SPECIAL NEEDS TRUSTS

AND

ABLE ACCOUNTS

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Parent of child with special needs

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SPECIAL NEEDS PLANNING GOALS

one	Maximize quality of life
two	Protect the child
three	Maximize independence
four	Maximize public benefits
five	Name "surrogate parents"
six	Avoid court system

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PUBLIC BENEFITS

WHICH PUBLIC BENEFITS DOES CHILD RECEIVE?

Income Stream

Health Insurance

Supplemental Security Income (SSI)

Monthly Income limit: $1,971/mo
Resource Limit: $2000 (per person)
Max. Monthly Payment: $1,183

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

Monthly Income Limit: $1,550/mo
Resource Limit: $2000 (per person)

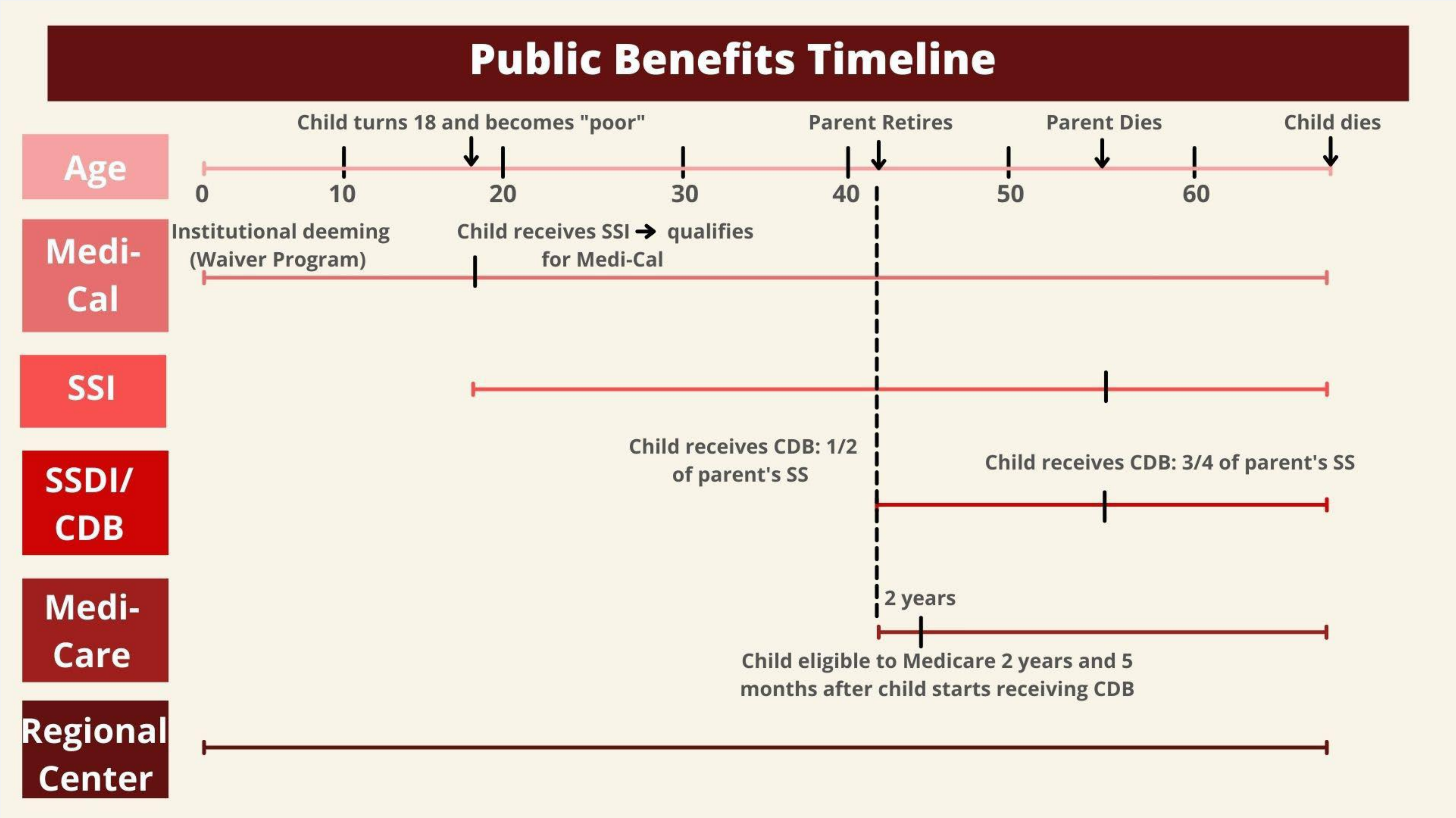
Only *earned* income interferes

2 years →

Medicare

Resource Limit: None
Income limit: None

Note: higher income → higher monthly adjustment amount


Public Benefits Timeline
Age
0
10
20
30
40
50
60
Child turns 18 and becomes "poor"
Parent Retires
Parent Dies
Child dies
Medi-Cal
Institutional deeming (Waiver Program)
Child receives SSI → qualifies for Medi-Cal
SSI
SSDI/ CDB
Child receives CDB: 1/2 of parent's SS
Child receives CDB: 3/4 of parent's SS
Medi-Care
2 years
Child eligible to Medicare 2 years and 5 months after child starts receiving CDB
Regional Center

2024 SUPPLEMENTAL SECURITY INCOME (SSI) UPDATES

Effective: 9/30/2024

IN-KIND SUPPORT & MAINTENANCE	• Food will not be counted as an ISM deduction • Rental subsidy reduced - now $334/month, not Fair Market Value
UPDATED DEFINITION OF "PUBLIC ASSISTANCE HOUSEHOLD"	**Expanded Definition:** One SSI applicant or recipient, and at least one other household member who receive one or more means-tested public income-maintenance (PIM) payments
OVERPAYMENT RECOVERY	**Old Rule:** If an overpayment occurred, the SSA would withhold **100%** of the SSI recipient's check until the overpaid amount was fully recovered. **New Rule:** The SSA will now only take 10% of the SSI recipient's check, and not charge interest on the amount owed.

2025 MEDI-CAL SHARE OF COST REFORM

Medi-Cal's maintenance need income level will increase to 138% of the Federal Poverty Level (FPL).

Effective 1/1/2025

Current Status: Reform was not included in the 2024-2025 proposed state budget; final implementation still uncertain

MAINTENANCE NEED INCOME LEVEL ("MNIL")	The MNIL is the budget allocated for an individual to pay for basic needs and is not based on their actual expenses. **The MNIL has remained at $600 for an individual since 1989!**
NEW MNIL	The new MNIL increased to **$1,732** (for 2024 – to be adjusted in January 2025).
SOC CALCULATION	Based on income above the MNIL minus applicable deductions

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SPECIAL NEEDS TRUSTS

WHAT IS A SPECIAL NEEDS TRUST?

- Irrevocable trust
- Holds assets for disabled person's benefit
- DOES NOT interfere with public benefits
- Like a safety net!

WHAT CAN A SNT PAY FOR?

Just about everything!

“ **‘Special needs’** then encompasses the very broad range of everything else a human being needs in order to live, thrive, and realize his or her potential in life.”

- *McGee vs. State of Department of Health Care Services (2023)*

Third Party SNT

First Party SNT

WHICH TYPE OF SNT TO ESTABLISH?

3 TYPES OF SPECIAL NEEDS TRUSTS

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

CHOICE OF TRUSTEE

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

OVERSIGHT FOR SNTS?

- Typically no court involvement
- Trust Protector
- Co-Trustees
- Advisory Committee

MEMO OF INTENT

The memorandum of intent is a separate document from the special needs trust.

- Offers guidance for successor trustees.
- Lists personal, medical, and financial preferences
  - Hobbies, routines, support team, housing preferences, favorite activities, etc.
- Reduces stress for family members during transition

STANDALONE VS. TESTAMENTARY

Standalone Special Needs Trust

- Can accept gifts during settlors' lifetimes
- Easier for SSA and DHCS to review

OR

Revocable Trust

Article 6 Testamentary Special Needs Trust

- Easier to draft
- Useful if SNT may not be funded

Cash Accounts

Investment Accounts

Real Estate

Inheritances and other gifts

Settlements

Retirement Accounts

Life Insurance

FUNDING SPECIAL NEEDS TRUSTS

What types of assets can a special needs trust hold?

DYNASTY TRUST

- For neurotypical children, or for children receiving SSDI and/or Medicare only
- Beneficiary OR someone else can act as trustee
- Irrevocable, Non-Grantor Trust
- Protection from spouses, creditors
- Estate tax savings to next generation

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ABLE ACCOUNTS

WHAT IS AN ABLE ACCOUNT AND WHY USE ONE?

ABLE (Achieving a Better Life Experience)

Accounts are tax-advantaged savings accounts for individuals with disabilities and their families.

- Save for disability-related expenses (no Medi-Cal payback requirement when using CalABLE account)
- Earned income grows tax-free and qualified withdrawals are tax-free
- Does not interfere with public benefits (with limitations)

ABLE ACCOUNT RULES

- To be used only for "qualified disability expenses"
- Eligible individuals can open the account for themselves, or an authorized individual (parent, legal guardian/conservator or power of attorney) can open an account on their behalf.
- Beneficiary or Authorized Legal Representative (ALR) can manage the account
- Anyone can make contributions directly to an ABLE account
- Only one ABLE account can be established per disabled individual

ABLE ACCOUNT & PUBLIC BENEFITS

- SSI suspended if total amount in account exceeds $100,000, but can continue to receive Medi-Cal
- 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

WHO IS ELIGIBLE?

People with disabilities which were present before **age 26…and**

Are entitled to SSI or SSDI because of their disability	**OR**	Have a written diagnosis from a physician indicating a medically determinable physical or mental impairment which results in marked and severe functional limitations that can be expected to last for at least a year or can cause death	**OR**	Are classified as blind, as defined in the Social Security Act	**OR**	Have a disability that is included on the Social Security Administration's List of Compassionate Allowances Conditions

Note: An individual does not have to prove eligibility but should have a record of a doctor's signed diagnosis, a benefits verification letter from the Social Security Administration or other relevant documentation for account verification, as needed.

ABLEnow

PHYSICIAN DIAGNOSIS FORM

Patient Name

Home Address

City, State and Zip Code

Date of Birth

Patient is applying to open a tax-advantaged ABLEnow Account. To establish eligibility to open and maintain an ABLEnow Account, an individual must either be receiving Social Security Income (SSI) or Social Security Disability Income (SSDI) OR self-certify that they have a qualifying disability AND have a written diagnosis from a qualified physician. ABLEnow provides this form for applicants to provide to their physician to obtain the required written diagnosis.

Provider: Please complete this form and provide it to your patient for their records.*

1. The attached medical diagnosis of the patient's impairment or impairments is based on my observation, testing and treatment of the patient.
2. The onset of this condition occurred before patient's twenty-sixth (26) birthday.
3. I am a medical doctor (MD) or doctor of osteopathy (DO), licensed to practice in the state in which I performed this diagnosis.

Provider Name (please print)

Provider Title

Provider Signature

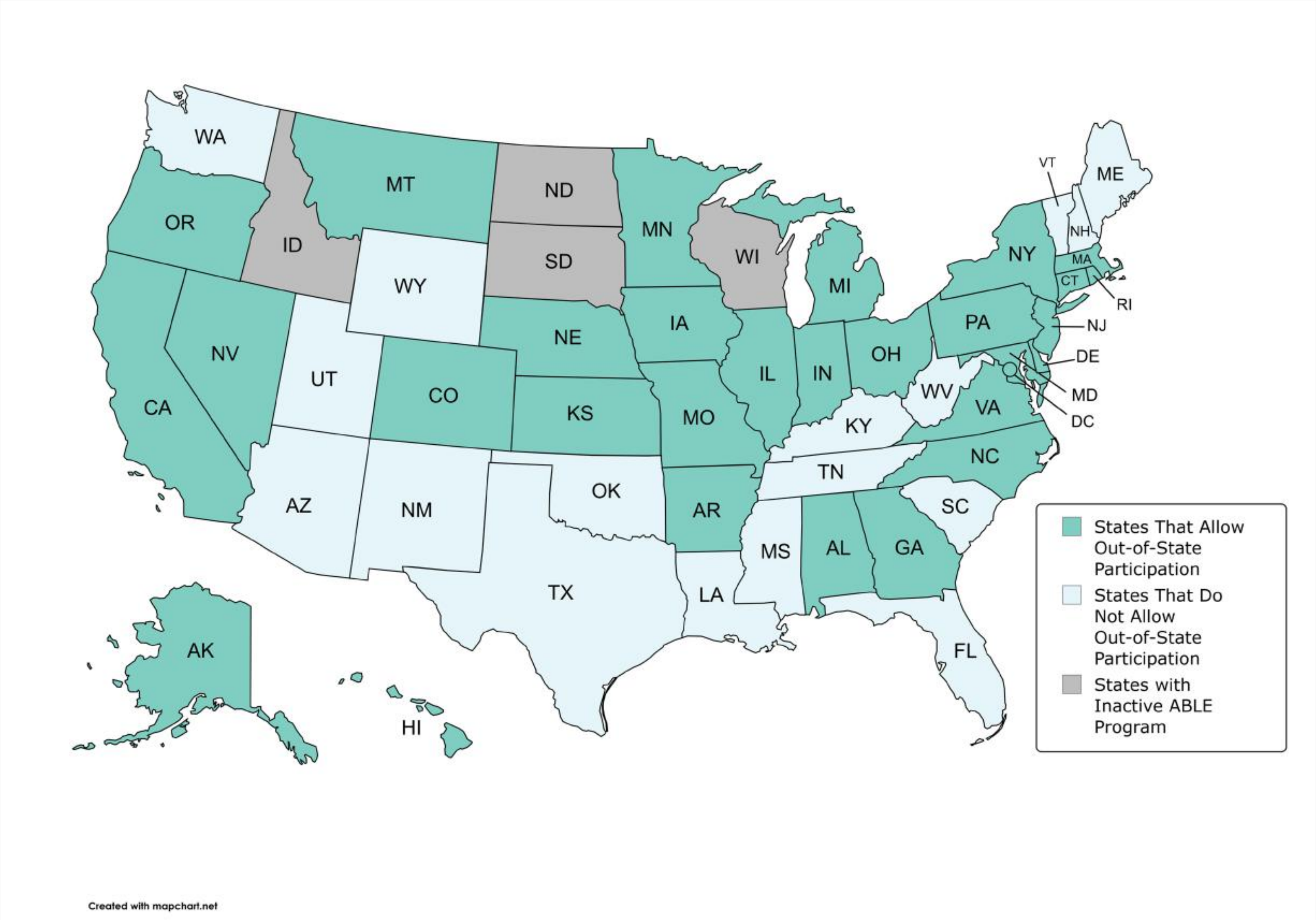
Date

*Completion of this form only establishes your patient's medical diagnosis and does not constitute your endorsement that the individual is eligible for an ABLE Account.

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 PROGRAM OUT-OF-STATE PARTICIPATION

CONTRIBUTION LIMITS

- **$19,000** annual contribution cap (for 2025)
- **$100,000** total cap for SSI recipients (contributions + earnings)
- **$529,000** total contribution cap for ABLE account (in California)

Note: every state has its own total contribution cap

ABLE TO WORK

- Beneficiaries earning income from employment can contribute more than $19,000 annual cap, up to the Federal Poverty Level, currently $15,060 for a single person, if not participating in employer's retirement plan.
- Potential maximum contribution of **$34,060** per year.

GIFTING

- Set up a "Gifting" page and share the link with friends and family.
- Gift contributions do not count as the beneficiary's income
- Gift contributions count toward the beneficiary's annual contribution limit of $19,000.

GIFT TAXES: ABLE ACCOUNTS VS. SNTs

$10,000 from grandma

$9,000 from cousin

ABLE Account

- Both gifts qualify for gift tax annual exclusion (up to $19,000)
- No tax returns or accounting required

$10,000 from grandma

$9,000 from cousin

3rd Party SNT

- No Annual exclusion available
- Grandma & Cousin must both file gift tax returns (form 709) the following year in April
- Trustee must obtain Tax ID #
- Start filing yearly fiduciary tax returns

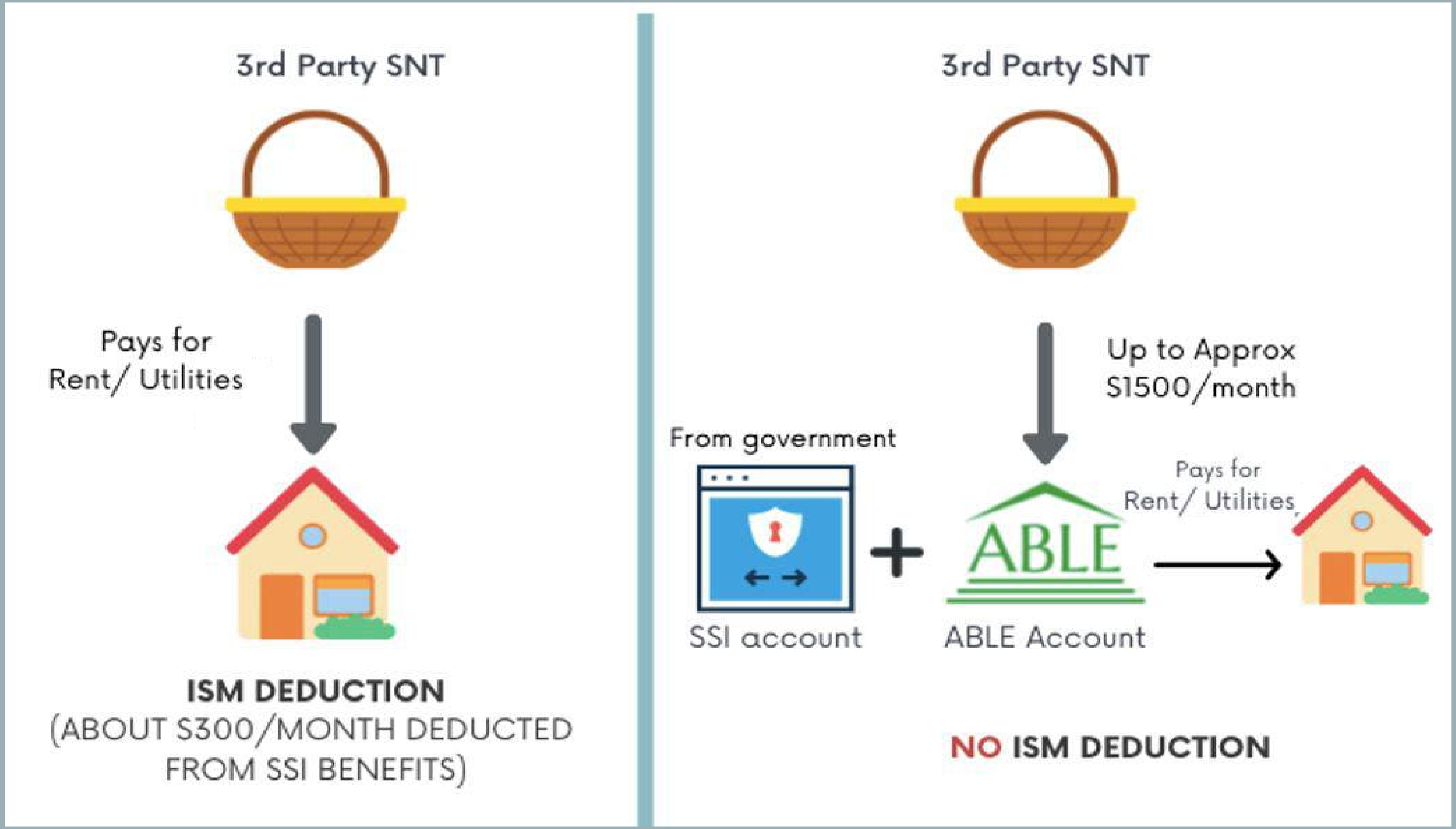
ABLE VS. 3RD PARTY SNT VS. 1ST PARTY SNT

Issues	ABLE Account	3rd Party SNT	1st Party SNT
Who can use?	Only persons disabled before age 26 (increases to age 46 in 2026)	Any person with a disability	A person with disability under age 65
Who can fund?	Anyone, including person with disability	Anyone, except person with disability (must use 1st Party SNT)	The person with a disability, conservator, guardian, agent, court
How many can a person have?	One	Unlimited	Unlimited
Who can control?	Person with a disability, guardian, Conservator, or agent	Anyone except the person with a disability and their spouse	Anyone except the person with a disability and their spouse
Medi-Cal Payback	No (if using CalABLE account)	No	Yes
Who can inherit on the death of person with disability	Estate of disabled person	Whomever is named in the document	Whomever is named in the document

ABLE vs. 3RD PARTY SNT vs. 1ST PARTY SNT

Issues	ABLE Account	3rd Party SNT	1st Party SNT
How much can be funded in a year?	$19,000 (or annual gift exemption)	Unlimited	Unlimited
Is funding gift tax-free?	Yes	No	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 ($529,000 in CA)	No	No
How is income taxed?	No income tax	Tax as non-grantor trust as highest marginal tax rate	Tax as a grantor trust at beneficiary's rate
What type of distributions can be made?	Qualified disability expenses	No limitation except for certain disbursements may reduce for eliminate SSI or Medicaid eligibility	Primary Benefit of beneficiary

USING ABLE ACCOUNTS TO PRESERVE SSI BENEFITS



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SETTING UP A CalABLE ACCOUNT

Bank Account	CalABLE Website	Required Information	Access to Funds
Set up checking or savings account at favorite bank	Set up an account on CalABLE website: https://www.calable.ca.gov/	- Beneficiary's SSN; - Authorized legal representative's SSN; and - Bank account information	Reloadable, prepaid Visa debit card is now available

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SUGGESTED NEXT STEPS…

1. Look over your own estate planning documents and see if they are up to date.
2. Reach out to our office if you have questions on how your documents work or if you need updates.
3. Share the information you learned with others who can benefit.

ABOUT COOKMAN LAW

- Palo Alto law firm serving all of California
- 3 attorneys, 10 support staff
- We charge a flat fee for estate planning, special needs planning and trust administration
- We do not assist with applications for public benefits

THANK YOU FOR YOUR ATTENTION!

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