

# CalABLE and Special Needs Trusts

The benefits of each and how the  
two can work together

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## What is a Special Needs Trust?

A Special Needs Trust (SNT) is a type of trust that provides funds to supplement public benefits without interfering with those benefits. Public benefits laws control the establishment and administration of a special needs trust.

- Preserves eligibility for SSI/Medi-Cal
- Appoints a lifetime management team for the beneficiary's finances and care
- Can provide for advocacy for the beneficiary with special needs so that the support system you have established will continue when you are no longer here



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## Who Needs a Special Needs Trust?



A person with a disability who depends on needs-based public benefits



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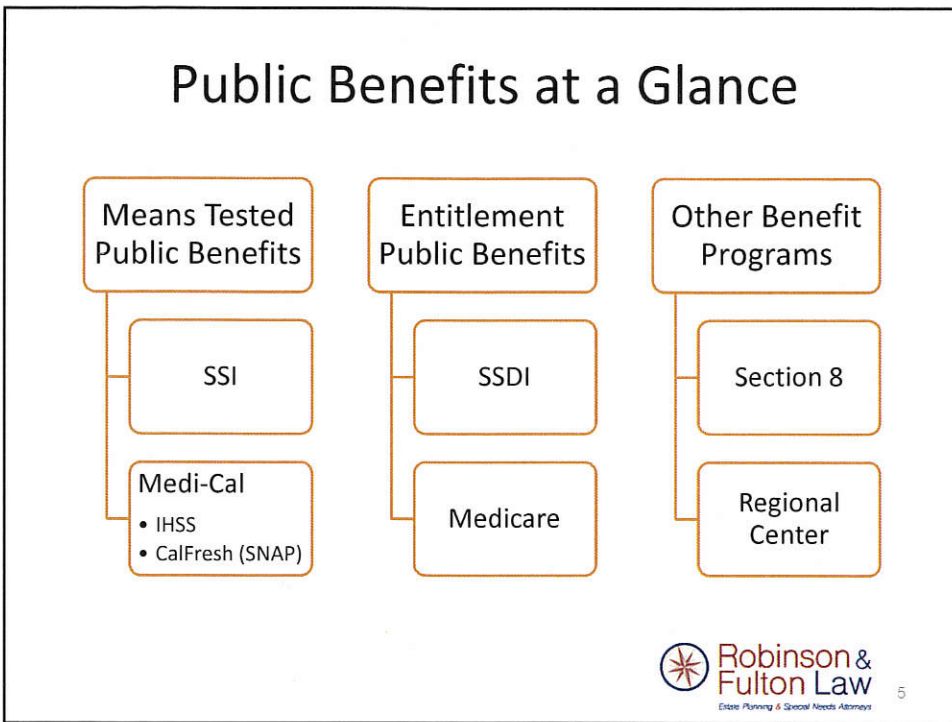
## Do All Persons with Disabilities Need a Special Needs Trust?

Only an individual who meets the definition of “disabled” for public benefit programs can be the beneficiary of an SNT

- Definition of “disabled”: Physical or mental impairment that will last 12 months or longer (or soon lead to death) that prevents the person from engaging in substantial gainful employment (work and earn \$1,350/month in 2022).
- Only individuals who need to remain eligible to receive needs based public benefits (i.e., SSI & Medi-Cal) need a special needs trust.



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## Needs Based Public Benefits

**SSI Eligibility Requirements:**

- Disabled
- Income Test
  - ✓ Must have low monthly income
- Resource Test
  - ✓ Having \$2,000 or more in assets will disqualify a single person from SSI.
  - ✓ Exemptions exist: one primary residence of any value, one vehicle of any value, irrevocable pre-paid funeral contract

**Medi-Cal Eligibility Requirements:**

- Effective July 1, 2022, \$130,000 asset limit for single person.
  - The asset test is phasing out. By 2024 there will be no asset test.
- Medi-Cal income test remains the same. If income threshold is reached, must pay share of cost.


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## What Does SSI Provide?

SSI provides a modest monthly cash grant for food and shelter to disabled, blind, or aged (65 or older) persons

- In 2022, the California SSI maximum payment for a single person is \$1,040.21 per month for an individual (\$841 federal maximum benefit, plus a supplement of \$199.21 from the state of California)



## What Can Medi-Cal Provide?

### Primary medical coverage:

Doctor visits, diagnostic testing, emergency services, surgery, hospitalization, prescription drugs, dental services, and optometry services

### Ongoing care and recovery:

In-home medical care services, personal care services, occupational and physical therapy, outpatient drug abuse services, nursing facility stays, intermediate care facilities for developmentally disabled individuals, and adult day health care

### Other medical-related costs:

Medical supplies, durable medical equipment, and transportation for doctor visits

### Waiver programs for home and community based services



## Different Types of Special Needs Trusts

	Source of Funds	Who Establishes	Distribution On Death
<b>Third Party SNT</b>	Anyone except beneficiary	Anyone except beneficiary	Grantor's wishes
<b>(d)(4)(A) SNT First Party SNT</b>	Disabled beneficiary's funds before age 65	Parent, grandparent, Guardian, Court, ALSO (since 12/2016) a beneficiary with capacity	Medi-Cal payback; then remainder beneficiaries
<b>(d)(4)(C) Pooled Trust</b>	Disabled beneficiary's funds (even after age 65)	Beneficiary, parent, grandparent, Guardian, Court	Non-profit Trustee <i>or</i> Medi-Cal payback; then remainder beneficiaries

## First Party Special Needs Trusts

- Special Needs Trusts are the only planning tool that allow injured persons to preserve the use of litigation proceeds in the future AND to preserve eligibility for needs based public benefits
- They are also used to hold an inheritance or other funds received by a person receiving needs based benefits



## Third Party Special Needs Trusts

If your child or other beneficiary receives needs based benefits, a third party SNT should be a part of your estate plan. The SNT should receive the inheritance from you or other family members, not the person with the disability.



## Other Arrangements - Not Recommended

- Outright inheritance – loss of SSI and Medi-Cal
- Left in non-qualifying trust – loss of SSI and Medi-Cal
- Disinheritance – no money available for child with special needs
- Leaving assets to brothers or sisters with request to take care of sibling
  - Subject to creditors
  - What if they die, who then has assets?
  - May not want to take care of brother/sister if have own family
  - Could be lost in divorce

Like all trusts, the Special Needs Trust has three parties:

- Grantor – person who funds the trust
- Trustee – person who manages the assets
- Beneficiary – person who receives the benefit of the assets



## Selecting an SNT Management Team

- Trustee
  - Individual or professional
- Trust Advisory Committee
  - Good check and balance on Trustee
- Trust Protector
  - Backup to Trust Advisory Committee
  - Allowed to modify SNT terms to keep current with changes in law



## What Can SNTs Pay For?

### Just about anything:

Clothing	Electronic devices
Cell phone, land lines	Maintenance of equipment and household
Internet	Vehicles and insurance on vehicles
Cable or satellite	Improvements and maintenance of vehicles
Hair or nail care	Medical expenses not covered Medi-Cal
Bedding	Other non-essential medical procedures (i.e., acupuncture or massage therapy)
Laundry	Periodic outings and vacations
Furniture	Pre-need funeral and burial expenses
Toys	Audio/video/computer equipment
Adaptive equipment	Items to enhance beneficiary's quality of life
Taxes	
Musical instruments	



## What Can't SNTs Pay For?

An SNT is designed to enhance the quality of life of the person with a disability

- To preserve SSI and Medi-Cal, SNT trustees should not give cash directly to beneficiary
- If an SNT pays for food, shelter or medical care already being provided for by SSI or Medi-Cal, it will reduce the SSI check or could eliminate it completely





## Comparing ABLE Account with 3<sup>rd</sup> Party SNT

Issues	ABLE Account	Third Party SNT
Who can use?	Only persons disabled before age 26	Any person with a disability
Who can fund?	Anyone, including person with a disability	Anyone, except person with a disability, usually funded by a will or trust
How many can person have?	One	Unlimited
Who can control?	Person with a disability and their legal guardian, conservator, or agent	Anyone except the person with a disability and their spouse
Who inherits on death of person with disability?	Under the CalABLE program, a beneficiary can be named	Person with a disability's heirs or whomever is named in document

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## Comparing ABLE Account with 3<sup>rd</sup> Party SNT

Issues	ABLE Account	Third Party SNT
How much can fund in a year?	\$16,000 (or annual gift exemption). If the beneficiary is employed, additional contributions of up to \$12,880 are allowed in California	Unlimited
Is there a cap on how much can be in account?	Yes, currently \$100,000 limitation for SSI recipients and up to State 529-plan limitations (\$529,000 in CA)	No
How is income taxed?	No income tax	Taxed as a non-grantor trust at highest marginal tax rate
What type of distributions can be made?	"Qualified disability expenses" as defined by government. Cash can be disbursed	No limitation, except for certain disbursements (cash) may reduce or eliminate SSI or Medi-Cal eligibility
Effect of paying for food or shelter	No penalty	Will reduce SSI because of ISM penalty

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## Planning Strategies using an ABLE account

- The ABLE account is very useful in keeping the beneficiary's account balance below \$2,000.
- Often used with a special needs trust. The ABLE account can be funded with distributions from the SNT.

The ABLE beneficiary can use a debit card linked to the ABLE account to make purchases without reduction of SSI.

Distributions for food and shelter can be made from the ABLE account without a reduction in SSI.



## Planning Strategy with SNTs Name the SNT as an IRA beneficiary

- SECURE Act, "Setting Every Community Up for Retirement Enhancement" Act – Passed Congress in Dec., 2020
- Removed the lifetime "stretch for most beneficiaries." Now, the IRA funds must be distributed to the beneficiary in ten years unless the beneficiary is an "eligible designated beneficiary" (EDB). EDBs include the surviving spouse, a minor child, and a disabled beneficiary.
- If the beneficiary is disabled or chronically ill, annual distributions can be made over the beneficiary's lifetime expectancy. Distributions can be made to the disabled individual's SNT.



# Questions????

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