

What Families Need to Know About Planning for a Loved One With Special Needs



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Client Education | Collaboration | Compassion



Disclaimer

The following presentation is meant for education only and not meant as a substitute for legal counseling.

Why Plan?

Planning for a loved one with special needs is about enhancing that person's quality of life to the maximum extent possible and protecting them only as much as necessary to not limit or restrict their potential.

Benefits of Planning:

1. Provide Financial Security
2. Leverage Means Tested Public Benefits
3. Select Proper Team to Provide Lifetime Management
4. Plan for Appropriate Housing
5. Provide Ongoing System for Advocacy
6. Plan for Caregiving Needs
7. Coordinate Entire Extended Family's Planning
8. Protect Beneficiary from Predators
9. Preserve Assets for other Heirs

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:

- Time to think
- 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 potential future challenges?
- Build layers
- Understand process and purpose

What Steps Should You Take Today?

Create a Memorandum of Intent

Lays out goals/expectations:

- Details preferences, needs, wishes, both medical and personal
- Lists key people in loved one's life

Helps guide:

- Family members
- Trustee
- Caregivers
- Others

Possibly the MOST Important Tool in
Special Needs Planning

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

Use Resources or Financial Advisors

Special Needs Expense Information

Item	Beginning		Amount		Lasting	
	Today	At Age	Monthly	Annual	Lifetime	Until Age
<u>Housing:</u>						
Mortgage/ Property Taxes						
Rent Expense						
Home/Condo Maintenance Fees/Security System						
Utilities (fuel/electricity/gas)						
Telephone/Cell Phone						
Cable/Satellite/Internet						
Misc. Household (lawn/etc.)						
<u>Child Care:</u>						
<u>Special Care Needs:</u>						
Live-in aid or ADL						
Assistance & Respite						
Advocacy/Social Services						

Use Financial Advisors' Resources

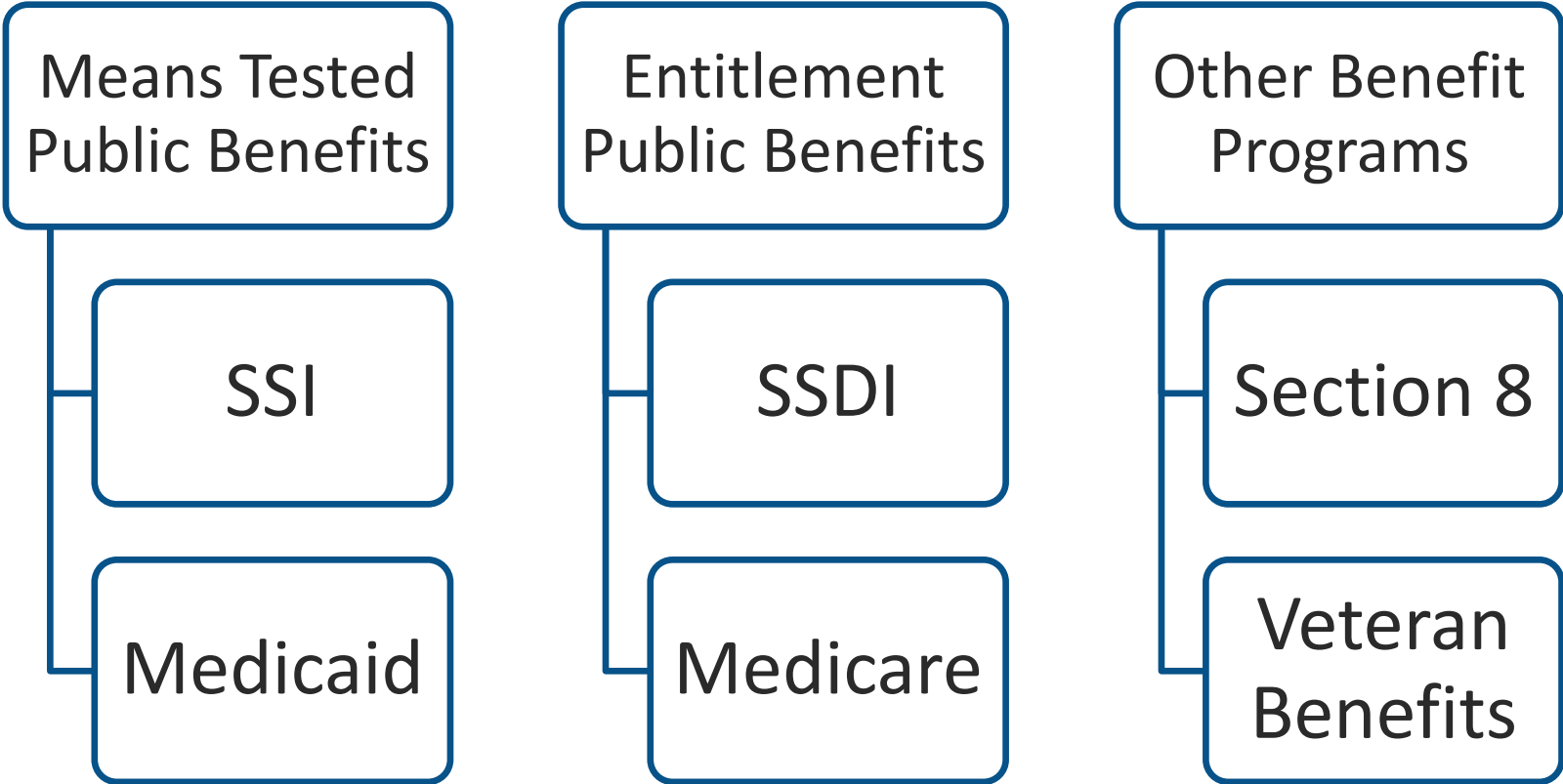
Item	Beginning		Amount		Lasting	
	Today	At Age	Monthly	Annual	Lifetime	Until Age
<u>Transportation:</u>						
Automobile/Van						
Fuel/maintenance of auto/van						
Adaptive Equipment						
<u>Nutrition/Food/Beverage:</u>						
Food/Beverages						
Special Diet						
Vitamins/Oral Medications						
Feeding Devices						
Eternal/Nutrition/Misc.						
<u>Clothing:</u>						
Special Clothing						
Cleaning Laundry						
<u>Furnishings:</u>						
Medical Equipment						
Wheelchair/Ramps						

Use Financial Advisors' Resources

Part 2: Understanding Public/Government Benefits



Public Benefits At a Glance



Supplemental Security Income (SSI) – What Do You Get?

SSI is to pay for **food** and **shelter**

- In 2021, Federal Benefit Rate is \$794/month
- Some States Supplement, e.g. California is \$160.72
- Amount may vary depending on living arrangement or eligible couple

Supplemental Security Income (SSI) Eligibility

- Person Must Meet Two Tests:
 - Medically Disabled (physically or mentally) OR elderly (65+), AND
 - Assets and Income Below Threshold Amount
 - Resource Test (measured only one time each month); and
 - Income Test (total any income received any time of the month)

Disability Defined

- “Disability” for an adult is defined as the inability to engage in any “substantial gainful activity” (SGA) due to any medically determinable physical or mental impairment, or combination of impairments, that has lasted or can be expected to last for a continuous period of at least 12 months, or result in death
- “Disability” for a minor is defined as a medically determinable physical or mental impairment or combination of impairments that causes marked and severe functional limitations, and that can be expected to cause death or that has lasted or can be expected to last for a continuous period of not less than 12 months

SSI Resource Test

“Countable resource” limits for SSI are:

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

Not all resources are counted, some are exempt:

- Primary residence of any value
- Automobile of any value
- Furniture, clothing, and personal care items
- Burial plots, certain types of life insurance contracts, and miscellaneous other assets

SSI Income Test

4 Types of Income:

- Earned, Unearned, In-Kind, and Deemed

“Countable” Income is subtracted from SSI Federal benefit rate to calculate the applicant’s SSI Federal benefit amount

- Not all income is counted

Types of SSI Income

Unearned Income

Includes gifts, payments from annuities, and pensions, alimony and support payments, dividends, interest, rents, awards and payments from other benefits programs.

Reduces benefits dollar-for-dollar after the first \$20.00

Earned Income

Consists of wages, royalties, net earnings from self employment, and any honoraria received for services rendered.

Reduces benefits one dollar for every two dollars earned after the first \$65 earned monthly.

Types of SSI Income

In-Kind Support & Maintenance

Actual receipt of food, clothing, or shelter, or something that can be used to get one of these.

Reduces benefits dollar for dollar up to a maximum of 1/3 the benefit.

Deemed Income

Someone else's income. (Same household; duty to support)

Reduces benefits dollar-for-dollar after the first \$20.00

Social Security Disability Insurance (SSDI) Eligibility

Two tests to qualify:

1. Disability – Same definition as for SSI
2. Sufficient work history

No resource test for SSDI

- SSDI benefit based on past wages
- After 24 months = Medicare
- Can receive SSDI and SSI if wages were low

Childhood Disability Beneficiary (CDB) (sometimes called Disabled Adult Child (DAC))

- Social Security benefit for individuals:
 - Disabled before age 22; and
 - With parents eligible based on their work record who are retired, disabled or deceased
 - 50% of parent's RSDI while parent is living
 - 75% of parent's RSDI after parent's death
- CDB/DAC Social Security benefits may reduce or eliminate SSI benefits
- No resource test
- Medicare after 24 months

Medicaid and Medicare

Medicaid:

- Covers “medically necessary” services, equipment, hospitalization, prescription meds
- Preventative care
- Covers long-term care and in-home nursing care

Medicare:

- Medical coverage, including doctors, hospital, prescription meds

Medicaid and Medicare

Medicaid

- Automatically available with SSI
- Must Apply Separately with SSDI or SS
- Expanded Medicaid if income below 138% FPL

Medicare

- Available with SSDI and CDB/DAC after 24 months

Section 8

Housing is one the greatest concerns that persons with disabilities and their families have for the future

Housing

Qualifying for Section 8

- Income limits
 - www.huduser.org
- Asset Test
- Transfer for less than fair market value
- Applying for Vouchers
 - Waiting lists
 - First come vs. Lottery
 - May take years to get



Part 3: Special Needs Trusts (sometimes known as Supplemental Needs Trusts)



Types of Special Needs Trusts

	Source of Funds	Who Establishes	Distribution Upon Death
Third Party	Anyone except beneficiary	Anyone except beneficiary	Remainder beneficiaries
First Party (d)(4)(A)	Disabled beneficiary's funds before age 65	Parent, grandparent, Guardian, Court, <i>or</i> the disabled beneficiary	Medicaid payback; then remainder beneficiaries
First Party (d)(4)(C) Pooled Trust	Disabled beneficiary's funds	Parent, grandparent, Guardian, Court, <i>or</i> the disabled beneficiary	Non-profit Trustee; <i>or</i> , Medicaid payback; then remainder beneficiaries

Utilizing a Third-Party Special/Supplemental Needs Trust

- A Third-Party Special Needs Trust is the best method for providing a structured inheritance to a loved one while also protecting eligibility for government benefits
- Called a Third-Party SNT because it is established with the assets of someone other than the loved one with special needs

Other Arrangements - Not Recommended

- Outright inheritance – loss of SSI and Medicaid
- Left in non-qualifying trust – loss of SSI and Medicaid
- Disinheritance – no money available for loved one with special needs
- Left to other person with request to take care of intended beneficiary
 - Subject to that other person's creditors
 - What if that other person dies?
 - Could be lost in divorce

Third-Party Special Needs Trusts

Third-party trust main requirements:

- Beneficiary (or spouse) did not create the trust;
- Trust does not hold any of the Beneficiary's (or spouse's) own money;
- Beneficiary is not the Trustee; and
- Trustee has discretion to make or withhold distributions.

Third-Party Special Needs Trusts

Most families prefer third-party trusts:

- No payback requirements
 - Grantor can leave any remaining funds to whomever he or she wants
- Can be revocable during life of grantor
- More drafting flexibility so long as correct distribution standard is used

Choosing The Trustee

- Family vs. Professional vs. Attorney
 - Complexity-SSI rules, tax reporting, investments,
 - Amount under management
 - Court oversight - bond?
 - Family relationship
 - Fees
 - Conflict of interest
 - Knowledge and experience
 - Ability vs. willingness

Using Trust Advisory Committee and Trust Protector

Consider Using:

- **Trust Advisory Committee**
 - Name family/friends to make sure Trustee doing job
 - Flexibility
- **Trust Protector**
 - Provide authority to make modifications if change in law or situation
 - Remove and replace Trustees
 - Review accounting
 - Flexibility

Contemporary Structure of Special Needs Trust Plan



Trustee Duties



Advocacy

- Best interest
- Understand public benefits
- Promotes independence and quality of life

Accountability

- Accurate records
- Keeps beneficiary informed
- Complies with statutory duties

Financial

- Invests appropriately
- Understands taxes
- Hires professionals

What Can a Third-Party SNT Pay For?

How does the expenditure affect beneficiary's government benefits?

Is the expenditure appropriate for the beneficiary and consistent with trust policies?

Is the expenditure at fair market value and otherwise reasonable?

How Much and Which Assets To Fund?

Most People Fall Into Two Groups:

1. Treat All Beneficiaries Equally
2. Fund Loved One with Special Needs with More Because Unable to Work
 - Life Insurance is good funding tool
 - Must use special planning for retirement assets
 - Find good financial planner
 - Utilize financial advisory services

Utilizing First-Party Special Needs Trusts

A First-Party SNT is the only planning tool that allows an individual who has assets to preserve those assets while also protecting their eligibility for needs-based public benefits

Two types of First-Party SNTs:

- (d)(4)(A) SNT (a/k/a Litigation or Payback SNT)
- (d)(4)(C) SNT (a/k/a Pooled Trust)

First-Party Special Needs Trusts

When First-Party SNTs are commonly used:

- Personal Injury Award
- Outright Inheritance or Gift
- Adult Recently Disabled

Implement as Part of Fundamental Special Needs Plan – Even if Not Currently Needed

Part 4:

Decision Making and Capacity



Planning for Incapacity

- If someone has legal capacity:
 - Sign Advance Health Care Directives and Powers of Attorney
- If someone lacks legal capacity, consider court-appointed guardianship/conservatorship:
 - When child without mental capacity becomes an adult, and parents want to maintain legal responsibility
- Supported decision maker/supported decision making – the future and evolution of Special Needs Law

Guardianship/Conservatorship

- At age 18, an individual is presumed to have legal capacity
- If someone lacks actual capacity to manage personal or financial affairs, a court will appoint a guardian or conservator to take control over that person's affairs (this must be sought in court)

Guardianship/Conservatorship

There are two general types of Guardianship/Conservatorship:

- Of the Person
 - For the care, custody, control, and education of the person; and
- Of the Estate
 - For the management of the finances and legal affairs of the person

Part 5: Making Decisions About the Future



Recommendations:

- Meet with me for a no-cost consultation
- Complete an estate planning questionnaire
- Bring your current estate planning documents for a complete review
- Consider whether you have an advisory team, including a financial advisor and CPA
- Prepare any questions or concerns you may have for discussion
- Take the time to think through your goals

Planning Steps

- Establish own Estate Plan
- Establish Special Needs Trust
- Create Memorandum of Intent
- Calculate future financial need
 - Consider funding alternatives, e.g. life insurance
- Understand your loved one's public benefits – and ensure trustees are also educated
- Start naming those persons who will advocate and care for your loved one

Thank You!



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