



Planning for a Loved One With Special Needs

An educational seminar presented by:



MEMBER OF THE ACADEMY OF
**SPECIAL NEEDS
PLANNERS**



Disclaimer

The following presentation is meant for educational purposes only and not meant as a substitute for legal counseling

Why Plan?

Part 1: Creating an Effective Plan for Your Loved One



What Steps Should You Take Today?

Envision your Loved One's Future

Planning ahead makes all the difference

- Where and with whom will your loved one live?
- What type/level of care will be required?
- Will a conservator or guardian be necessary?
- Who else will be involved?
- What kind of lifestyle is desired?
- Consider any potential future challenges?

What Steps Should You Take Today?

Create a Memorandum of Intent

- Maps out goals/expectations
 - Details preferences, needs, wishes, both medical and personal
 - Lists key people in loved one's life
- Helps guide:
 - Family members
 - Trustees
 - Caregivers
 - Others

What Steps Should You Take Today?

Estimate Income and Expenses

- Monthly income
 - SSI, SSDI, Social Security, earned/unearned income
- Monthly living expenses
 - Housing, food, transportation, medical, recreation, etc.
 - Consider how any shortfall will be met

Income - Expenses = Shortfall



What Steps Should You Take Today?

Utilize a Third-Party SNT

- A Third Party Special Needs Trust is the best method for providing instructions on leaving inheritance to a loved one with special needs
 - Called a third party SNT because it is established with the assets of someone other than loved one with special needs

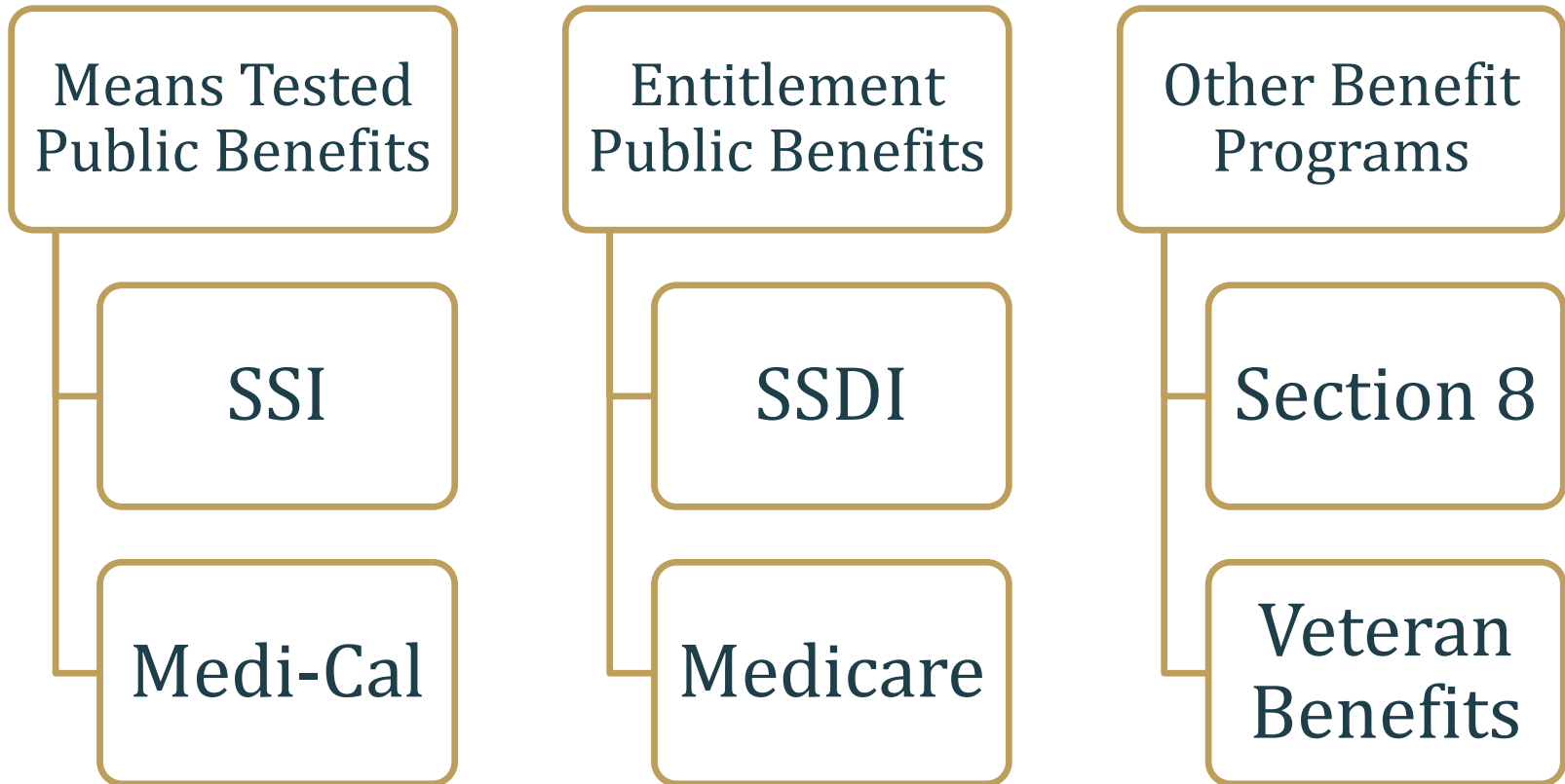
What Your Loved One With Special Needs Should Do

- If he or she has legal capacity, put in place the following documents:
 - Advance Health Care Directive
 - HIPAA
 - Financial Powers of Attorney
- Establish a First-Party SNT if he or she has assets

Part 2: Understanding Public Benefits



Public Benefits At a Glance



SSI – Monthly Payment

SSI is to pay for food and shelter

- In 2018, Federal Benefit Rate is \$771/month
 - Some States Supplement, e.g. California is \$160.72
- Amount may change depending on income, living arrangement or eligible couple

Supplemental Security Income (SSI)

- Person must meet two tests:
 - Medically disabled (physically or mentally) or elderly (65+)
 - Social Security's Income and Resource limits

SSI Resource Test

“Countable Resource” limits for SSI

- \$2,000 for an eligible individual
- \$3,000 for an eligible couple

Not all resources are counted, some are exempt

- Home of any value
- Automobile of any value
- Furniture, clothing, and personal care items



SSI Income Test

- Income is divided into FOUR TYPES:
 - Earned Income (e.g., wages)
 - Unearned Income (e.g., cash gifts or inheritances)
 - In-Kind Income (e.g., gifts of food or shelter)
 - Deemed Income (somebody else's income)

NOTE: Definition of “Income” for SSI purposes is different than definition of “Income” for IRS purposes

SSI Income Types

Earned Income

- Wages, self employment earnings, etc.

The first \$20 of any income is exempt plus the first \$65 of earned income

Earned income reduces the SSI monthly benefit \$1 for every \$2 earned

- Example: If \$585 was earned in a month, the SSI check would be reduced by \$250
 - $(\$585 - \$85 \text{ exemptions} - 250 \text{ (50\% of earned income)}) = \250

SSI Income Types

Unearned Income

- Gifts, inheritances, dividends, interest, support, lawsuit proceeds, SSDI, etc.
- Unearned Income reduces SSI benefits \$1 for \$1 after the \$20 exemption
 - Example: Parent gives child SSI recipient \$585 cash gift. Child will lose \$565 of his/her monthly SSI check

SSI Income Types

In-Kind Support & Maintenance (Unearned Income)

- Actual receipt of food or shelter or income used to get these
- Reduces benefits \$1 for \$1 up to 1/3 of the Federal Benefit rate

Deemed Income (Unearned Income)

- Someone else's income (parent, spouse)
- Reduces benefits \$1 for \$1 after the first \$20.00

Social Security (SS) / Social Security Disability Insurance (SSDI)

- Social Security for individuals
 - Disabled before age 22
 - With parents eligibility based on their work record who are retired, disabled or deceased
- SSDI for individuals with work record
- Social Security benefits may reduce or eliminate SSI benefits

Medi-Cal and Medicare

- Medi-Cal
 - Automatically available with SSI
 - Must apply separately with SSDI or SS
 - Covers long-term care and in-home nursing care
 - Income and resource limits
- Medicare
 - Available with SSDI after two years

Part 3: Special Needs Trust



My Child Does Not Need/Qualify for Benefits?

Do I still need a Special Needs Trust?

- Lifetime protection trust
- System of checks and balances
- Protection against predators
- Assures advocacy

Third Party Special Needs Trust

- A document setting forth legally binding instructions concerning your loved one with special needs
 - Preserves eligibility for SSI/Medi-Cal
 - Appoints a lifetime management team for loved one's care
 - Directs personal care and advocacy for loved one with special needs

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 loved one with special needs

Other Arrangements – Not Recommended

- Leaving assets to brothers or sisters with request to take care of sibling
 - Subject to creditors
 - Issue with assets if brother/sister dies
 - May not want to take care of sibling if they have their own family
 - Could be lost in divorce

Drafting a Special Needs Trust

- Revocable versus Non Revocable
- “Living” SNT lets other family members and friends contribute
- Distribution Standard

Selecting a SNT Management Team

- Trustee
 - Individual or professional
- Trust Advisory Committee
 - Good checks and balances on Trustee
- Trust Protector
 - Backup to Trust Advisory Committee
 - Allowed to modify SNT terms to stay current with changes in law

Trustee Responsibilities

- Invest/manage assets
- Distribute funds
- Keep books
- File tax returns
- Hire advocates and care managers, etc., as needed
- Personal liability

ABLE ACCOUNT 2019

Another Tool in The Toolbox for Special Needs Planning



Achieving Better Life Experience (ABLE)

- California opened “CalABLE Savings Plan” to the public in December 2018
- Must be disabled before age 26
- Streamlined disability certification
- Can receive \$15,000 annually (in the aggregate of all donors) up to the state’s contribution cap for 529 plan
- Allows \$100,000 to be accumulated without impacting SSI
- Allows working individual to contribute up to an additional \$12,140 annually
- Works well in conjunction with a special needs trust

Achieving Better Life Experience (ABLE)

How do ABLE account assets impact government benefits?

Supplemental Security Income (SSI)

- First \$100,000 in account disregarded
- If over \$100,000, eligibility will be suspended until eligibility goes below total resources of \$102,000.
- Contributions to account are not income or resources

Medi-Cal

- Medi-Cal eligibility is only suspended if it is over the state maximum for 529 B plan
- CalAble does not have Medi-Cal reimbursement



Achieving Better Life Experience (ABLE)

How distributions from an ABLE account impact benefits?

- Distributions from ABLE account for QDE are not income
 - Housing expenses paid in the month of distribution will not be income
- Distributions of a QDE for non-housing expense will not be a resource and can be retained indefinitely if funds are not spent and identifiable
 - Example: school tuition, vehicle
- Distributions for a non-QDE will be counted as a resource if not spent in the month of receipt



Achieving Better Life Experience (ABLE)

Scenario

- Cole is 25 and has been disabled since birth and receives \$931.72 per month in SSI benefits
- He would like to move into his own house which would cost \$1000 per month and his parents would like to help him
- Option 1- Pay Cole the \$1000
RESULT: Loss of SSI benefits
- Option 2- Pay \$1000 to the landlord directly
RESULT: Reduction of \$277.00 of SSI Benefit
- Option 3 – Pay \$1000 to the ABLE account and the funds in the ABLE account are used to pay the landlord
RESULT: No Reduction in SSI
THE BEST OPTION!!!!



Get Started Today

- Make plans for the future
- Understand your loved one's public benefits
- Start identifying those persons who will advocate and care for your loved one
- Make the Special Needs Trust the key part of your estate plan
- Include the ABLE Act in your planning
- Talk to an attorney who specializes in this complicated area of law

HOMEWORK:

Create a Memorandum of Intent

Thank You



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