

ESTATE PLANNING FOR INDIVIDUALS WITH DISABILITIES

Presented by

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ESTATE PLANNING GOALS

one

Maximize quality of life

two

Protect yourself

three

Maximize independence

four

Maximize public benefits


five

Avoid court system

WHICH PUBLIC BENEFITS DOES CHILD RECEIVE?

Income Stream


Health Insurance

Supplemental Security Income (SSI) 

Resource Limit: \$2000
Income limit: \$1,183/mo


Earned income decreases SSI 50¢/every \$1 of income; unearned income decreases SSI \$1/every \$1 of income

\$1
→

Medi-Cal (Medicaid) 

Resource Limit: None (as of 2024)
Income Limit: approx. \$1,732/mo


Includes earned and unearned income

Social Security Disability (SSDI)/CDB 

Resource Limit: \$2000
Income limit: \$1,470/mo

Only earned income interferes

2 years
→

Medicare 

Resource Limit: None
Income limit: None

Note: higher income → higher monthly adjustment amount

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SPECIAL NEEDS TRUSTS



WHAT IS A SPECIAL NEEDS TRUST?

- Irrevocable trust
- Holds assets for your benefit
- Someone else (not you) acts as Trustee
- DOES NOT interfere with your public benefits
- Like a safety net!

3 TYPES OF SPECIAL NEEDS TRUSTS

Type of SNT	Source of Funds	Who Establishes	Distribution on Death
First Party (d)(4)(A) SNT	Your funds before age 65	You, parent, grandparent, Guardian, Court	Medi-Cal payback; then remainder beneficiaries
(d)(4)(C) Pooled SNT	Your funds	You, parent, grandparent, Guardian, Court	Non-profit Trustee; or, Medi-Cal payback, then remainder beneficiaries
Third Party SNT	Anyone except your funds	Anyone except you	Grantor's wishes



WHO USUALLY ACTS AS TRUSTEE?

- Family member
- Friend
- Private Professional Fiduciary
- Bank
- Nonprofit
- Pooled Trust
- Combination

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ABLE ACCOUNTS



WHAT IS AN ABLE ACCOUNT AND WHY ABLE?

ABLE (Achieving a Better Life Experience)

Accounts are tax-advantaged savings accounts for you and your families.

- Save for disability-related expenses (with Medical payback requirement, but not in CA);
- Earned income grows tax-free and qualified withdrawals are tax-free; and
- Does not interfere with your public benefits (with limitations)
- Contribution limits of \$18,000 per year (as of 2024) from all sources.

ABLE ACCOUNT:
WHO IS ELIGIBLE?

You must have a “qualifying disability,” ***and***

Your disability must have manifested before
age 26 (up to age 46 in 2026)

ABLE ACCOUNT: LIMITATIONS

- To be used only for “qualified disability expenses”
- You can establish only one ABLÉ account
- You or an Authorized Legal Representative (ALR) can manage the account
- SSI suspended if total amount in account exceeds \$100,000, but you can continue to receive Medi-Cal

ABLE ACCOUNT: OTHER DETAILS

- Your 529 savings account can be rolled over into your ABLE account up to \$18,000/year (until 2026).
- If you are earning income from employment, you can contribute more than \$18,000 annual cap, up to the Federal Poverty Level, currently \$15,060 for a single person, if not participating in employer's retirement plan.
- California residents using CalABLE accounts won't have a Medi-Cal reimbursement claim upon their death; ABLE accounts established in other states (starting 1/23) WILL be subject to reimbursement claim

WHAT IS A QUALIFIED DISABILITY EXPENSE?

A Qualified Disability Expense is ANY expense that is incurred as a result of living with a disability and is intended to improve quality of life. Qualified expenses include, but are not limited to:

- Education
- Health and wellness
- Housing (should be spent in same month as withdrawn from ABLE account)
- Transportation
- Legal Fees
- Financial Management
- Employment training and support
- Assistive Technology
- Personal support services
- Oversight and monitoring
- Funeral and burial expenses

ABLE ACCOUNT vs. 1ST PARTY SNT

Issues	ABLE Account	1 st Party SNT
Who can use?	You, if your disability began before age 26 (increases to age 46 in 2026)	You, if you are disabled and under age 65
Who can fund?	Anyone, including you	You, conservator, guardian, agent, court
How many can you have?	One	Unlimited
Who can control?	You, guardian, Conservator, or agent	Anyone except you and your spouse
Medi-Cal Payback	No (if you're using CalABLE account)	Yes
Who can inherit on your death?	Your estate	Whomever is named in the document

ABLE ACCOUNT vs. 1ST PARTY SNT

Issues	ABLE Account	1 st Party SNT
How much can be funded in a year?	\$18,000 (or annual gift exemption)	Unlimited
Is funding gift tax-free?	Yes	No
Is there a cap on how much can be in an account?	Yes, currently \$100,000 limitation for SSI recipients and up to state 529 plan limits for Medicaid only recipients	No
How is income taxed?	No income tax	Taxed at your tax rate
What type of distributions can be made?	Only “qualified disability expenses”	For your primary benefit

SETTING UP A CalABLE ACCOUNT

CalABLE Website

- You can set up an account on the CalABLE website:

<https://www.calable.ca.gov/>

Required information:

- Your SSN;
- Authorized legal representative's SSN; and
- Bank account information.

Access to Funds

- Reloadable, prepaid Visa debit card is now available

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POWER OF ATTORNEY



DURABLE POWER OF ATTORNEY (“DPA”)

- You (the Principal) give someone the ability to sign financial documents
- Your Power of Attorney can:
 - Access your bank accounts, talk with public benefits programs, pay your bills, etc.
- Forms are available online, but are often incomplete.
- Some powers must be spelled out (i.e. gifting powers)

ISSUES WITH DPAs

- Principal can revoke the DPA
- Banks often don't accept forms
- Substitute decision-making – it is not empowering

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ADVANCE
HEALTH
CARE
DIRECTIVE



ADVANCE HEALTH
CARE DIRECTIVE
("AHCD")

- You name someone to advocate on your behalf if you are unconscious in the hospital.
- Access medical records
- Spells out your decisions:
 - “Keep me alive” or “let me go?”
 - Organ donations?
 - Burial/cremation/green burial?
- You can revoke it!

POLST & DNR FORMS

An Advance Health Care Directive is different from the POLST and DNR forms.

- POLST (“Physician Orders for Life-Sustaining Treatment”) is a medical order form signed by a doctor that outlines a patient’s preferences for end-of-life care.
- DNR (“Do not Resuscitate”) is part of the POLST form and instructs healthcare providers not to perform CPR if a patient's breathing or heart stops.



ABOUT COOKMAN LAW, PC

Palo Alto law firm serving all of
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3 attorneys, 10 support staff

We charge a flat fee for estate
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We do not assist with applications
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