# CalABLE – Planning the future of your child with special needs

**Original Broadcast Date: September 15, 2022**

### Fiona Ma:

Good afternoon, everyone. I'm California state treasurer Fiona Ma and I would like to welcome you to the UC Davis Mind Institute webinar: CalABLE and Special Needs Trust. Margaret Heiser Fulton from Robinson & Fulton Law will be speaking on Special Needs Trust and Anne Osborne of CalABLE, Program Manager, will be speaking about CalABLE.

This topic, Special Needs Trust and ABLE accounts is near and dear to my heart. Today we will focus on how CalABLE accounts and Special Needs Trust can complement each other and work in tandem to help families with special needs loved ones achieve their financial goals.

As State Treasurer, I believe that this partnership with the UC Davis mind institute is a critical step toward ensuring that families with special needs children have access to resources and opportunities they need to thrive economically. We recognize that these concepts can feel a little intimidating. But we are confident that with a little help and guidance we can all feel better equipped to plan for a brighter financial future.

Today's webinar will serve as a great introduction to the financial resources available to all of our families. Thank you for joining us today.

### Anne Osborne:

Thank you, Treasurer Ma, for that introduction. I am Anne Osborne, and I am the program manager here at CalABLE. We're excited to be partnering with UC Davis and also with Margaret Fulton. I do want to let everyone know that the entire CalABLE team is on this recording today. Dante Allen, our Executive Director, is in the audience and Madeline Handy is someone who is behind the scenes driving our slides. So, thank you everyone for joining us.

The next slide is going to be our video of our account holder Tatiana. And she's going to just share a little bit about CalABLE and then I will begin the formal presentation.

[video] (very lively instrumental music)

**Tatiana:**

Money can't buy you happiness, we've all heard that before, right? While that may be true, achieving your dreams often requires learning to manage your finances. Whether your dream is to own your own home, get an education or just become more independent, saving money is often the first step.

I know talking about managing your money can be very intimidating, especially for people with disabilities who also have to consider the added expenses of living a life with a disability and the limits placed on what we can save if we receive government benefits. Your dreams can come true, it's happening for me. I have a disability and saving for my goals is now a reality since I opened my CalABLE account. With CalABLE I'm investing some of my money so that is has a chance to grow. I'm saving for an accessible home and to grow my business.

Maybe you want or need to save for expenses like moving or getting a smartphone or a computer. Maybe you want to save for something big like a vehicle or to purchase a home. Maybe you don't have a lot of money and that's okay. The first step is to set goals and to create a plan to achieve them. CalABLE is a great tool that can help you get there.

Opening a CalABLE account is quick and easy. Once your account is open you can begin to save regularly, maybe for the first time in your life. The CalABLE account is for those of us who have a disability that began before turning 26, but they can be opened at any age. The sooner it is opened, the more time your money has a chance to grow. Earnings in an ABLE account are not counted as income, it's tax-free and you can use the money whenever you like as long as you use the money to pay for expenses of living life with a disability.

So many times, those of us with disabilities have been held back from reaching our dreams. We are told to limit our earnings and savings to keep any benefits we may need just to cover our basic living expenses. With the CalABLE account, we don't have to hold back. In fact, you can save up to a hundred thousand dollars and still be eligible for public benefits such as housing, food assistance or health coverage. Best of all when friends and family contribute to your ABLE account, those contributions won't count against your benefits like crowdfunding apps can.

So, if you're like me or have a family member with a disability and you wish you could save money to help towards expenses today or in the future, join me and thousands of others like me from across the country and open your very own CalABLE account. With a CalABLE savings, I can plan for the future and so can you.

**Presenter:** Call the number on your screen (833-225-2253) or visit CalABLE.ca.gov to become a CalABLE saver. If you would like to learn more about financial planning like setting a budget, saving to buy a house or even understanding your credit score visit the California State Treasurer's website (www.treasurer.ca.gov). The National Disability Institute and ABLE National Resource Center provide information specifically for people with disabilities on the path to saving and investing with CalABLE.

Dream, plan, succeed. CalABLE will help you plan for your best possible life. Dreams can come true; you can make it happen. Follow these three simple steps. Ask yourself, what would it take to change your life for the better? Make a list of what you are saving for and estimate the costs for each item on your list to set your savings goals. Share your goals with family and friends and see how you can all contribute to your account to meet those goals. Keep your loved ones up to date! Stick with your plan, learn more as you go, and celebrate when you achieve your goals! Let's dream, plan and succeed together.

[End video]

**Anne Osborne:** Thank you, Madeline, for sharing that video. I really like this video. I think it talks a lot about CalABLE. And so, what I'm going to give you today is just additional information in support of that video. So next slide please.

So, what we're going to talk about today is: what is ABLE, ABLE basics, how do ABLE accounts work. We'll talk a little bit about Special Needs Trust, the investment options. We'll give you some resources, how you can connect with us, and then we'll do some Q&A at the end of the presentation, after my presentation and Margaret's. We're going to do all those at the end. So next slide please.

So, what is ABLE? Next slide.

So ABLE is part of the Achieving a Better Life Experience Act. This act was passed in 2014. It's part of the IRS tax code. You may be familiar with 529, those are the college savings programs. 529A is the IRS tax for ABLE accounts. What this did is this provided a platform for all states in the United States to offer ABLE programs. So, California has their program of the ABLE act.

And that is why we are called CalABLE. Currently we have over 6 million in assets under management and over 6,000 in accounts. This is a little bit dated. Actually, we have over 80 million in assets under management and we have over 7,500 in accounts. So, we are definitely growing. Next slide please.

So, what is ABLE? Why would you want to save in an ABLE account? First and foremost, you can save money in a tax advantaged way and have the potential to grow your money through investments and access that money at any time without taxes or penalties when you use your account for qualified expenses. Qualified disability expenses -- we're going to cover that in just a few moments. You can take advantage of CalABLE's professionally managed investment portfolios and select the best portfolio that suits your needs. So, we will cover those as part of this presentation. And individuals on means tested benefits, they can save up to $100,000 without the risk of losing their benefits. Next slide please.

So currently these are all the ABLE programs in the United States. The first one I'll call your attention to is the dark blue states. All these states have national programs. So, you can live anywhere in the United States and open an ABLE account. For example, you can open the CalABLE account anywhere in the United States.

The states that are in light blue, they have ABLE accounts specifically for the residents. So, if you look at the state of Oklahoma, Oklahoma has an ABLE program for their residents.

And the states in the gray, as you see Idaho, they do not have a program for their residents. So those state residents can participate in any national program. So, they could open a CalABLE account in Idaho.

One thing that we do always advise people to is if you are living in these states, your state may have an ABLE program that has some benefits to those residents. California does have that program and we'll talk about that shortly. But we always encourage people to look at what is available in their states. Next slide please.

We're going to talk about some basics of ABLE. Next slide.

So, who is eligible? If you are a person with a disability and that disability began before your 26th birthday, you are eligible to open a CalABLE account. If you already meet the eligibility criteria like SSI or SSDI and that disability did occur before age 26, you're automatically eligible to open a CalABLE account.

You can also open your ABLE account in what we call self-certification. And what that means is you can look at the SSA list of compassionate allowances or the blue book listings. And if your disability is listed in one of those, you can open it in what we call self-certification. Next slide please.

So, I just talked about self-certification. What this means is after you have looked at the SSA blue book or the list of compassionate allowances you could then open a CalABLE account. Before you open that account, you will have a screen as you're going through that you will select that you confirm under penalty of perjury that your disability occurred before age 26. You also will need to have a signed letter from a qualified physician. And that letter basically says that your disability occurred before age 26. The physician does not need to be the original physician that diagnosed you. It needs to be somebody that you are currently seeing.

CalABLE does not ask for that letter. But we do ask that you have it in the event that your account may be reviewed. As I mentioned earlier, this is part of the IRS tax code. And so, your account may be reviewed by the IRS. At this time we have not heard of anyone having their accounts reviewed but we do recommend that you do have that letter.

Also, I'll mention that our accounts are -- CalABLE is an online program. And so, when you are looking to open a CalABLE account, you will need to visit CalABLE.ca.gov to open a CalABLE account. Commercial banks do not have this option available. So, if you go to your commercial bank and ask them about CalABLE, they probably will not be able to assist you. So again, just remember CalABLE.ca.gov is where you register for CalABLE. Next slide please.

As we mentioned that anyone that has a disability before age 26, that is who can open these accounts. So, you know it really is not limited to anybody. As long as that disability began before age 26 you can open it. Just with that information if you are a parent and you want to open this account, you can certainly open it for your child. If you're somebody that is able to open these accounts and then you want to open them for yourself and let's say you are 40 years old. As long as that disability began before age 26 you would be able to open a CalABLE account. So, it's really when that disability began is when you want to open these accounts. Next slide please.

So, let's talk a little bit more about the basics.

The first thing is when these accounts were formed through the ABLE Act, one of the stipulations that they said was that you could only have one account. So, if you're a beneficiary, that means the person who is opening the account up for themselves, you would only be able to have one account. If you are what we call an authorized legal representative and you're opening this ABLE account on behalf of somebody with a disability. You can only open their account. You can only be as far as the authorized legal representative.  Right now, that person is defined as the parent, legal guardian, or conservator or power of attorney.  Next slide.

We don't have that. Okay.

Let me just add that on authorized legal representative, that definition has been expanded to include the spouse, sibling, grandparent, or a rep payee. And that option is going to be available through the CalABLE portal probably in October of 2022. So those additional people will be allowed to open CalABLE accounts. So now we'll discuss how these accounts work. Next slide please.

So, how do these accounts work?

First and foremost, they are designed to protect assets, but they do not shelter income. If you're working, just because you have a CalABLE account, you can't take all your earned income and then put it in a CalABLE account and then expect it to qualify for not to be income. Income is income. And CalABLE accounts are to protect your assets.

They do function like a savings account. And you can put these in our FDIC insured portfolios. Or you can put them in our three target risk portfolios. And those can grow through your investing.

You can actually use these accounts as long as you use them for qualified disability expenses. If you're using them for qualified disability expenses, earnings are tax free. And as you continue to let these accounts grow through your investments those earnings are also tax free.

Account holders can split their funds between the different options that we – I've discussed, but I will discuss them a little bit further.

And anyone can contribute to your CalABLE account. So, if you have family members, friends, if you have people from your church or anyone can contribute to these accounts.

Next slide please.

As I mentioned, before the ABLE act, you currently -- if you were receiving benefits, you could only have $2,000 as resources. With the ABLE act, you can now save up to $16,000 per year. Apologize with this -- on this slide. It will be -- it is $16,000. And that will be on our website when we post this. But you can save up to $16,000 per year and also once you reach $100,000 if you want to maintain your benefits at that point you would need to do a spend down. And then you would continue to save up until that $100,000.

Let's go to the next slide. Okay.

So, it is $16,000. This is our annual cap that you would be able to contribute. January through December of each calendar year. And then once you reach that $100,000 as you see on the slide here, it is where you would -- if you want to maintain your benefits, that's where you would have to stop putting money into your account. If you're not worried about your benefits, you want to continue to save, once you make a contribution of up to $529,000, then you would at that point just be earning additional money on that $529,000.

We do keep track of those contributions. So, if you do have somebody that has contributed up to the $16,000 in your account, we would then not be able to accept any additional contributions if it's above that $16,000. Next slide please.

So again, it's the $16,000 contribution not the $15,000 as it's shown on this slide. So, we actually have a program that's called ABLE to work. And so with that program -- next slide please.

You would actually be able to contribute -- this is in 2022. That amount is $12,880. That is for 2022. And if you were to combine that with the $16,000 with the cap here, you would be able to contribute up to $28,000 in 2022.

What ABLE to work allows you to do is if you are working and your employer does not have a retirement plan, that is how you can make that additional contribution. And what you would want to do is, you would want to when you open your CalABLE account there are two buckets. You will see a general contribution bucket. That's anybody, your family or friends can contribute to anywhere up to $16,000 in that bucket. And you would have your ABLE to work bucket, which they can contribute up to the $12,880. That is in 2022. We do expect that to increase next year in 2023.

So again, if you are working and you have -- you can increase -- contribute that $12,880 and then you have that general contribution of $16,000. Combine that adds up to $28,880. So, there is a way that you can actually grow these accounts very quickly. Next slide please.

So, what these accounts do. They do give you a lot of flexibility in the sense that you can spend money in these account for what we call qualified disability expenses. What's nice about ABLE accounts is, if you were to compare them to other retirement accounts like 401Ks, usually you have age limits of when you can withdraw the money. With CalABLE you do not have any restrictions as far as age or time or whenever you want to withdraw these. So, we'll move to the next slide.

So, what is a qualified disability expense?

This is part of the ABLE Act. The federal government defined it as any expense related to the ABLE account owner as a result of living a life with a disability that helps maintain or improve health, independence, or quality of life. Since this is part of the federal government, these categories are very broad. It's very difficult to specify or do a line item of which Item is considered a qualified disability expense. So, what the federal government has provided, and this is actually part of Social Security POMS. We can go to the next slide.

These are categories of what you can use your CalABLE account for. Again, these are called qualified disability expenses. The first one here is education. If you're going to school, you need assistance with tuition. You may need some tutoring. You may need to purchase a laptop computer. Any of these expenses would be considered qualified disability expenses.

If you use it for a housing related item, such as rent, mortgage payment, insurance, and even utilities, what you need to know here is that you can only withdraw from your CalABLE account in the month that this expense is going to occur. For example, if you have a utility bill that was due on the 20th of the month. You would want to withdraw those funds from your CalABLE account between the first and the 30th of the month for that expense. Probably you would want to withdraw it in this example probably by the 10th of the month. Because your utility bill is due on the 20th. So, you always want to make sure if you're using this CalABLE account for a housing related expense that you do it between the first and the 30th of that month that you would want to use the money.

Transportation. You could use that for public transportation if you're using transportation services like uber or Lyft. You would want to use it for that. And the list goes on.

Big question we get is on the basic living expenses. Is food one of those items? Yes, food is considered a basic living expense. So, you can withdraw money for groceries. Let's say you want to have coffee with a friend. You can do that as well.

Another question we get is vacation. Is that considered a qualified disability expense? And yes, that is considered a qualified disability expense. If you go back to that definition. Does this improve your health, independence, or quality of life? That is really the umbrella that these are evaluated against. These qualified disability expenses. So, in that instance, as far as a vacation, any time I go on a vacation it does certainly improve my overall well-being. So, I would say that that would be a qualified disability expense.

As you see the list is pretty extensive. Funeral and burial costs. Those are also eligible qualified disability expenses.

Question we get asked often is, "What is a non-qualified disability expense?" And again, if you remember these are part of the IRS tax code. So, what we have been advised on is if it's a gift. Remember this is for the beneficiary. So, if I am the beneficiary and I am giving a gift to somebody, I am not directly benefiting from that gift. So, gift giving is considered one of those nonqualified disability expenses, such as gambling and alcohol.

You can use your money to pay for non-qualified disability expenses. But if you do, then you're going to be subject to the regular income taxes plus tax a 10% tax penalty on account earnings and benefits. We don't recommend that you use your CalABLE account for non-qualified disability expenses. But if you did, that would be what would be attached to that.

Also, it could be considered a resource if you withdraw money for nonqualified disability expenses. I will mention here that any time you are using your CalABLE account for qualified disability expenses you will want to maintain those receipts. CalABLE does not ask for those receipts. But we do encourage people to maintain those. Again, as I mentioned, this is part of IRS tax code. Where we have heard that people have been asked for receipt is when they are going to the Social Security for the redetermination. When Social Security is reviewing their status, you may be asked at that point by the Social Security worker there. They may see you have a CalABLE account. And they may ask you to provide some receipts. So, if they do, you want to make sure you have those available.

Also, again our program is an online program. We have had people, when they're going through that self-determination recertification process, we have had calls from people about Social Security not accepting their online statements, because they're printing those on their home computers. If you do have any problems certainly reach out to us here at CalABLE. And we can help you manage that. So we'll go to the next slide here.

We're going to talk about Special Needs Trust and how they work together. So next slide.

CalABLE accounts and Special Needs Trust, they do allow people with disabilities to save money without losing their benefits. As I mentioned earlier CalABLE accounts are managed by the beneficiary. And because of that they are less costly and easier to use than using a Special Needs Trust.

Special Needs Trust offer oversight and the ability to make large contributions. As you know CalABLE does have those limits. That $16,000 annual contribution. So, if you have some money that's above our contributions, a Special Needs Trust may be something that you would want to use.

Also, since CalABLE is set up by the beneficiary, a Special Needs Trust could be -- could cost you a little bit more. And also with Special Needs Trust you can't use them for food or housing. Next slide please.

So which one is better? We don't say here at CalABLE. We see these working together as a resource. So, let's look at the next slide.

And this is a nice comparison slide. And I know Margaret is going to talk further about Special Needs Trust. But this is just a quick comparison.

As I mentioned CalABLE is an online process. So again, you can open your account probably within 20 minutes. Usually when you're opening a Special Needs Trust, you're going to be working with an attorney. Again, Margaret can talk to you more about -- we'll discuss this further.

Again, when you look about who controls these accounts, CalABLE has the beneficiary is the one in charge or the authorized legal representative who's opened this account on their behalf. And then Special Needs Trust, it does require a trustee that will be overseeing it.

When you talk about purchases, CalABLE has a little bit more flexibility than Special Needs Trust. Those food and housing expenses are allowed with a CalABLE account. With Special Needs Trust they typically are not allowed.

We do have a small state administrative fee which I will talk about. Again, Special Needs Trust because of the nature of them, they are going to have, there's going to be higher cost than our state administrative fee. And that fee is $37. It's an annual fee. We -- all of our accounts will have that basic fee.

And as far as contributions, some of that Special Needs Trust they could be -- there could be some limits there.

Again, with Medi-Cal there is as far as in California we do have a law that we have passed. And I'm going to talk about that in just a moment. And Margaret, I know you can talk a little bit further about the -- for Special Needs Trust on that. So, I will leave that to you.

Again, we have different options to invest in. And if you withdraw anything from CalABLE, those withdrawals are tax free as long as they're on qualified disability expenses. So, we'll move to the next slide here.

Talk about some investment options. Next slide.

In general, when you do open a CalABLE account, there is going to be some risk involved. Essentially, this is an investment program. And when you do invest your money, there's going to be some risk as we mentioned.

So, we are -- we don't guarantee that those investments are going to always be high performing. These investments as you know are tied to the stock market. So, you're going to have some highs and some lows. But pretty much -- our investment portfolios currently are very strong performers. So, we'll go to the next slide here.

Our investments are managed by TIAA-CREF. TIAA-CREF was selected by the board in 2018. They have been currently managing our portfolio. The state does have a competitive bid process. This is how our manager was selected.

We do have the FDIC insured portfolio. And we have three target risk investment options, we do have some fees, and you can transfer funds. So, we'll go to the next slide.

These are our portfolio savings and investment options. The first one I mentioned is the FDIC insured portfolio. This is very similar to your passbook savings account. We have about 30% of our account holders in this portfolio.

The next one as you see, we have our target risk portfolios. And you have the conservative, moderate, and aggressive. These portfolios as you can see are made up of different stocks and bonds. And so, it's really the comfort level of the beneficiary on which portfolio they would like to invest in. As I mentioned you can select -- you can split your investments. So, we do see people that participate in all of these.

A lot of the times we have first time investors. Often, they will select FDIC insured. And then as they become comfortable with saving money, we do see those portfolios being expanded where they may select one of these other portfolios. Next slide please.

This is how the fees are. And I'm just going to briefly talk about this. As I mentioned, FDIC insured you have a $37 annual fee. And that is broken out into monthly payments of $3 a month. So, you would see $3 a month being taken out of your account.

In order to open a CalABLE account, I did say it is an online account. We do ask that you put in a $25 deposit. That just opens your account. But we also like to recommend that once you open these accounts with that $25, that 3-5 months after you open that account you put an additional $25 in. As you can see, you're going to have that $37 annual maintenance fee. So, you want to make sure that your account stays in the positive. So, we do recommend you make that $25 deposit 3-5 months after you open it.

And this particular example, we have a $3,000 asset that would be the balance of your account. So, if you are looking to go into the investment portfolios, there are some additional fees. As you can see, the underlying investment fee based on $3,000, that can range between $2.40 to $2.70. And then on that $3,000, there's a state administrative fee, which is $13.20. So, between $52.60 to $52.90.  We can round that up to about – if you were to have a monthly fee, you're probably going to see about $5 a month being withdrawn from your account.

That's if you have $3,000 in your account. So, if you're just doing FDIC insured, you're going to see a monthly fee of $3. If you select any investment portfolios there will be some additional fees. Again, in this example based on $3,000 that could be $5 a month. So, it's just depending what you're comfortable with. You would have these fees assigned to your account. Next slide please.

This is what we have talked about the funeral and burial cost.  California has passed a law here in California that protects you from your CalABLE account from being used. So, let's go to that next slide here.

So, this is the current law that we have passed that if you have a CalABLE account and you are a resident in California, the first thing is Medi-Cal could only withdraw if all these things apply. The first one is deceased was age 55 or older. The individual was a user of comprehensive Medicaid services, such as in-home support or skilled nursing. The individual estate is required to go into probate which is $150,000 or more. And individual is not survived by spouse or child under 21 or disabled child of any age.

Medi-Cal will not recover from a CalABLE account. All these things do need to apply. So, if it's just one of these things, it would not apply.

Again, as I mentioned earlier, a funeral and burial costs are considered qualified disability expenses. So, when the beneficiary does pass away if they had a CalABLE account, you'd want to make sure that anything that would qualify as a qualified disability expense, that you would use your CalABLE account for that. Let's go to the next slide.

As I mentioned to open a CalABLE account it's CalABLE.ca.gov. Next slide.

Next slide.

These are resources.

This is our staff. Dante Allen is in the audience. I'm Anne Osborne program manager, and Madeline Handy is our program analyst who's moving the slides for us today.

As you saw in the video if you need any assistance opening your CalABLE account you would want to contact our engagement center at 833-225-2253. Next slide.

We are on social media. Facebook, Twitter, LinkedIn, Instagram. Next slide.

If you are currently a CalABLE account holder, we would love to hear your story. As you saw, we had Tatiana on the video. We also have ambassadors. You may have heard about our we are CalABLE campaign. This is currently being played on all the social media outlets. So, if you are a CalABLE account holder, we would love to hear your story. So please reach out to us. Next slide.

Again, we have our YouTube channel which is here for you to view. This is where we have all our information about CalABLE. We have webinars that we do every month. So, all these are recorded so you'll see -- you see CalABLE 101. That really has a lot more details. We have Special Needs Trust. We have one on qualified disability expenses. Just a menu of many different webinars. So, we encourage you to go to our YouTube channel. Next one please.

And this is the disclaimer that we do share with you. As I mention we are part of a financial program. So, we do need to share this with you.

And the next slide is we want to thank you. And I know Margaret is ready. So, I will turn this over to you Margaret.  And thank you everyone for their attention today.

### Margaret Fulton:

Hello everybody. Let me share my screen with you. Good. I hope everybody can see my slides. My name is Margaret Fulton. I am an attorney doing estate planning for many, many years. Longer than I'd like to think about. I also do Special Needs Trust and have worked with a lot of special needs families.

And I have to tell you as an attorney working with Special Needs Trust, I was excited and thrilled to see the ABLE Act pass on the federal level. And then to see the state of California adopt the CalABLE program. As Anne mentioned one of the major barriers for disabled people who want to work is -- and I will be talking about this more -- is to save money. They couldn't do it before ABLE. They had to limit their resources to $2,000 basically. And so, to see ABLE come and make it possible for people to save money, it's just really exciting. Let's see -- okay.

So, a Special Needs Trust. Okay. A Special Needs Trust is a special kind of trust. It provides that you can have funds for your own use which are not considered to be available assets for public benefit laws. So, you can -- you have funds in a Special Needs Trust, it preserves eligibility for SSI and Medi-Cal.

But a Special Needs Trust goes on beyond that. Many parents worry about what will happen to their special needs child when they're no longer around. The Special Needs Trust can provide a management team to manage their child's money. And even advocacy for their child. So, it's a good thing to look at to provide plans for the future.

And who needs the Special Needs Trust? A person with disability who depends on needs-based benefits.

Who can be eligible for it? So, I also have slides comparing the Special Needs Trust with the CalABLE account. But to be eligible for Special Needs Trust, you need to be disabled. And basically, if you are declared disabled by Social Security, then you would be eligible to have a Special Needs Trust.

There's a definition as you can see right there. Disabled means that impairment that lasts 12 months or longer or prevents the person from participating in substantial employment. And the individuals who should use a Special Needs Trust are those who want to be remain eligible for public needs-based benefit.

So, I'm going to go over the different kinds of benefits. And that's when I asked my clients what kind of benefits is their child getting or perhaps sister or brother. And often people don't know for sure what they are. So, this chart helps you figure it out.

The means tested public benefits means that you -- essentially you can't have assets. Then you're eligible for them. That's SSI. You could only have $2,000 in the bank. If you have more than the 2,000 you will not be -- you are a single person you will not be eligible for SSI. Medi-Cal has a similar requirement, but Medi-Cal requirements are changing. They have changed this year. I'm not really going to go into that. IHSS, in home supportive services, where someone will pay a caregiver for care in the home is another means tested public benefit.

The other kinds of benefits, which everybody gets confused about are entitlement benefits. So, for all of us who have worked, paid into Social Security, we are entitled to certain benefits. One of them is SSDI, that's social security disability. So, if a person has worked and becomes disabled, they may be entitled to SSDI. Usually that is more than

SSI. They -- also with the SSDI, after a period of time they would be eligible for Medicare to take care of their medical needs.

Some people who are disabled will use Medicare, but they'll also use Medi-Cal. So, it's important to analyze whether your benefits are those that you are entitled to because somebody worked or whether benefits that you're entitled to because you must maintain a certain low level of assets.

Other programs that are available to disabled are section 8, which is a housing program that is often means based. And then of course the regional centers are programs which are not means based.

So, it's good to get a general idea of all the benefits. And then you can figure out whether a Special Needs Trust would be good for you to have.

I just went through these kind of SSI. You must have a low monthly income. $2000 or more assets will disqualify the single person. Although you can have a vehicle. Various things.

Medi-Cal requirements as I said are changing. The asset limit as of this July went up to $130,000. That test will be phasing out. But Medi-Cal income test remains the same. So, people are trying to work with the new Medi-Cal laws. But there will be complications if you have income.

So those are the needs-based benefits. SSI as you may know provides a modest monthly cash grant for food and shelter. In 2022, the SSI maximum payment for single person is $1040.21. It's a federal benefit plus a California supplement.

So, when we talk more about food and shelter, I know Anne mentioned the ABLE accounts can pay for food and shelter. The theory in using a Special Needs Trust is that -- and using perhaps family members to pay for food and shelter -- is that if you are on SSI, the $1,000 a month is supposed to pay for food and shelter in California.

I will get into how an ABLE account can really help you use outside resources without reducing your SSI. Medi-Cal can provide various medical coverage, ongoing care. Medi-Cal can be extremely important to a disabled person. They should be very careful not to do something that would disqualify them from Medi-Cal, like having too much money or too much income.

So that's where the Special Needs Trust comes in to make a trust available -- for example, to hold an inheritance. That is the major use of Special Needs Trust in my practice. Parents may want to leave money to their disabled children. And they would use a Special Needs Trust to do that.

So, there are different kinds of Special Needs Trusts. We'll just go over it briefly.

The third-party Special Needs Trust is the one that is created by anybody but the beneficiary. The most typical person to create a trust -- a third party trust is the parent who wants to leave money to their child. So, it's often established by the parent. And that means that what happens to it on the death of the beneficiary is up to the person who established it.

So, if you're a parent, you establish a special needs child to receive the inheritance that you're giving to your special needs child.  You might say that a third of your estate is going to go to a special needs child, another third to another child, and the third third to yet another person. You could say that if your special needs child passes away anything left in the Special Needs Trust will go to those other beneficiaries.

What gets confusing is the first party Special Needs Trust is one where the disabled beneficiary’s funds are used.

How would a disabled beneficiary end up with funds? One way would be that there was a terrible traffic accident, there was a personal injury lawsuit, and the disabled beneficiary got a million dollar judgment against whoever was responsible for the lawsuit. They would not want to have that money in their own account because it would disqualify them.

But frankly when they were looking at public benefits they might say well I’ve got this money.  I don't need public benefits. But they should think of the future and the fact that medical expenses could be great, and they should put those benefits in a first party trust.  The beneficiary themselves can create the first party trust.

But -- Anne mentioned this -- if it's a first party trust, the first -- because it was the beneficiary's own assets -- the first beneficiary is Medi-Cal. So, if Medi-Cal paid for medical expenses for the beneficiary then when they die Medi-Cal gets repaid. So that is a major defect of the first party trust.

There's also pooled trust for people over 65 to handle special needs.  So basically, those are -- that is the first party trust.

But the inheritance is used a lot. And actually, what people need to be careful about in the estate plan, if they say the estate plan says I leave all my assets equally to my children. But if one of my children dies, I leave it to the grandchildren, the children of my deceased child. That's where we get a lot of problems, where the grandparents know that there might be disabilities that they don't understand that the grandchild was on public benefits. And they don't understand that if they leave an inheritance which goes to the grandchild because the intervening parent had passed away, that that person is going to be disqualified from public benefits. And we may have to establish a first party trust for that person.

But that is something to guard against. So, for anybody doing their estate planning and you have a beneficiary who is a special needs person, you really should be doing a Special Needs Trust along with your estate plan.

You should also think about your IRA and your life insurance. If you're going to leave your IRA to a number of your children for example, you should not name a special needs beneficiary. You should name the Special Needs Trust.

And if you have life insurance, again, your spouse may be the first beneficiary. But if something happens to you and your spouse, you should make sure that if there's the special needs child, that child's Special Needs Trust -- the third-party trust should be named the beneficiary of that life insurance.

So, some of my estate planning clients say well I don't feel like paying for a Special Needs Trust.

Just to kind of clarify the Special Needs Trust can be costly. An attorney, as Anne pointed out, has to do it. In my practice, if somebody does estate planning with me they might run around $1,500 or more.

But If people say, well I'm just going to let the other kids, “Suzy” can inherit everything and I know she'll take care of “Billy” because she really likes him and she is responsible. So, if they leave the whole inheritance to Suzy, anything could happen to Suzy. She might get divorced, and the money might be lost in a divorce. She might forget to pay her income tax and the IRS might get the money. And so, there's a lot of things that could happen.

I do not recommend that you disinherit the special needs child. You really should try to establish that trust and then you know that that money would be available for them. So, it should be part of every family's estate plan.

I usually do stand alone trusts. They are not part of the parent's revocable trust to avoid probate. They stand by themselves.

When a Special Needs Trust is funded, we must send a copy to Social Security. Most people don't want their family living trust going to the Social Security office. So, it's good to have it as a separate document.

The other reason that it's good to have as a separate document that I discussed before is the grandparents can say I leave everything to my son “Johnny” but if he dies before me, I leave everything to the Special Needs Trust for his son Billy. So various family members can use the same Special Needs Trust to benefit the same beneficiary.

So, families need to think beyond just your estate plan.

You need to think to grandchildren. Other family members and even I've had clients who, aunt or uncle wants to either give somebody during lifetime to the special needs beneficiary or give it when they die. That transfer can go to the Special Needs Trust.

So that is also possible with ABLE accounts. I will compare the two. One of the limitations of the ABLE account that Anne pointed out, that it can only receive $16,000 a year. So, for an inheritance from the parents which maybe involves quite a bit more money, a Special Needs Trust is what has to happen in that case. Okay.

So, what is a Special Needs Trust? It's a trust that should be I believe drafted by an attorney.

I just did a seminar for Sierra college community education. And one lady asked me during the seminar, well I'm a paralegal and I'm used to drafting things.  Can I just draft it? And I said, well it's pretty complicated. You have to follow Social Security regulations. So, I would recommend that you do go to an attorney to get it drafted.

So, like all trusts, the Special Needs Trust has three parties. One is the grantor, the person who funds the trust. So hopefully we're talking about a third-party trust where the parents plan to fund it at their death. If again the special needs beneficiary ends up with an inheritance inadvertently or gets money through a traffic accident, they would be the person to fund their trust and it would be a first party trust.

The trustee in the Special Needs Trust is a really important person. And that was the one who manages the assets.

And the beneficiary of course is the special needs beneficiary. That beneficiary receives the benefit of the assets.

Just to mention how things can go wrong.  The beneficiary should be the sole beneficiary of that Special Needs Trust. Money cannot be gifted out of the Special Needs Trust to other family members. The Special Needs Trust can pay for the trip to

Disneyland by the beneficiary and possibly caregivers. They cannot pay for the whole family who are not caregivers to go to Disneyland.

But getting back to the trustee. That is always the really hard question. Who should be the trustee? Often, it's family members. But the parents who are planning their Special Needs Trust, they have to say who is going to be able to handle this when I am gone? It's not going to be today. It's when the parents are gone.

The trustee can be an individual. And I'll go through some of the pitfalls of having an individual trustee. It can be a private fiduciary. It can be a bank. Those are more expensive options of course. You're going to have to pay somebody a fee for being a trustee.

It's kind of overwhelming to think of who is going to be the trustee for the rest of a young beneficiary's life. They're doing this trust when the beneficiary is 5 years old or whatever. So, what I do in my Special Needs Trust is I usually make sure that somebody else can name a successor trustee.

Maybe the parents name somebody, their sibling aunt Suzy as the trustee. But we also give aunt Suzy the power to name a successor trustee. Or maybe the parents say I have another adult child who's willing. They're very close to the special needs beneficiary. They're willing to be the trustee. And so, that's great if they're willing to do that. But they have to understand that we always need to provide a succession plan.

Another thing you can have is a trust advisory committee. I've had that happen. For example, I had a case where a woman who was fairly wealthy had her young daughter and a niece be the trust advisory committee. She did name a bank as the trustee. The niece and the young daughter as they get older, they would have the ability to change the trustee. And so, a trust protector can do that too. And a trust protector you know could be a committee or it could be one person.

One of the other things that a Special Needs Trust -- it can pay for all kinds of things. A lot of the things that could be paid for with CalABLE. But there is the limitation. If it pays for food and shelter that will reduce the SSI benefits and the Special Needs Trust cannot distribute cash to the beneficiary. So that -- the cash thing is very difficult. And we'll talk about how ABLE can cure that difficulty.

So, I have comparison charts just like Anne did. And you can look at them all and maybe some of that will make sense.

The ABLE account is only available to persons disabled before age 26. I believe there is legislation or there has been off and on legislation to raise that age level. That's what we really, really would like to see in the disability company.  Sometimes, particularly people with mental illness, that disability is not discovered by age 26 and that means they can't use the ABLE account.

And I always ask all my special needs people doing a Special Needs Trust, can you use an ABLE account? Is that going to be a problem?  Because I always provide in all my Special Needs Trust that the trustee of the Special Needs Trust can establish an ABLE account for the beneficiary.

Third party Special Needs Trust can be used by anybody. Can be a beneficiary. And who can fund it? The ABLE account can be funded by anybody, and the Special Needs Trust can be the third party. Again, can be funded by everybody but the person with disability. So again, the grandparents, the aunts or uncles, everybody can put money in it.

The ABLE account the individual can only have one. You can have as many Special Needs Trusts as you want. But it doesn't make sense to have the grandparents have one and the parents have one. It's better if the family tries to use the same one.

Who controls the ABLE account?  It's great. The person with the disability if they have capacity and are able to do that can control their ABLE account. Maybe that's not appropriate. Maybe they would be subject to undue influence. Then we could have their guardian and I'm glad to hear that the rep payee -- the person who receives the SSI benefits on their behalf will be able to open their ABLE account on behalf of the person who's receiving those benefits. The third-party Special Needs Trust it is controlled by the trustee. And it cannot be the person who has the disability.

Inheritance is another thing. I understand now that CalABLE that the beneficiary can be named. That was a problem at first. As I mentioned before, the person who creates the Special Needs Trust can name people to inherit when the special needs person passes on.

Funding in a year. Again, ABLE account is limited to $16,000 a year. Any additional amount as Anne discussed when the beneficiary is employed. Which is fantastic. The cap on the account Anne went over those in ABLE. There's no cap on the third-party Special Needs Trust.

ABLE has no income tax. Special Needs Trust gets to pay income taxes annually. If there's income and it's not distributed to the beneficiary, then there's going to be an income tax liability. And that's one of the expenses of the Special Needs Trust. It has to file the trustee must file the income tax return.

And discuss qualified disability expenses. Again, there's the limited from Special Needs Trust about disbursements for food and shelter that could reduce SSI.

So planning strategies using the ABLE account.

You can keep the beneficiary account balance especially somebody who works by putting extra money in the ABLE account. But the reason I recommend that all my special needs clients have the beneficiary open an ABLE account is the ABLE beneficiary can use the debit card linked to the ABLE account to have some spending money. They can go buy clothes. Whereas the trustee of the Special Needs Trust just can't give the beneficiary money to go down to the store and buy clothes.

And again, the food and shelter. I've seen the Special Needs Trust pay for rent or housing which, if the parents paid for it out of their own pocket, will reduce the SSI. Whereas the ABLE account, the parents put money into the ABLE account or the special needs trustee puts money into the ABLE account and it can come out. And that can make the difference between the beneficiary being able to afford rental housing.

So that is super benefits of using the two together. Which I really like.

And my presentation is almost over. I just want to focus on another law, the Secure Act which passed in December 2020. IRAs used to be that you could stretch them out, a beneficiary could stretch them out for their lifetime. You could leave an IRA to your children, and they would be able to take distributions from the IRA over their whole life and the rest of the IRA would remain invested. Now that is limited to only ten years. Where a beneficiary who is disabled is able to stretch it over their lifetime. And distributions can be made from the IRA to the Special Needs Trust. So, this is an important planning thing that people should keep in mind.

As I mentioned before once you're doing your estate planning make sure your IRA beneficiary is the Special Needs Trust. Make sure your life insurance beneficiary is the Special Needs Trust.

So, that is the end of my presentation. I know that there's going to be an opportunity for you all to ask questions. So hopefully you'll get your questions answered. I'm always happy to answer questions too. So, I will stop my sharing.

**Steve Ruder:**

Thank you. I want to first of all start by thanking both Margaret and Anne for the workshop. You guys did a tremendous job. Margaret, I want to thank you for at the very end mentioning that CalABLE can be used to fund Special Needs Trust. Because that was something that was coming up a lot in the Q&A. So, with that I'm going to start with some questions that I highlighted from the Q&A as the presentation was going.

And one of the questions for Anne and CalABLE. Going to start with the CalABLE ones. And one of the things that came up initially was a lot of disabilities have obviously levels of severity or impairment or however you want to term that. And, for example with autism, there's three different levels within the medical model of autism. Do you have to have a certain level of disability in order to be eligible for establishing a CalABLE account?

**Anne Osborne:**

No, you do not. It's again, when did that disability occur? Did it occur prior to age 26? As long as it was a disability prior to age 26, they are eligible.

And we have heard stories of people that have been diagnosed with autism later in life. And so, the question comes up, are they eligible? And again, we know that autism is something that is -- occurs early on. In a child's life. But it may show up at different phases, at different times of somebody's life. So as long as again the age of onset is really the key and that is age 26

**Steve Ruder:**

So it's not the age of diagnosis. If you can establish that autism existed prior to the age of 26 then you are eligible for the account

**Anne Osborne:**

Exactly

**Steve Ruder:**

Anne, there was also a lot of confusion about how people actually withdraw funds from CalABLE. There were a lot of questions about some people saying there's not debit cards available. And also, there's a lot of questions regarding whether or not auto payments could be set up for bills using the CalABLE.

**Anne Osborne:**

So right now CalABLE is getting ready to start opening up their prepaid card. We had to do a temporary hold. We were in transition between vendors. But we are looking to probably have that functionality available probably in October. We're not sure which date. But that is something we are looking to deploy soon. We have heard a lot from our CalABLE account holders that they are anxiously awaiting this.

So, we are looking to have that again in October of 2022. I know this is being recorded. So, people will be looking at this down the road. So, 2022, anybody that is a CalABLE account holder or if you're on our ListServe, we will definitely be letting people know when it's available. We will be letting people know through our social media channels as well because we know it's a great need. So currently right now if you have your CalABLE account, the best way to do it is if you have a regular checking account is to just transfer those funds electronically.

And then you know keep those receipts and then that way you'll get access to your money a lot quicker than if you were to ask us to mail you a check. Any time we do issue a check there's a $5 fee. So, I would recommend that you just do those electronic funds. Another way people can actually deposit money into their account, and I didn't mention this, is if you are current ABLE account holder we have an E-gifting portal. Very similar to a crowd funding app where you can share that link with family and friends and they can make deposits into your account. The direct deposit is -- was that the last part of that question?

**Steve Ruder:**

I'm sorry -- the question is can bills be autopaid through the CalABLE account?

**Anne Osborne:**

I believe there is a function that they can work with our CalABLE call center. I would recommend them calling that 833-225-2253 number. And they are more familiar with that functionality than I am. I don't currently -- I'm not eligible for a CalABLE account. So, a lot of those technical issues I would encourage you to call our call center because they are experts at that.  And they can set those payments up and things like that

**Steve Ruder:**

And one thing I would want to emphasize that you mentioned earlier is that obviously things change. You know month to month with a program like CalABLE. And so, getting linked to CalABLE being on the ListServe getting those updates is something I would really recommend all families who are interested in this would do.

**Anne Osborne:**

Yes, like I did mention earlier Steve, we do have a monthly webinar series. And we're always looking for topics that people are interested in, and we get those topics from questions we see. So, we're always sending out those announcements three to four weeks before those webinars do occur. And that's how we decide what to do and it's really driven by the questions that we receive

**Steve Ruder:**

Thank you. So, there's a question about that if someone established a 529 college saving account for a child and then the child had a disability that would not allow them to attend college. Is there a way to automatic to roll those funds over into an ABLE account?

**Anne Osborne:**

Yes, they can certainly do that as long as it's a 529 college savings program. That actually happened to one of our ambassadors. His child -- he had started that savings plan and then his child did have a disability. And so, that's actually how he became a CalABLE account holder was he rolled over those funds.

And I will mention you know you can use 529 for college. And so, rolling them into a 529A CalABLE account is something you can do. You can also use it for siblings. You can roll the funds from a CalABLE account into another CalABLE account sibling if they're eligible you can roll funds into those as well. We have seen that. So that's something that families may want to consider.

**Steve Ruder:**

All right. Anne, we have more questions, but obviously we have limited time. I'm going to ask Margaret a question that came up, which is a family asked that they currently have a Special Needs Trust but it is not a stand alone. And whether or not that's something that should be changed?

**Margaret Fulton:**

Okay. A lot of people who have done their estate planning a number of years ago will have that. You just have to -- first of all, you always want to watch the trustee that you have named in your Special Needs Trust. Because that's the thing that would change over time. So, if you end up having to amend your living trust to change that, you might consider a stand alone. The embedded stand alone is okay.

You just have to know that your whole trust will go to the Social Security administration office workers when it is funded. And the flexibility and things like trust adviser. Special Needs Trust have sort of evolved over time. So, you might want to go back to your estate planning attorney or somebody else who knows about it and see whether you could have more features.

What I really would not want to see is that you have named like one or two people to be the trustees and they have no power to name additional trustees. You must have the flexibility to add trustees as the beneficiary gets older.

So, I would look at all those features. It can be embedded. It's fine. But you should make sure it has flexibility and it currently reflects your desires as trustee in the future

**Steve Ruder:**

Actually, I was initially had made a list of CalABLE questions and then was looking assuming that there would be more that were typed for you Margaret. Very few.

There was just one that was just added which was can you briefly explain the process of a property is partly left to an individual with disability and obviously partly left to someone else. What's the best way to handle this?

**Margaret Fulton:**

I can't give you a general answer to that. Probably you don't want ownership split between a trust and another individual. You would have to look at that situation individually and see whether it could be worked out

**Steve Ruder:**

I know Margaret we're oftentimes asked questions that are beyond

**Margaret Fulton:**

[indiscernible] [laughing]

**Steve Ruder:**

So, I'm going to jump back to -- not seeing a lot of questions specific to trusts. There were regarding CalABLE also some questions about -- a lot of questions about the breadth of what those funds could be spent on. Everything from things that you know about whether or not OT, PT could be used paying for those to my favorite: if CalABLE is being paid for food at a restaurant do you have to split off the alcohol?

**Anne Osborne:**

You know I saw that one Steve. And I did actually respond to that one. That's actually the first time I've heard that question. I was like, "boy, this is a new one." And the way I responded was like, if you go to the restaurant with your friend and you guys split the check, right? You know again we're not looking at those -- we're not asking for those receipts. But I would probably say I want my CalABLE, can you put $20 on this card and $10 on this card?

And you know that would be how I would probably answer that question like I said it's first time I've heard that question. And so, I was thinking, "well, how do those receipts usually come?" Usually, you just get the receipt from the restaurant.

Again, we don't ask for those receipts. But that would be my advice is that you would probably just do two forms of payment. Just to keep it clean.

**Steve Ruder:**

Thanks.

**Anne Osborne:**

And we do have a full webinar on qualified disability expenses. So, if somebody wants to go to the CalABLE YouTube channel they can actually look at that webinar. It's about an hour and a half. So, we do go into a lot of detail about qualified disability expenses.

There's even on the CalABLE.ca.gov website, there is even a tab that talks about qualified disability expenses. I know it's a hard topic because it's so broad. But just always I think the best rule here is just remember the definition is -- does it enhance -- does it improve your independence? Your quality of life? If you really use that definition as your guide, when you're going to use your CalABLE for qualified expense I would just remember that.

And then the other thing I would encourage people to do is keep their receipts. And you know a restaurant is pretty easy. But if you're going maybe to the grocery store and you're buying different items. There may be something that may or may not be considered. So just be mindful of how those receipts are coming you know and how those expenses are broken down on your receipts

**Steve Ruder:**

Thank you so much. So, we are at 3:30 mark, which is when the general session ends. We are going to continue for small group until 4:00. But I want to thank Anne Osborne from CalABLE and Margaret Fulton from Robinson Fulton and law for all of the work that you put into this workshop.

I do want to remind the audience that this session was videotaped. And it will be posted on the YouTube page and Anne mentioned that it will also be posted on the CalABLE website as well. And I will be sending as a matter of fact I did include in Q&A a link already to the Powerpoints in a PDF format. But I will be sending those out to all attendees as well.

So again, I want to thank everyone for attending. Thank you so much Anne and Margaret for your presentation. And really look forward to continued work. You know about the ABLE and Special Needs Trust accounts. So, thank you so much.

**[End of session]**

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**If funds aren't used for qualified expenses, the earnings portion of a non-qualified withdrawal is subject to federal income tax, possibly including the additional federal tax. Non-qualified withdrawals may also be subject to state and/or local income tax. For those beneficiaries subject to California income tax, the earnings portion of a non-qualified withdrawal is subject to California income tax and the additional California tax.**

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