.d
 - Individual Trust Document
- Pooled trusts
 - Federally: POMS SI 01120.200
 - Colorado: 10 CCR 2505-10 8.100.7.E.6.d
 - Master Pooled Trust Document

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You meet with an individual in services and their family for their IP meeting and they tell you they're thinking of setting up a trust for their son/daughter but they just don't know where to start. What advice would you give them?

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Which Model Should We Choose?

The choice of which model is right for the situation will depend upon

- The beneficiary's disability and unique needs
- The amount of funds in the trust
- The need for advocacy and case managers
- The proximity of the Trustees



When the Pooled Trust is the BEST option

- The set-up of the trust is time sensitive
 - The Trust is already approved by Medicaid and SSI to protect benefits
 - The disability determination process is simplified
 - The asset size makes sense
 - The average pooled trust is \$25,000-\$30,000
 - trusts less than \$300,000 still make good sense.
 - There are no family members who want to take on this liability/responsibility
 - In addition to CFPD's experience and expertise in administering trusts, CFPD provides case management and a network of professionals
 - The set-up and management fees are typically less expensive
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Steve is a person with IDD who is on the SLS Waiver. You are contacted by the Personal Representative for the estate of Steve's great aunt Gertrude. They are ready to make a distribution of \$30,000 to Steve outright. What type of trust will Steve need?

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What an SNT can pay for



RECREATION



Vacations

Companionship Services



Entertainment

Subscriptions



Memberships

Pets



Cable TV



MEDICAL CARE (NOT COVERED BY BENEFITS)

Dental Work

Glasses

Hearing Aids

Massage

Hair Care

Co-Pays

Personal Supplies

Vitamins/Supplements



What an SNT can pay for



HOUSEHOLD

Home Purchase

Home Maintenance

Clothing

Telephone

Appliances

Furniture

Home Insurance

Accessibility Upgrades



TRANSPORTATION

Public Transportation

(Bus Passes, Light Rail, Etc.)

Vehicle Purchase

Vehicle Maintenance

Gasoline

Auto Insurance



What an SNT can pay for

EDUCATION



Public/Private Education

Training

Computer



Software

Books



Vocational Training

SERVICES

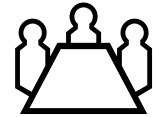
Attorney Fees

Alternative Therapies


Guardian Fees

Conservator Fees

Burial Plan



What an SNT typically can't pay for

- **Cash** or cash equivalents cannot be given directly to the Beneficiary
 - **Mortgage** payment, **rent** payments (Counted as income if it is paid)
 - **Utility bills**, property taxes, homeowner or condo fees (unless property is held in Trust)
 - **Food** or groceries, eating out at restaurants, etc. (except while on a trip.)
 - **Gambling, lottery tickets, gifts of any kind, pawned items** or items that can be considered a resource
 - **Third party benefit.** This means payment for anything which primarily benefits someone other than the Beneficiary. An example would be gifts to family members.
 - **Services or items for which the Beneficiary is entitled to receive payment through another program.** An example is prescription medication that should be paid by Medicaid.
 - **At the time of death, Distributions are not allowed** or severely limited, depending on the trust document.
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What do you most commonly see trusts being used for to benefit the people you serve?

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How does it work?



- Trust Disbursements MUST be pre-approved.
- The unique benefit structure of each individual must be evaluated
- Input from the “team” is considered
- Balance of independence of the individual and limitations of regulations with their benefits
- All allowable bills are paid primarily by the trustee Trustees may also:
 - Use True Link pre-paid cards
 - Use credit cards on a limited basis
 - Reimburse others
 - Utilize on-line purchases when possible
- Disbursement for minors must be considered very carefully.
- **Trustee has sole and absolute discretion**

ABLE—A Better Life Experience

10 Quick Facts

1. A Better Life Experience (ABLE) was passed in the US Congress and **signed into law Dec, 2014**.
2. **In CO**, the enabling legislation was introduced by College Invest and passed in 2015.
3. ABLE is kin to 529 plans. It is **529a of the Internal Revenue Code**.
4. ABLE is limited to people with disabilities who were **disabled before the age of 26**. However, they may contribute at any age.
5. **Individuals with disabilities, their family and friends** can contribute to **ONE account** for each individual.
6. **Annual contributions** (from all sources) are limited to the gift tax exclusion, currently \$16,000 in 2022 or higher for those who are working.
7. **The total value of the account** cannot exceed \$100,000 for SSI recipients (before suspension of SSI, **not Medicaid**) and **lifetime contributions cannot exceed \$400,000** in Colorado.
8. **Distributions** are different than SNT's. They must be related to the individual's blindness or disability. Allowable expenses: Education, *Housing, Transportation, employment training and support, assistive technology and personal support services, health, prevention and wellness, financial management and admin services, legal fees, expenses for oversight and monitoring, funeral and burial.
9. The **account holder manages their own distributions**. The administrator (like College Invest) has no discretion.
10. **In Colorado, Medicaid is now prohibited from filing a claim** on the funds upon the death of the beneficiary.

***Housing is one of the greatest benefits of ABLE Accounts and it is not the same for Trust.**

“For many families, the ABLE account will be a significant and viable option **in addition to, rather than instead of**, a Trust program.” National Down Syndrome Society.

WHAT WOULD YOU DO?

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One of the individuals you serve has a third-party trust and their cousin is the trustee. They do not know the balance of the trust, have trouble contacting the trustee and the trustee has refused multiple requests. What do you do?

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An individual you serve works and is able to contribute excess income to either a 1st party pooled trust or an ABLE Account. He recently married and you have many reasons to believe his marriage may end in divorce. Why may a trust be a better option?

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You receive an accounting from a family member trustee to submit for a Medicaid re-determination and you notice several ATM withdrawals and concerning distributions on the accounting. You're not satisfied with their explanations. What would you do?

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Your staff member comes to you and they're upset because the trustee for an individual you serve denied a request because it wasn't for sole benefit. Your staff member exclaims: "But its THEIR MONEY". How do you respond?

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You're meeting with a parent of an individual and the topic of trusts comes up. They say, "oh, we decided we're just going to leave the money to our daughter and tell her that she needs to use half of it for our son's needs." Why is this a bad idea?

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In a word or two, please tell me something that you learned today or that was helpful information?

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Questions?

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