

# CalABLE and Special Needs Trusts

The benefits of each and how the  
two can work together

Presented By

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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 the parents or others have established will continue when they are no longer here

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

# Who Needs a Special Needs Trust?



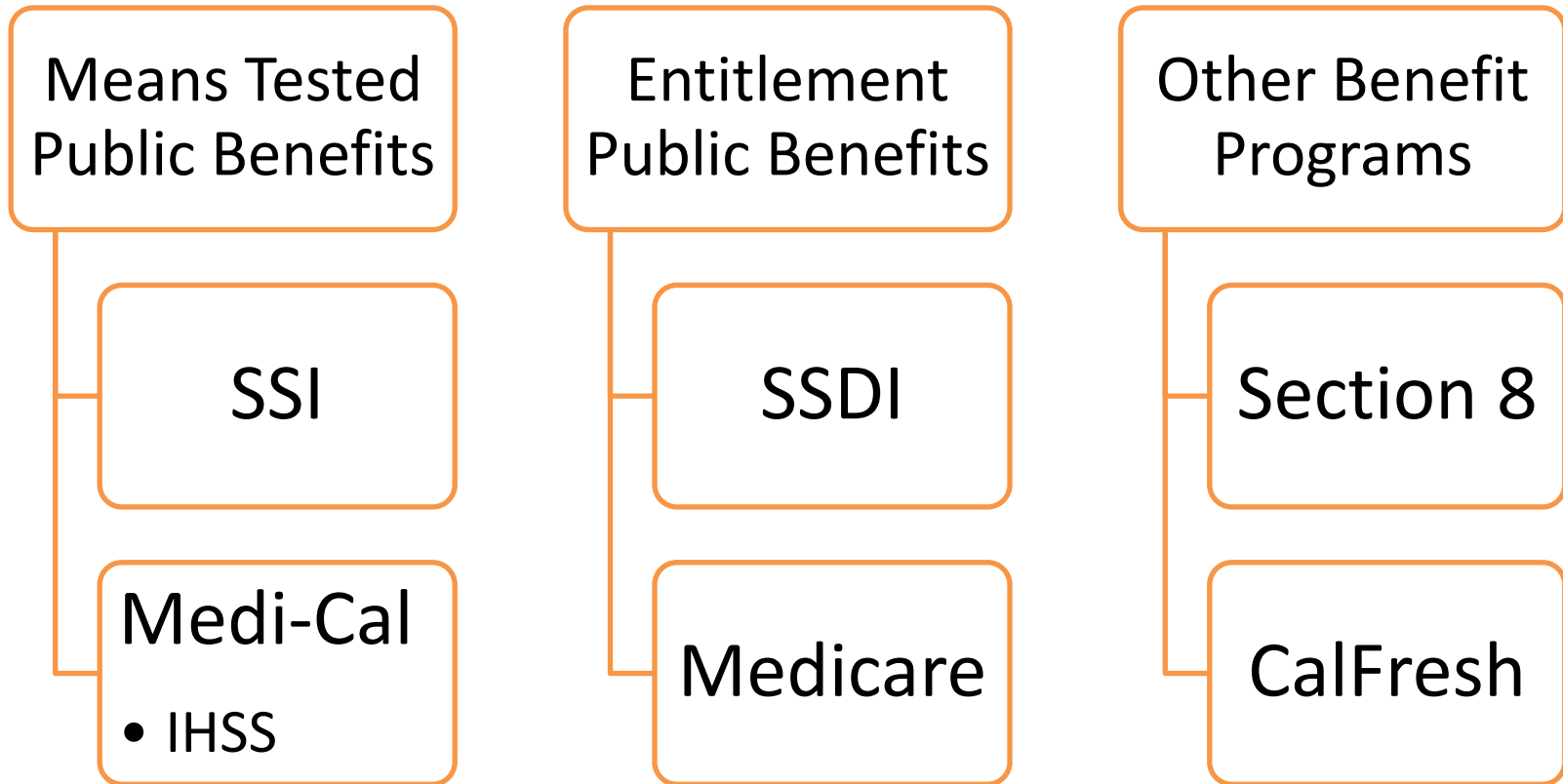
A person with a disability who depends on needs-based public benefits

# 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 \$1,180/month)
- Only individuals who need to remain eligible to receive needs based public benefits (i.e., SSI & Medi-Cal) need a special needs trust.

# Public Benefits at a Glance



# 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, an 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

# 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

Food

Cell phone, land lines

Internet

Cable or satellite

Hair or nail care

Bedding

Laundry

Furniture

Toys

Adaptive equipment

Taxes

Musical instruments

Electronic devices

Maintenance of equipment and household

Vehicles and insurance on vehicles

Improvements and maintenance of vehicles

Medical expenses not covered Medi-Cal

Other non-essential medical procedures

(i.e., acupuncture or massage therapy)

Periodic outings and vacations

Pre-need funeral and burial expenses

Audio/video/computer equipment

Items to enhance beneficiary's quality of life

# 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. Money received by an SSI recipient directly (not earned) will reduce the beneficiary's SSI check dollar for dollar.
- If an SNT pays for medical care already being provided for by SSI or Medi-Cal, or shelter under certain circumstances, it could 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. In 2026, age limit will adjust to 46.	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?	ABLE eligible sibling or probate heirs	Person with a disability's heirs or whomever is named in document

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

Issues	ABLE Account	Third Party SNT
How much can fund in a year?	\$18,000 (or annual gift exemption which will be \$19,000 in 2026). If the beneficiary is employed, additional contributions are allowed	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 on income earned in an ABLE account.	Income earned by investment held by an SNT is taxed.
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
Possible effect of paying for shelter	No penalty	Possible reduction of SSI because of ISM penalty See new SSA rules 9/30 /24

# Planning Strategies - Use ABLE funds for distributions which would otherwise reduce SSI

- **Problem:** Money received by the SSI recipient directly (not earned) will be considered “unearned income” and reduce the beneficiary’s SSI check dollar for dollar.
- **Solution:** Funds can be contributed to the ABLE account by an individual or the trustee of a special needs trust. The ABLE beneficiary can then receive cash or pay for shelter without reducing the beneficiary’s SSI, so long as the distribution is for a Qualified Disability Expense.
- New SSA Rules effective September 30, 2024.
  - Food provided by the SNT trustee or anyone else is not included in the In-kind support and Maintenance (ISM) calculations. The new rules also provide that, under certain circumstances, rent paid by the SNT or others will not reduce the SSI check.



# How can you find a special needs attorney?

- The Academy of Special Needs Planners
  - <https://specialneedsanswers.com/about-us>
    - Find a Planner Tab. You can search by state and city to find a local special needs attorney.

# Questions????

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