



**The Arc**  
Oakland County

*Achieve with us.*

## Michigan COVID-19 Special Education Considerations

by Tricia Luker — Senior Staff Advocate

### Compensatory Education Versus Covid-19 Recovery Services

Michigan public school students, their parents and families, their teachers and administrators and the general public all recognize that the emergency actions taken throughout the State of Michigan to keep educational services flowing to students in the safest way possible have left gaps in student learning.

Students who have special education IEPs are particularly vulnerable to learning deficits associated with the Covid-19 pandemic. The challenge is how to identify and address the cause of the deficits. Is the deficit a problem in the student’s IEP and how it was developed and implemented; or is it a problem that developed because of Covid-19 related changes in the student’s instructional time or location?

The parent’s role in ensuring that their child receives both a free, appropriate public education and necessary recovery services resulting from Covid-19 pandemic emergency procedures is critical. Here are suggestions parents may use to prepare themselves to advocate for their children when determining what compensatory or recovery services their child will need in the coming school year.

- Review your notes, teacher emails and educational materials associated with your child’s educational performance during the period of the pandemic. These records may be your best documentation of where and how your child has struggled educationally through the emergency.
- Review the related services [speech, physical therapy, occupational therapy, etc.] your child’s IEP mandated for them to determine how many sessions they actually received, how those sessions were delivered and how your child responded if the services were delivered in an alternate setting, like Zoom, community meeting, group sessions as opposed to direct services and the like.
- Re establish a child-focused relationship with your child’s teacher and special educa-

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### Mission Statement

*The Arc of Oakland County advocates for the rights and full participation of all children and adults with intellectual and developmental disabilities. We strive to improve systems of supports and services; connect families; inspire our community, and influence public policy.*



### "From The Director's Chair"

*By: Dawn Calnen*

We all have moments that leave a lasting impression on us, don't we? Just recently, I was in a zoom meeting to discuss estate planning with a family who have been long time members of The Arc of Oakland County. Like so many others I have met with over these past few months, their name was so familiar to me, but I couldn't recall exactly why.

This particular couple immediately reminded me that I helped them in 1999 when their son was very young and they were just learning to navigate the special education system. Through the years, they've leaned on The Arc of Oakland County when they have needed guidance. We chatted about what our help has meant to them, and I have reflected on that conversation as I have met with other families. What does The Arc of Oakland County symbolize in our community? It means having an organization that has an expertise in an ever changing government benefits system. It means knowing that someone has your back when the need arises to fight for extended school years services, or inclusion. It means receiving up to the minute information regarding statewide legislative efforts and knowing that The Arc of Oakland County will be a voice for people with disabilities and their caregivers. It means helping families plan for the future and offering a comprehensive plan of lifetime advocacy. We are here to

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tion service providers before the child returns to school or the IEP team meets. The purpose is to promote the restoration of positive intent in the parent-professional partnership.

- Prepare a return to school parent report that describes your child's processing of challenges during the pandemic, highlighting those areas of study habits, behavior challenges, sensory responses and other examples of the changes your child has experienced during the pandemic.

The Michigan Department of Education's Office of Special Education has developed a chart that gives guidance on how the question will be addressed when the students have an IEP. It looks like this:

### **Compensatory Education**

Is required by law when a district fails to provide services required by a student's IEP and the student is denied a free and appropriate public education.

Purpose is to put student in the position they would have been in but for the violation of special education law.

Provided outside of the normal school day.

Services based on the student's needs as stated in the IEP, as directed by the district, or state education or administrative law officials.

Must be provided as determined by state education or administrative law officials.

The support provided to the student must align with the IEP and address the act of noncompliance that led to the order that the district provide compensatory education.

MDE or administrative law officials determine the type, amount, frequency, and duration of compensatory services.

Timeframe for a state complaint is one year from the date the state complaint is filed, or two years from the date the request for a due process hearing is filed.

Compensatory education award decisions must be made within 60 days of the filing of the state complaint, or within timelines through focused monitoring requirements or as set by the administrative law official as the outcome of a due process hearing.

### **Covid-19 Recovery Services**

Results from Covid-19 related loss of instructional time and its impact on the student the student who has an IEP.

Provide additional support to the student to meet IEP goals and progress in the general curriculum.

Can be provided within the normal school day.

Services based on the student's needs as determined by the IEP Team including the student's parents.

Must be provided within the IEP time frame or within the school year, including the summer.

Support to the student is based on the identified student needs and the impact that Covid-19 had on the student's performance.

The IEP Team, which always includes parents as team members, determines the type, amount, frequency and duration of the recovery services, based on student level data.

Timeframe is specific to the mandatory school closure due to Covid-19 and Executive Order 2020-65.

Covid-19 recovery service decisions must be made within the first six months of the 2020-2021 school year, including the summer.

# ACTION ALERT! Senate Bills 597 & 598

## A MESSAGE FROM THE ARC OF OAKLAND COUNTY'S EXECUTIVE DIRECTOR — DAWN CALNEN

On Thursday, July 15, 2021, Senator Shirkey introduced his 2-bill integration package. Senate Bills 597, sponsored by Sen. Shirkey amends the social welfare act and Senate Bill 598, sponsored by Sen. Bizon amends the mental health code.

These two bills would shift the Medicaid financing and managed care functions from the public PIHP system to private Medicaid Health Plans. Turning over behavioral health to Private Health Plans would have a significant impact on our most vulnerable citizens.

View Senate Bill 597:

<http://www.legislature.mi.gov/documents/2021-2022/billintroduced/Senate/pdf/2021-SIB-0597.pdf>

View Senate Bill 598:

<http://www.legislature.mi.gov/documents/2021-2022/billintroduced/Senate/pdf/2021-SIB-0598.pdf>

I urge everyone to contact their Senator and Governor and please tell them how they feel about these bills.

Governor Whitmer contact info:

<https://sombgovweb.state.mi.us/GovRelations/ContactGovernor.aspx>

Locate your Senator by your address:

<https://www.senate.michigan.gov/fysbyaddress.html>

If you have any questions or concerns, please contact our office at 248-816-1900.

Thank you in advance for your support and advocacy efforts!

## ADVOCACY IN ACTION!

The Arc of Oakland County has assisted members when their homeowner associations have not allowed fences. They have been able to help these families resolve the issue by using Michigan and federal Fair Housing laws. The gist of the laws is that homeowner associations are required to provide reasonable accommodations to people with disabilities. The families and The Arc of Oakland County have worked together to provide educational material and medical documentation to justify the need for a fence for the child with disabilities.

Once the homeowner associations understand the need and the law, the families have been able to construct fences that meet their needs and the homeowner association's needs.

*Continued "From the Director's Chair" on Page 1*

assist you and your family in whatever manner may be necessary — we are your LIFELINE OF HOPE!

Since 1967, we have been assisting families, and because of the generous contributions from our membership, we will be able to continue our efforts.

Next month, one of our awesome champion supporters, Kevin Knoblock, will be running a HALF MARATHON for our Annual Run Challenge to raise money for The Arc of Oakland County. As a special education teacher, Kevin knows first hand how impactful the services we provide are. If you are able, I humbly ask for your support which will allow us to continue to help folks live their very best lives. You can donate directly online through our website at [www.thearcoakland.org](http://www.thearcoakland.org) or over the phone by calling The Arc of Oakland County office at 248-816-1900.

.....DHC

# YOUR CHILD UNDER 18 YEARS OLD – GOVERNMENT BENEFITS

Children under 18 years old who have disabilities generally do not qualify for governmental benefits if their parents' income exceeds a designated amount. There are some programs, however, which might be available without considering parental income. Here are some of those programs.

## Supplemental Security Income/Medicaid:

Supplemental Security Income [SSI] does use parent income to determine eligibility and monthly assistance amount. We encourage low-and moderate-income parents to consider SSI. The link to check eligibility is here. <https://ssabest.benefits.gov/benefit-finder/>. If your child qualifies for SSI, the child also automatically qualifies for Medicaid.

## Social Security Survivor's Benefits:

If a child's parent is deceased, disabled or retired and is or was eligible for Social Security benefits, the child might qualify for survivor benefits. The eligibility link above also works for this benefit. If you have no internet access, you may call the Social Security Administration at 1-800-772-1213.

## Veterans Survivor Benefits:

If a child's parent is deceased, disabled or retired and is or was eligible for veterans' benefits, the child might qualify for survivor benefits. The link to check out these benefits is <https://www.va.gov/family-member-benefits/>. If you have no internet access, you may call the Veterans Administration at 1-800-827-1000.

## Oakland County Mental Health Services:

The Oakland Community Health Network (OCHN) is the designated access point for Oakland County residents seeking mental health and developmental disability services. Service recipients must be eligible for Medicaid services. The OCHN eligibility and program description link is: <https://www.oaklandchn.org/index.php/access-and-eligibility/access>. The phone number is 248-464-6363.

## Children's Waiver Program:

The Children's Waiver Program [CWP] provides access to Medicaid eligibility for funding home and community-based services for children who are under age 18. To be eligible for the CWP, the child must have a documented developmental disability and require medical or behavioral supports and services at home. The child's consistent, daily home behavioral or medical and habilitative needs must meet requirements for the level of care for an "Intermediate Care Facility for Individuals with Intellectual Disabilities." Parents apply for CWP services through OCHN, whose contact information is listed above.

The key benefit to the CWP program is that eligibility is determined based only on the child's income or resources. Parental income and assets are not considered. If the child already qualifies for Medicaid services, parents may request in-home services through OCHN.

CWP eligibility requirements include all the following:

- The child must be under the age of 18.
- The child must have a developmental disability as defined by Michigan law. A developmental disability is not based on diagnosis. Instead, a developmental disability is based on documented evidence of "substantial functional limitations" in three or more of the following seven areas (considering the age of the child):
  - a. self-care (bathing, grooming, dressing, toileting, eating)
  - b. expressive and receptive language
  - c. learning
  - d. mobility
  - e. self-direction
  - f. If a child is age 16 or older: capacity for economic self-sufficiency
  - g. If a child is age 16 or older: capacity for independent living.
- The child must have identified needs for a consistent, aggressive program of in-home services and supports focused on developing skills for the child to function with as much independence as possible and/or to prevent the loss of current abilities.
- The child must live with a birth or legally adoptive parent or with a relative who has been named the legal guardian by the court (and who is not paid to provide foster care for the child).

## Special Education Services:

Michigan and federal law require Michigan public and charter schools to provide special education services to eligible students. Michigan local and intermediate school districts are required to evaluate students who may be eligible for special education services. Here is a link explaining Child Find: <https://1800earlyon.org/about.php?ID=17&sub=5>.

Parents who believe their children may qualify for special education services must contact their local school district special education department to request that their child's eligibility be evaluated. Michigan and federal law provide parents with comprehensive procedural safeguards that apply to eligibility and to determining what services the student requires. Parents often benefit from having advocates who help them understand and work through the process. We offer educational advocacy and support services to Oakland County residents. Other agencies who provide advocacy include:

- Michigan Alliance for Families 800-552-4821; [info@michiganallianceforfamilies.org](mailto:info@michiganallianceforfamilies.org).
- Disability Rights Michigan 800-288-5923; <https://www.drmich.org/>.

## Michigan Family Support Subsidy:

The Michigan Family Support Subsidy Act [FSSA], administered through the Michigan Department of Health and Human Services, provides a payment of \$222.11 per month. The minor child must have a special education category eligibility of "Cognitive Impairment – Severe," "Severely Multiply Impaired," or "Autism Spectrum Disorder." Family annual gross income on a Michigan tax return exceed \$60,000 as of this writing. Here is the link describing FSSA: [https://www.michigan.gov/mdhhs/0,5885,7-339-71550\\_2941\\_4868\\_7145\\_81705---,00.html](https://www.michigan.gov/mdhhs/0,5885,7-339-71550_2941_4868_7145_81705---,00.html).

### **Michigan Children's Special Health Care Services:**

The Children's Special Health Care Services [CSHCS] is a program administered by the Michigan Department of Health and Human Services, for children with physical impairments, chronic health conditions or disabilities. Eligible children must have a qualifying medical condition and be 20 years old or younger. Persons 21 years and older with Cystic Fibrosis or certain blood coagulation disorders may also qualify for services. Families of all income levels are eligible to enroll. The CSHC:

- helps pay for a child's special medical care needs and medications;
- helps arrange for supplies and equipment (wheelchairs, etc.); and
- assists with referrals to specialists and other community resources.

### **Supplemental Nutrition Assistance Program:**

The Supplemental Nutrition Assistance Program [SNAP], also called food stamps or the Bridge Card, provides food assistance to qualified Michigan families as determined by family income and assets and the number of dependents in the household. Families apply through their local Michigan Department of Health and Human Services office.

### **Applied Behavioral Analysis Therapy:**

Applied Behavioral Analysis ("ABA") is available for children with autism spectrum disorder (ASD). Coverage for ABA services is available to Medicaid-eligible children under the age of 21 who are diagnosed with ASD and who meet medical necessity criteria. ABA is a Medicaid-covered service under the Behavioral Health Treatment "umbrella" within the Early and Periodic Screening, Diagnosis and Treatment (EPSDT) benefit. Private health insurance coverage for ABA therapy typically terminates at age 18, although private insurance companies may extend coverage to beneficiaries 18 and over, usually as a result of union negotiations.

### **Special Needs Trust:**

Special needs trusts [SNT] allow parents, family members and friends to create accounts for the benefit of a child with disabilities without placing the child's access to government funds at risk. The requirements for creating and managing a SNT are complicated and heavily linked to Michigan and federal tax law. A key SNT requirement is that the SNT trustee must have absolute discretion in deciding when, how, what or how much to release to the direct benefit of the child.

We strongly recommend that parents or others considering creating a SNT for a child with disabilities work through a lawyer, financial planner, tax accountant or CPA. We no longer create SNTs for our members, however we can consult with you and refer you to agencies who have SNT referral sources. We do offer special wills with testamentary trusts for those interested in that option.

### **The Arc Michigan's Annual Income Tax Guide:**

The Arc Michigan produces an Annual Income Tax Guide to give tax information and guidance to parents and families who have children with disabilities. We have a link to the Guide on our website, <http://www.thearcoakland.org/informational-resources/income-tax-guide/>.

### **Michigan Medicaid Health Care Eligibility:**

Michigan offers several Medicare health care coverage options to individuals and families who meet eligibility requirements. The goal of these health care programs is to ensure that essential health care services are made available to those who otherwise do not have the financial resources to purchase them. This link will describe the Medicaid options and eligibility requirements. [www.michigan.gov/mibridges](http://www.michigan.gov/mibridges).

Michigan Medicaid health care programs available to children, adults, and families vary depending on the program and the applicant's citizenship status (some non-citizens may be limited to coverage of emergency services only). The Michigan Department of Health and Human Services [MDHHS] determines eligibility for most health care programs administered by the State of Michigan).

All Michigan Medicaid programs except Children's Special Health Care Services have an income test. Some programs also have an asset test. These income and asset tests vary with each program. For some programs, the applicant may exceed the income limit and still be able to obtain health care benefits when their medical expenses equal or exceed their deductible (formerly called the spend-down) amount. Visit the MDHHS link at [https://www.michigan.gov/md-hhs/0,5885,7-339-71547\\_4860-35199--,00.html](https://www.michigan.gov/md-hhs/0,5885,7-339-71547_4860-35199--,00.html) for more comprehensive information. Here are some Medicaid programs that provide Medicaid services or help.

#### **• U-19 Medicaid:**

U-19 serves low-income children under age 19. There is only an income test. There is no monthly premium. Most children who are eligible for U-19 Medicaid are enrolled in a Medicaid health plan. This program provides a comprehensive package of health care benefits including vision, dental, and mental health services. Contact your county MDHHS office to apply for this program or apply online at [www.michigan.gov/mibridges](http://www.michigan.gov/mibridges).

#### **• MICHild:**

MICHild provides services to low income children of Michigan's working families who are under age 19. MICHild has a higher income limit than U-19 Medicaid. There is only an income test. There is a \$10 per family monthly premium for MICHild, covering all the children in the family. The child must be enrolled in a MICHild health and dental plan in order to receive services. Beneficiaries receive a comprehensive package of health care benefits including vision, dental, and mental health services. Contact the local MDHHS office in your county to apply for this program or apply online at: [www.michigan.gov/mibridges](http://www.michigan.gov/mibridges). For more information, visit the MICHild website at <https://www.michigan.gov/michild>.

#### **• Under 21**

Medicaid is available to eligible persons under age 21. There is an income test and an asset test for this program. If income exceeds the income limit, the person is assigned a deductible. Persons may incur medical expenses that equal or exceed the deductible and still qualify for this program. Beneficiaries receive a comprehensive package of health care benefits including vision, dental, and mental health services. Contact a local MDHHS office in your county to apply for this program or apply online at [www.michigan.gov/mibridges](http://www.michigan.gov/mibridges).

You may contact us with your questions or comments. We will provide technical assistance and direct advocacy for those issues that fall within our program and service areas. We also can refer you to other agencies.

It's not too late to donate!

# THE ARC OF OAKLAND COUNTY ANNUAL RUN CHALLENGE



BROOKSIE IS BACK! Kevin Knoblock will again be running and raising money for The Arc of Oakland County in the upcoming 2021 Brooksie Way Half Marathon!

Please consider pledging a donation to The Arc of Oakland County to support programs and services for individuals with disabilities in our community.

## 2021 BROOKSIE WAY HALF MARATHON Sunday, September 26, 2021

**GOAL FOR 2021 IS \$20,000**

With YOUR HELP — we can do it! We can reach our goal! ARE YOU UP TO THE CHALLENGE?

✂ .....

Name \_\_\_\_\_

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Please Accept my Donation of \$ \_\_\_\_\_ for The Arc of Oakland County's 2021 Annual Run Challenge

Select Payment Option \_\_\_\_\_ Check; Please make checks payable to: The Arc of Oakland County

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# THANK YOU FOR YOUR DONATIONS!

# Should My Child's Special Needs Trust Be Part of My Trust or a Separate Trust?

by Christopher W. Smith

When a special needs trust is part of your estate plan, attorneys take two legally correct approaches. One approach embeds the special needs trust within a parent's own estate planning document. This can be done within a person's will (called a "testamentary trust"), or is more commonly within the parents' revocable trust (called a "sub-trust"). Here, when titling or naming the special needs trust as a beneficiary, you would title it something like this: The Ann Jones Special Needs Trust under the William and Lynda Jones Trust dated August 1, 2021.

Another approach creates a standalone special needs trust for the individual with disabilities. Under this approach, you typically have two separate trusts: The Ann Jones Special Needs Trust and the William and Lynda Jones Trust. When titling or naming the special needs trust as a beneficiary, you state: The Ann Jones Special Needs Trust dated August 1, 2021.

Either approach works. The critical aspect of any special needs trust is that it contains a discretionary distribution standard. The Trustee must have absolute discretion over trust distributions. A testamentary trust, a sub-trust, or a standalone trust can accomplish this.

The trend for most attorneys specializing in special needs planning now leans towards doing a standalone special needs trusts. Why?

- Special needs trusts will be regularly reviewed by government agencies looking for issues with the trust. Less language is almost always better when a government agency is reviewing the trust. With a sub-trust, the agency reads through all the irrelevant language in your revocable trust, which could confuse. It took one case arguing with Social Security that William, Sr. and William, Jr. are two people before I vowed to rarely do a sub-trust.
- Standalone trusts are easier to restate or amend. These trusts must often last 50+ years. Laws and people change. There is a high likelihood that the trust you are drafting today will need to be amended.
- It is easier to customize the trust to address concerns specific to the beneficiary. For instance, we commonly add checks and balances and increased flexibility to a standalone special needs trust. Also, if a beneficiary will inherit retirement assets, the trust may require particular language to ensure that the beneficiary gets the tax benefit.
- A standalone trust may not cost more. With the accepted use of various word processing and estate planning document programs, an attorney may have to do less specialized drafting with a standalone trust than a sub-trust.

Again, either a sub-trust or a standalone trust works. Do not panic if you have a sub-trust. But special needs planning evolves based on estate planning and government benefit laws and trends. The next time you review your estate planning documents, ask your attorney about possibly doing a standalone special needs trust.

*[ Christopher W. Smith is a special needs attorney with Chalgian & Tripp in Southfield, Michigan. He is on the Board of Directors for the Special Needs Alliance and is the former chair of the Elder Law & Disability Rights Section of the State Bar of Michigan. ]*

# Profiles



**The Arc**  
Oakland County

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**2021 Membership Goal**  
**2,000**

### The Arc of Oakland County Calendar

#### September

6 – Labor Day

26 – Brooksie Way Half Marathon, Oakland University, Rochester

#### October

5 – The Arc of Oakland County Board of Director's Meeting, 7 p.m.

31 – Halloween

#### November

25 – Thanksgiving

30 – The Arc of Oakland County Board of Director's Meeting, 7 p.m.

### IN MEMORIAM

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