How to Involve Siblings in Future Planning for a Loved One with a Disability

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Special Needs Planning Goals

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

Meet The Siblings

2 Children

2 Different Needs

- One child may need lifelong care and financial support.
- The other may be building an independent life — and possibly facing future caregiving expectations.

Considerations with Siblings

How much will the siblings inherit from you? Should it be equal or fair?

How will the siblings receive their inheritance?

Who should manage the neurodivergent sibling's money?

We recommend parents discuss their estate plan with their children to make sure everyone is on board and on the same page.

Today's Roadmap

one	Public Benefits Overview
two	Special Needs Trusts
six	ABLE Accounts

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PUBLIC BENEFITS

Which Public Benefits Does Child Receive?

Income Stream

Needs Based

Supplemental Security Income (SSI)

Monthly Income limit: $1,971/mo
Resource Limit: $2000
Max. Monthly Payment: $1,233.94/mo

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

Entitlement Based

Social Security Disability Insurance (SSDI)/Child Disability Benefits (CDB)

Monthly Income Limit: $1,550/mo
Resource Limit: None

Only *earned* income interferes

$1

2 years

Health Insurance

Needs Based

Medi-Cal (and IHSS)

Monthly Income limit: $1,799.75/mo
Resource Limit: $130,000

Includes *earned* and *unearned* income

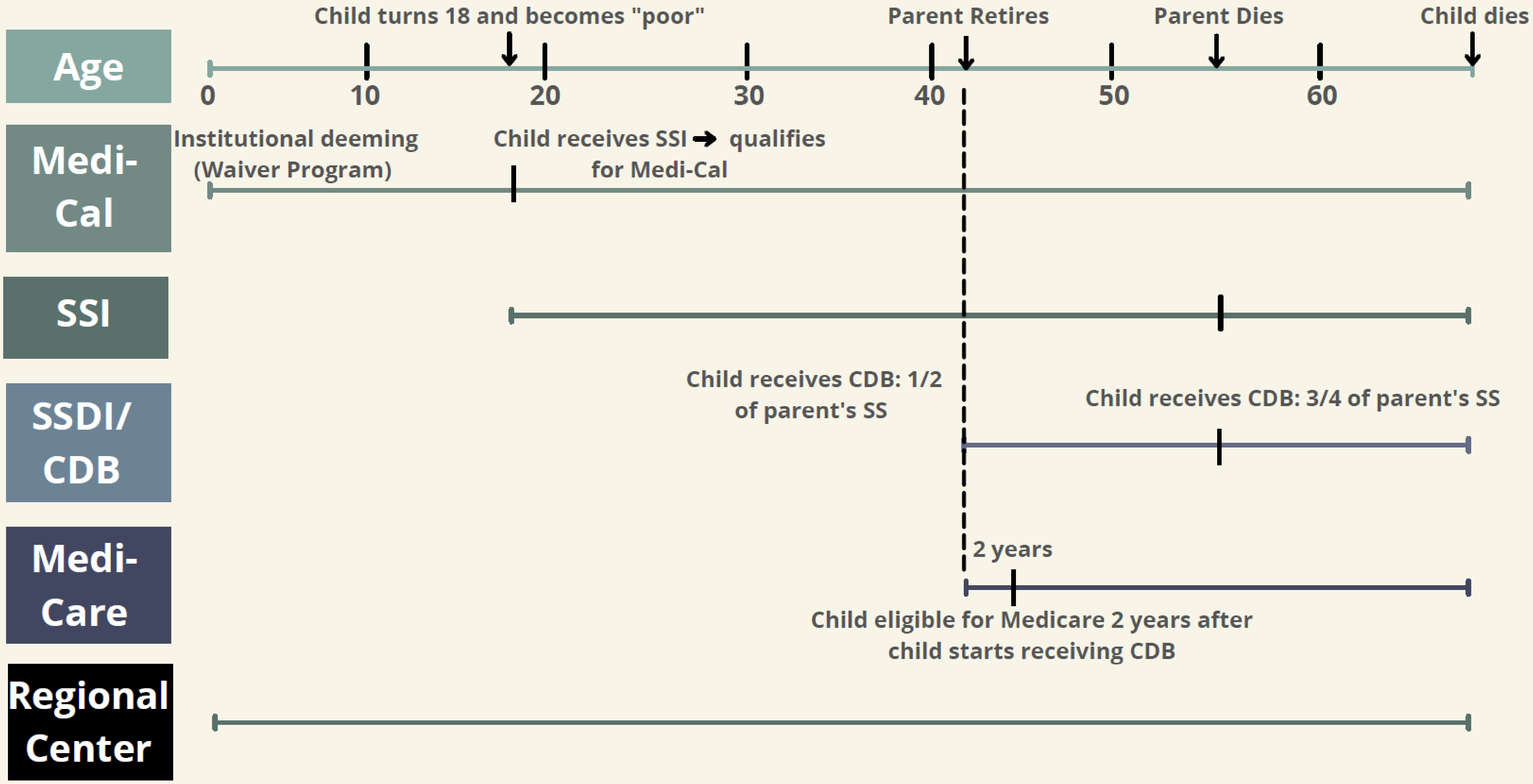
Entitlement Based

Medicare

Monthly Income Limit: None
Resource Limit: None

Note: higher income --> higher adjustment amount

Public Benefits Timeline



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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 anything!

" **'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?

Three 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 (*not a sibling!*)	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 – sibling?!!
- Friend
- Private Professional Fiduciary
- Bank or Trust Company
- Nonprofit
- Pooled Trust
- Combination

Challenges for a Sibling Acting as Trustee of a SNT

- **Complex Requirements:** Managing a SNT and ensuring public benefits eligibility requires navigating complex legal requirements and financial regulations.
- **Family Dynamics:** A sibling acting as a gatekeeper to their sibling's money can impact family dynamics and create emotional strain.
- **Significant Time Commitment:** Ongoing maintenance involves detailed accountings, annual tax filings, staying current with public benefits regulations, among other duties. This can become overwhelming for siblings with their own personal obligations.

Trust Protector

A Trust Protector may a better role for a sibling.

- **Less burdensome:** Sibling can stay involved and supportive without complex, day-to-day responsibilities; helps maintain family harmony
- **Safeguard family interests:** Allows the sibling to advocate for the disabled sibling while minimizing liability; Trust Protector can review accountings and ensure the trustee is managing the SNT effectively
- **Power to adjust terms:** Trust Protector can appoint a new trustee and amend the SNT in certain situations

Memorandum of Intent

This is a separate document from the special needs trust.

Informal letter from parent:

- What makes child happy/sad?
- Food restrictions?
- Housing preferences
- Favorite activities

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?

How Much To Fund SNT?

- Should you leave money equally to all the children?
- Financial Advisors can do financial projections to see how much the neurodivergent child will need for their lifetime
    - *Note: not all financial advisors know how to do this! Work with a Chartered Special Needs Consultant if possible*
- 2 choices for leaving to neurodivergent child:
    - Cash amount "off the top" to SNT (perhaps indexed for inflation), then neurotypical child(ren) receive remainder equally
    - Percentages to SNT and other children

Dynasty Trust

When to Use Dynasty Trust	How a Dynasty Trust Works	Special Protections
• Neurotypical child • Parents want to ensure multi-generational wealth protection • Desire for long-term financial management	• Assets are held in trust indefinitely (or for multiple generations) • Trustee manages distributions based on child's needs • Child can become the trustee at a designated age (if appropriate) • Assets can be used to purchase a house or start business	• Provides protections against creditors and lawsuits • Assets remain "separate property" in case of divorce • Assets pass to next generation free of estate tax

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ABLE ACCOUNTS

What is an ABLE Account? 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, *sibling*, 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 (including siblings!)
- Only one ABLE account can be established per disabled individual

Who is Eligible?

People with disabilities which were present before **age 46…<u>and</u>**

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.

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

Contribution Limits

- **$20,000** annual contribution cap (for 2026)
- **$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 $20,000 annual cap, up to the Federal Poverty Level, currently $15,650 for a single person, if not participating in employer's retirement plan.
    - So potential maximum contribution is **$35,650** per year.
    - *Note*: this federal rule was set to expire in 2026, but the OBBBA made this rollover option permanent.

ABLE Saver's Credit

- Beginning 1/1/26, contributions made by a beneficiary to their ABLE account can qualify for a federal tax credit for low to moderate income taxpayers.
  - Credit amount is 10-50% of ABLE contribution (up to $2,000), depending on income level.
  - Maximum possible credit = $1,000/year
  - Credit is nonrefundable – reduces tax owed, but won't generate a refund.

Rollover to 529 Plan

- You can roll over funds between 529 College Savings Plans and CalABLE accounts for the beneficiary and their siblings, as long as the total rolled over amount is within the annual CalABLE contribution limit ($20,000 in 2026).
- *Note*: this federal rule was set to expire in 2026, but the OBBBA made this rollover option permanent.

Savings and Investment Options

Investment options vary across ABLE plans, but most plans offer multiple portfolio options based on risk tolerance and investment goals:

- **Long-term savings:** Beneficiary might consider a diversified portfolio to maximize growth potential over time.
- **Short-term use of qualified expenses:** The FDIC-Insured Portfolio offers protection against short-term market fluctuations, ensuring funds are readily available when needed.
- **Long-term savings and short-term use of funds:** Beneficiary might consider spreading the funds among several portfolios.

Setting Up a CalABLE Account

Bank Account

Set up checking or savings account at favorite bank

CalABLE Website

Set up an account on CalABLE website:

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

Required Information

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

Access to Funds

Reloadable, prepaid Visa debit card is now available

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 46	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?	$20,000 (for 2026)	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

About Cookman Law

- Palo Alto law firm serving all of California
- 4 attorneys, 10 support staff
- We charge a flat fee for estate planning, special needs planning and trust administration
- We do not assist with conservatorships or applications for public benefits
- Now launching our Trust Maintenance Program!

Thank You For Your Attention!

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