Meaningful Outcomes in Adulthood
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Financial/Legal Planning for Adults with ASD

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Financial/Legal Planning Considerations

When a child with autism spectrum disorder (ASD) reaches 18 years old (the age of majority in CA):

- Parents no longer have the legal rights that they were entitled to when their child was a minor (e.g., accessing confidential health and school records, making financial decisions, etc.).

- Certain supports and benefits their child had access to before turning 18 may change or require new actions (e.g., SSI benefits expire, Special Education services end after high school graduation or age 22, whichever comes first).

- Before the child turns 18, it is important for families to consult with professionals, such as attorneys, financial planners, and others who can help them make critical decisions about their child’s future.
Social Security Administration (SSA) Support Programs

- SSA has two kinds of benefits for people with disabilities over the age of 18 years:
  - (1) **SSI**: Supplemental Security Income, and
  - (2) **SSDI**: Social Security Disability Insurance/Disabled Adult Child Benefits.

- To qualify for these programs, a person must meet the SSA’s definition of *disabled*. 
How SSA Evaluates the Merits of the Case

Does the claimant’s disability falls within SSA’s definition of disability? Factors considered:

- 1. Is the claimant engaging in *substantial gainful activity*?
- 2. Is the impairment *severe* (i.e., “significantly limits your physical or mental ability to do basic work activities”)?
- 3. Does claimant have a *listed impairment* (e.g., ASD or ID)?
- 4. Is the claimant able to engage in *past relevant work*?
- 5. Can the claimant perform other jobs that exist in significant numbers in the national economy?
Federal Benefits: SSI/SSDI

**Supplemental Security Income (SSI):**

For people with disabilities that prevent them from gainful employment *and* have low income/resources.

- Means-tested:
  - $2,000 in countable resources and a limited monthly income.
  - At age 18, the income and resources of family members are **not** counted, even if the individual lives at home.

- Retroactive benefits are paid as of the **application date**, *not* the alleged onset date of disability.

- If child was receiving SSI before they turn 18, they need to go through a re-determination process to maintain SSI benefits as an adult (can take several months).
Federal Benefits: SSI/SSDI, cont.

Social Security Disability Insurance/Disabled Adult Child Benefits (SSDI):

For people with long-term disabilities who **used to work OR have family members who have worked**.

- Anyone whose disability developed **prior to age 22**, and whose parent or guardian is either deceased or getting Social Security retirement or disability benefits, may qualify for a form of SSDI insurance called *Disabled Adult Child Benefits*.

- To qualify on their own, the disabled person must have worked in the past for a certain period of time.

- Available regardless of the individual’s income and resources.
Other Public Benefits

- **Medi-Cal Benefits:**
  - Individuals who qualify for SSI are eligible to receive Medi-Cal health insurance.
  - May also be eligible to receive funding for long-term services and supports (e.g., institutional care in nursing facilities, nonspecialized placements for people with disabilities).

- **Home and Community-Based Waiver Services (HCBS):**
  - HCBS is a program for qualified Medi-Cal recipients.
  - Allows individuals otherwise requiring an institutional level of care to instead be served at home or in the community.
ABLE (Achieving Better Life Experience) ACT

- On December 19, 2014, President Obama signed the ABLE Act into law, amending Section 529 of the IRS code of 1986.

- In October 11, 2015, California establishing a CalABLE Board set with the task of implementing the ABLE Act within California (not yet fully up and running – expected in summer of 2017).

- The ABLE Act allows tax-exempt savings accounts to be used for maintaining health, independence, and quality of life for individuals with disabilities.

- Allows money to accumulate that won’t affect means-tested benefits received based on the individual having a disability.
ABLE Act Qualified Disability Expenses

Qualified Disability Expense:

- Relates to the person’s disability and helps them maintain and improve their health, independence, or quality of life.
- Not restricted to medical expenses.
- Can include expenses for education, housing, transportation, employment support, health, prevention and wellness, assistive technology, financial services, home improvement, and funeral services.
CalABLE

- CalABLE will allow people with disabilities to save up to $14,000 per year and up to $100,000 in total **without losing public benefits**.
- Earnings in these accounts are not subject to federal or state income tax, so long as the earnings are spent on **Qualified Disability Expenses**.
- In order to be eligible to have an ABLE account, you must be an individual who has been diagnosed with a disability **before age 26**.
Special Needs Trust

- Created to hold assets for a special needs beneficiary.

- Similar to ABLE Act accounts, Special Needs Trusts (SNTs) can be useful for beneficiaries who receive means-tested public benefits, to avoid **impacting their eligibility**.

- Benefits and disadvantages of ABLE Act accounts and SNTs will differ depending on the individual’s circumstances and financial situation.

- The rules and choices regarding SNTs are complicated, so it’s important to **consult an attorney** before deciding whether and how to create a SNT. (If designed incorrectly, the SNT can render the beneficiary ineligible for other benefits, or cost the beneficiary unnecessary expenses or penalties)
Guardianship/Conservatorship

- Guardianships & conservatorships shift the responsibility for making *financial and personal care decisions* from the minor/conservatee to the guardian/conservator.

- They impose *significant limitations* on the minor/conservatee’s ability to make actions affecting finances or personal care.

**Advantages:**

- Court supervision and support for the guardian/conservator’s decisions, providing protection of the minor/conservatee’s interests.

- Particularly useful when the protected person is mentally or physically unable to understand and accept help, or is vulnerable to persons who might take financial advantage of them.
Guardianship vs. Conservatorship in CA

- **Guardianships** are created by the court to manage the affairs of *minors*. They are typically appointed in the event of deceased or unfit parents (e.g., drug use, mental disability).

- **Conservatorships** are created by the court to protect *incapacitated adults*. Conservatorships must be filed in the Probate Court of the Superior Court where the proposed individual resides.

- There are **two main types of Conservatorship** in California:
  1. **Conservator of the Person** – Charged with overseeing the *personal* affairs of the incapacitated adult (including health-care decisions)
  2. **Conservator of the Estate** – Charged with overseeing the *financial* affairs of the incapacitated adult.
Additional Types of Conservatorships

- **Conservatorship of the Person and Estate**: Protects the health and finances of an adult who cannot care for himself or herself. There can be separate conservators, or a single person can be the conservator of both.

- **Limited Conservatorship for Developmentally Disabled Adult**: Authorizes the conservator to be responsible for part of a disabled adult's life and finances. The disabled person retains all other rights, and the conservator is required to get treatment, services, and opportunities to help the disabled person become as independent as possible.

- **Lanterman Petris Short (LPS) Conservatorship**: For a person who is seriously disabled by a mental disorder or chronic alcoholism and who may need to be placed in a locked facility. (Governed by different rules and courts than the other types.)
Conservatorships: Additional Considerations

- May be expensive and time-consuming to set up and maintain. Need to file legal documents and go through a court hearing.

- In many situations, less expensive (and less restrictive) legal alternatives to a conservatorship are adequate and available, but in some situations, a conservatorship is necessary.

- Therefore, it is important to **consult an attorney**.
Other Legal Considerations for Adults

- Obtain a state I.D. card or driver’s license from the Department of Motor Vehicles.
- Register to vote.
- Register for Selective Service: All males, regardless of disability, must register for Selective Service at age 18. (They may register at the post office or online at www.sss.gov.)
- Explore transportation options, including driver’s training.
References:

- Autism Speaks Tool Kits: (https://www.autismspeaks.org/family-services/tool-kits)
- Disability Benefits 101 (https://ca.db101.org/)
- CalABLE Program (http://treasurer.ca.gov/able/)
- Michael Joyce, Attorney at Law, David Allen & Associates