

Fundamentals of Special Needs Planning

Autism Society of Inland Empire



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MEMBER OF THE ACADEMY OF
SPECIAL NEEDS
PLANNERS



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My Story

Special Needs Background

- 2 Adult Children with "Disabilities"
 - Cerebral Palsy
 - Autism – High Functioning
- Passion for Special Needs
- Exceptional Sports - 501(c)(3)
- Public Speaking - Community Involvement
- Member of many Special Needs Legal Organization



Meeting Agenda – Zoom!

- I miss Live Meetings!
- Don't get Overwhelmed!
- Covering Lots of Topics
 - Benefit Programs
 - Special Needs Trust – Types
 - Conservatorship
 - Able Account
 - Other Important Documents
- Questions & Zoom!



Disclaimer

The following presentation is
Legal Information
Not Legal Advice



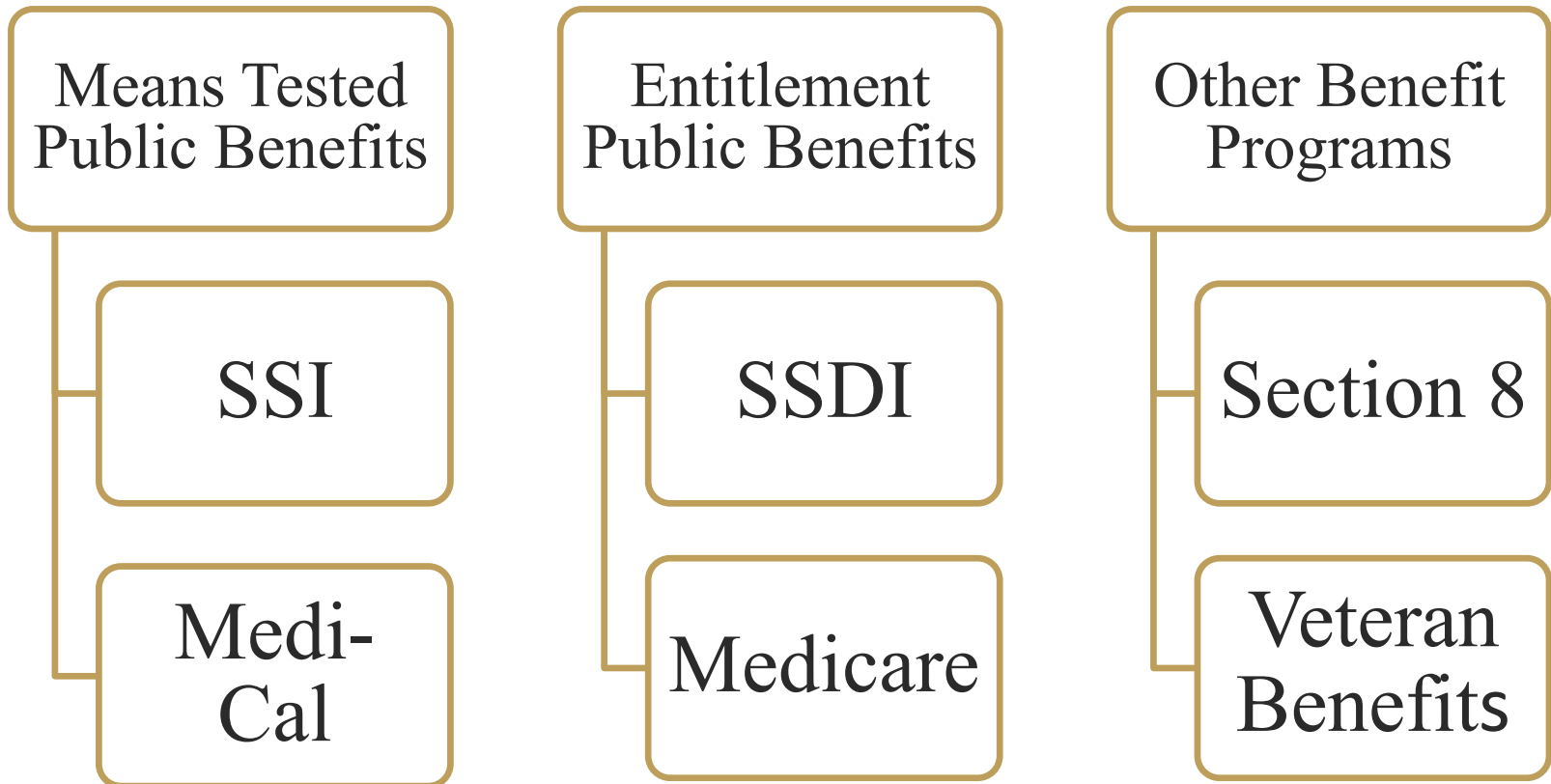
Why Special Needs Planning?

1. Protect Government Benefits – SSI, Medi-Cal, Etc
2. Life Planning for Financial & Care Management



Without a Special Needs Trust, your disabled family member is likely to not qualify, lose or disrupt SSI, Medi-Cal or other benefits?

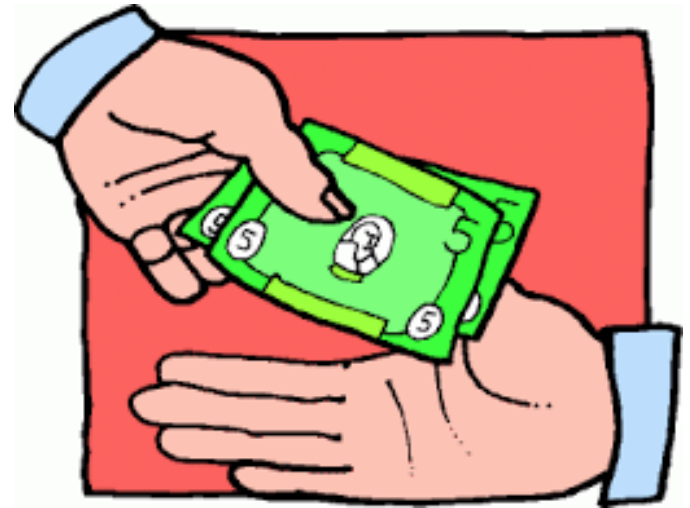
Public Benefits



SSI Payments

How Much?

What For?



- **SSI Payments**
 - In 2020, Federal Benefit Rate is \$783/month
 - Plus California adds \$160.72
 - Total \$943.72
 - Getting Less? \$630? Why? – How to Fix
- **Food Stamps! “Cal Fresh”** – Now Available to SSI Beneficiaries – This Year

Supplemental Security Income (SSI)

Two Tests:

Disabled

Inability to engage in “Substantial Gainful Activity”

Poor (Also 2 Tests)

- 1) Resource (Asset) Test
- 2) Income Test



SSI Definition of Disability

“Disability” Defined as:

- **Inability to engage in “Substantial Gainful Activity”**
- Due to any medically determinable physical or mental impairment, or combination of impairments,
- Lasted or can be expected to last for a continuous period of at least 12 months, or result in death



SSI Asset Limits

Single Adult Person - \$2,000

Married Adult Couple - \$3,000

Minor – Count the assets of the parents



SSI Income Test

- More Complicated – Limit is based on the type of income
- Income is divided into FOUR TYPES:
 - Earned Income (e.g., wages)
 - Unearned Income - Gifts (e.g., cash gifts or inheritances)
 - Deemed Income (Under 18 – Parents Income)
 - In-Kind Income (e.g., Gifts of Food or Shelter)



SSI To Pay For All Food & Shelter

All Housing & Food expense is to come from SSI.
Any outside funds to pay for Housing & Food will reduce the SSI payment by 1/3 (In Kind Income)

Solutions

- Accept the 1/3 Reduction
- Room & Board
- ABLE Account



SSI

Summary & Key Points

Qualification

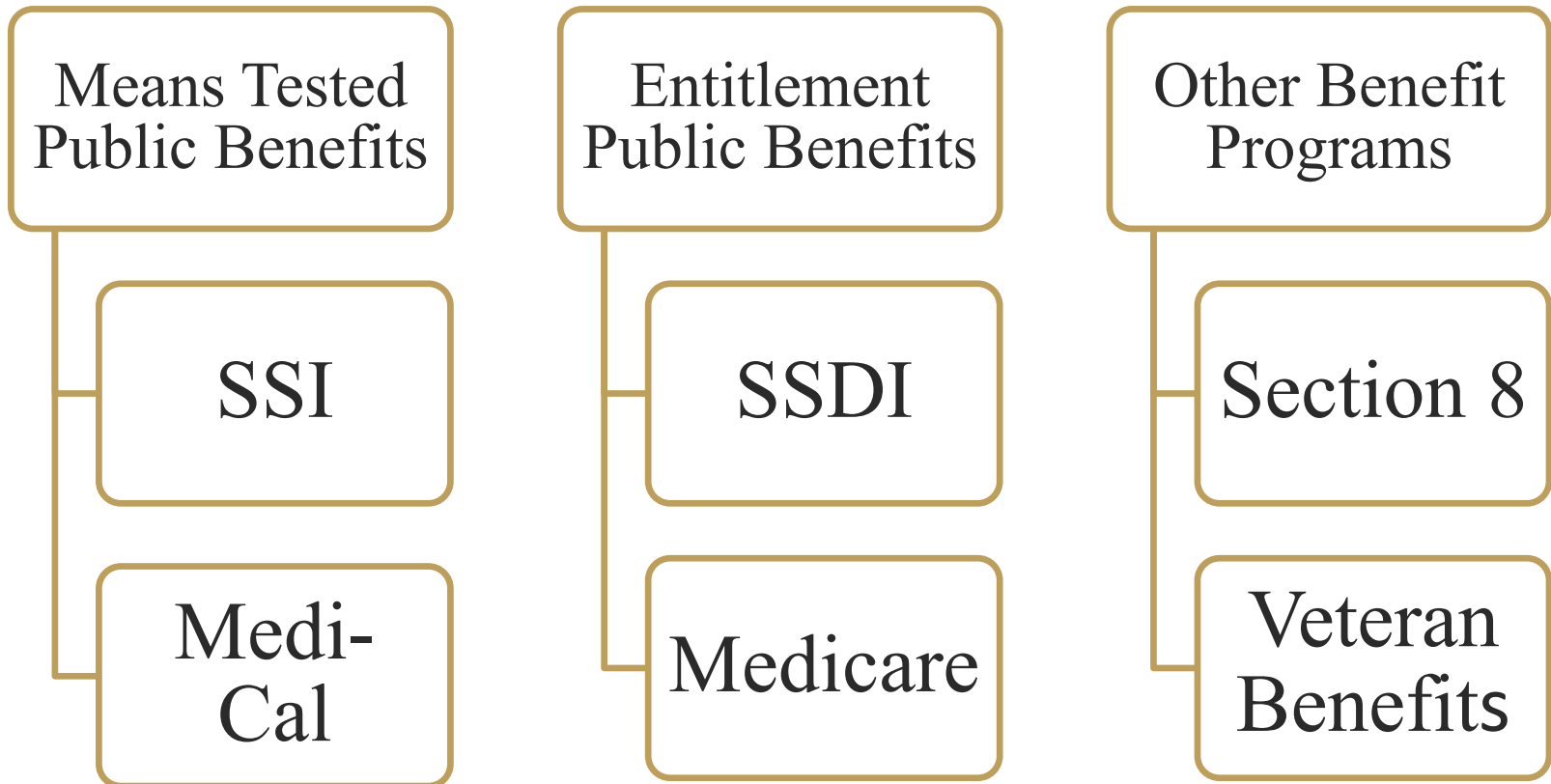
- Disabled
- Asset & Income Limitations
 - \$2,000
 - Outside Income will reduce SSI & Must be Reported



Payments

- Food & Shelter expense to come from SSI

Public Benefits



Medi-Cal (CA's Medicaid)

\$1 of SSI will qualify for Medi-Cal

Traditional - Medi-Cal

Asset Limit - \$2,000

Various Types

Share of Cost

Others

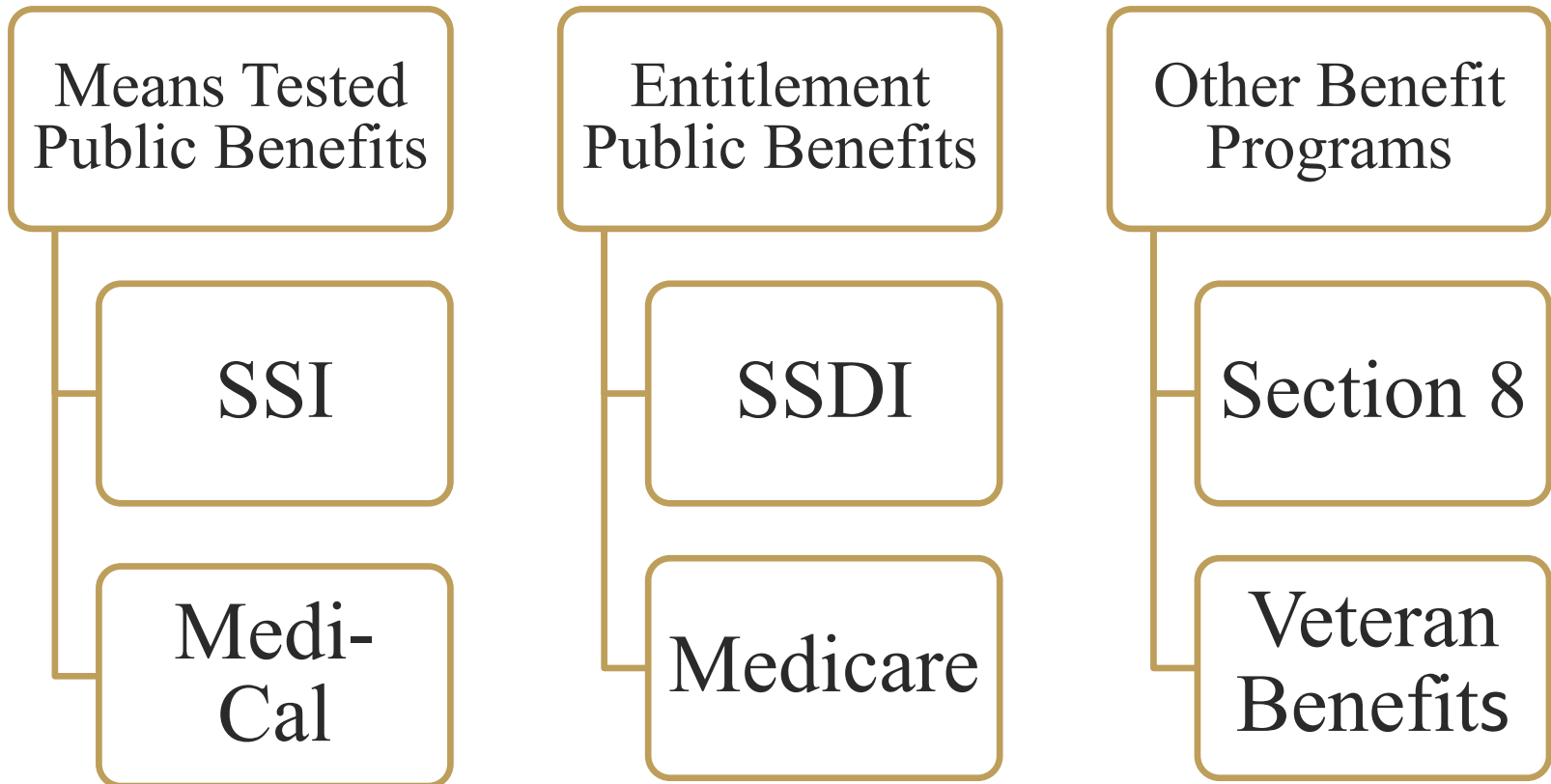
Good News – Medi-Cal will generally help you find the program you qualify for



Medi-Cal Summary

- Medi-Cal (Medicaid)
 - Automatically available with SSI apply Separately with SSDI
 - Covers “medically necessary” services, equipment, hospitalization, prescription meds
 - Preventative, long-term care & in home nursing care
 - Must be in a Managed Care program in Riverside County (IEHP & Molina)
 - Covers Services (Life Sustaining) Medicare does not cover

Public Benefits



SSDI - Social Security Disability Insurance (SSDI) - Entitlement

- SSDI – Based on contributions of Beneficiary or Parents
 - Parents:
 - Disabled before age 22 and
 - Work record who are retired, disabled or deceased
 - Beneficiary – work record
- SSDI can be more \$\$
- SSI Rules Go Away!
- After 2 Year – Qualify for Medicare!
Medi-Medi



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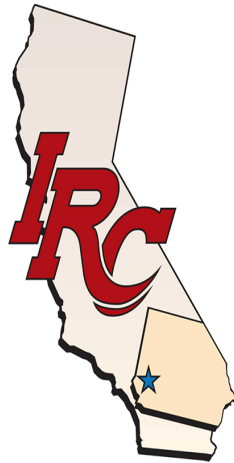
Medicare - Entitlement

- Medicare:
 - Medical, doctors, hospital, prescription meds
 - **Available with SSDI after two years**
 - **Medi-Medi**



Other Benefit Programs

Regional Center



IHSS

In Home Support
Services



Summary of Benefits

SSI

SSDI

Medi-Cal

Medicare

Food Stamps - *New!*

IHSS

Regional Center

Next – How to protect Benefits



Questions?



The Best Way to Protect Benefits?



Special Needs Trusts!



What is a Trust?

Bucket!

Put your stuff into the Bucket

- **Like a separate entity**
- **You control it!**
 1. **Trustmaker**
 2. **Trustee**
 3. **Beneficiary**



Types of Trusts

Special Needs Trust = Supplemental Needs Trust (SNT)

1. 1st Party SNT Trust

Disabled Party's Own Money

Accident, Bad Planning, Inheritance



2. Pooled Trusts



3. 3rd Party SNT Trust

NOT the Disabled Party's Own Money

Most Common



1st Party Special Needs Trust

- Disabled Person Money
- Inheritance – Personal Injury – W.C.
- Maintains Benefits!



Payback:

State must be reimbursed from the trust for all Medicaid expenses on death of the Beneficiary

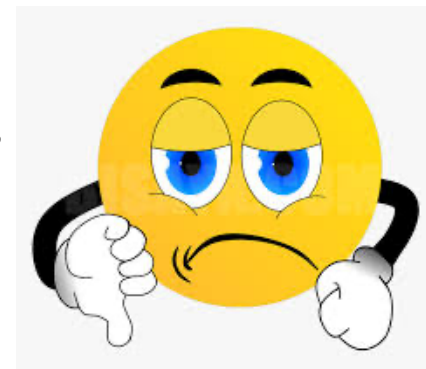
Rules:

- Beneficiary under age 65
- Established by Parent, Grandparent, Legal Guardian or Court, Beneficiary if Competent



Pooled Trust

- If an individual SNT doesn't make sense, a Pooled Trust may be solution
- Pooled Trusts
 - Run by not-for-profit
 - Set up separate account
 - Can test out Pooled Trust during lifetime by joining trust during lifetime
- Non-Profit Keeps any remaining Funds



3rd Special Needs Trust

Most Common

NOT the Disabled Persons Money but Funds can only be spent for the Special Needs Individual

- Maintains Benefits
- Names Person to Manage - Trustee
- Includes Personal Care and Advocacy
- Best method leaving money to Disabled Person
- **Spending of Trust Funds? – Sole Benefit Rule**



Special Needs Trusts

3rd Party - Best Legal Structure to Protect Special Needs Family Members

Funds Can Only Be Used For the Beneficiary
But – It's NOT the Beneficiaries Money!



What not to Do!

- Outright inheritance
 - Loss of SSI and Medicaid
- Left in Family (Revocable) Trust
 - Loss of SSI and Medicaid
- Disinheritance – No money available for loved one with special needs
- Leaving assets to brothers or sisters with request to take care of sibling
 - Evil Siblings!
 - Good Siblings, but
 - Subject to Creditors – Forgot to Pay the Auto Insurance Bill
 - Comingled with Community Assets – Then Divorce
 - Good Sibling – but Bad Spouse!



Selecting a Special Needs Successor Trustee

Family Member – Business Expertise
or access to Advisors.

One Sibling manages other Sibling Money?
Lot's of work



Professional Fiduciary
California Fiduciary is Licensed,
Bonded – must be vetted.
Expensive?



Drafting a Special Needs Trust

- Very Specific Rules & Language
 - Beneficiary must never have right to control the funds or revoke trust
 - Trustee has Sole Discretion
- Embedded v. Stand Alone
- “Stand Alone” SNT lets other family members and friends contribute
- Funding



Trust Administration

Trustee Responsibilities

- Invests / Manages Assets
- Distributes funds
- Keeps books
- Files tax returns
- Communicates Hires - Fires Advocates and care managers, etc., as needed
- No Personal liability – Unless acting badly

HOMEWORK FOR
TRUSTEES

1. LEARN YOUR DUTIES

2. SEE NUMBER 1

3. SEE NUMBER 2

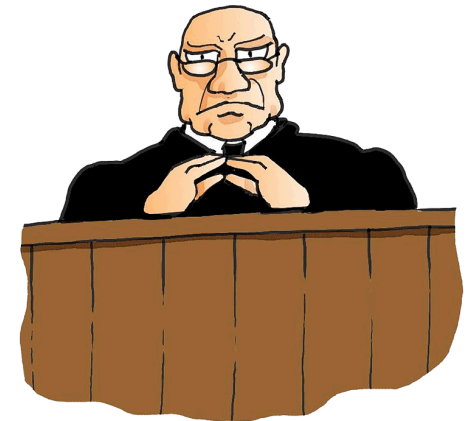


Questions?



Limited Conservatorship?

- At age 18, an individual is presumed to have legal capacity – Do you need a Conservatorship?
- Court Driven
Expensive & Time Consuming
- Do you need it?
- Can you do it yourself?



Questions?



ABLE Accounts

A Great Tool!

Another way to Help your Disabled
Family Member

**California Achieving
a Better Life
Experience (CalABLE)
for People with
Disabilities**



What is an ABLE account?

- Federal legislation passed in 2014 – Slowly being implemented by State (Signed in CA in December 2018)
 - State Run Tax advantaged investment accounts for individuals with disabilities that Do not affect eligibility for benefits – Some states call it “Attainable Savings Plan”
- **DOES NOT COUNT TOWARD Benefits!!**
- **CAN BE 1ST PARTY OR 3RD PARTY MONEY**
- **After Tax Deposit - Tax free interest savings**
- **PAYBACK - MEDI-CAL CAN RECOVER ALL EXPENSES FROM THE START OF THE ABLE ACCOUNT – EXCEPT CALIFORNIA!**



Details of an ABLE Account

- \$15,000 Contributions + \$15,000 of earnings - One Account
- **Beneficiary's Own Account.**
 - Set up by beneficiary or Parent, Guardian, Conservator, Power of Attorney
 - Own Account – Can be Problematic
- Easy On-Line Set up – State Run
- Provides financial independence for persons with disabilities
- **Use for Food & Housing!!**

Eligibility for ABLE account

Individual with Disability Occurring Prior To Age 26

- 1) Eligible to receive SSI or SSDI due to disability
- 2) Condition on SSA “List of Compassionate Allowance Conditions”
- 3) Self-Certification



Other Considerations

SSI

- Balance over \$100,000 count as a resource – but only suspends benefits, not terminates
- Individuals wages are still income even if deposited
- **Use for Housing**



Medi-Cal

- Amount does not effect benefits
- Payback but can first pay QDE bills, funeral expenses, etc.

How can funds be spent?

- True Link Card
- Use on Qualified Disability Expenses

If it (1) relates to disability and (2) helps to maintain or improve health, independence, quality of life (such as housing, living expenses, medical bills, education, transportation, assistance technology

- Withdrawals have
 - No limits
 - IRS may audit, so keep receipts
 - Can transfer to personal checking, savings or special debit card which is loadable and tracks expenses, limits merchants, does not overdraft.



Questions?



Everyone Needs



- Advance Health Care Directives
 - Financial Powers of Attorney
- Must have Legal Capacity!



Financial Power of Attorney

- Allows a person you choose to manage your finances if you are incapacitated
- Agent can pay mortgage, utilities, medical bills, provide funds for your family's needs (groceries, clothing, etc.)
- Agent can manage your business (pay employees, sign contracts, file taxes, etc.)
- **Agent can do anything financially you could do yourself if you were able**



Health Care

- **Advanced Health Care Directive**
 - Allows a person(s) you choose to make health care decisions if you become incapacitated
 - Informs medical providers of your medical wishes



Questions?



Finding A Special Needs Attorney?

- Find someone knowledgeable in Special Needs Planning
- Comfortable working with & Trust
- Pricing – Open & Honest
- Professional Special Needs Organizations

