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**Elder Law Memo - 2025**

- Goal: Paying for assisted living, in-home care, or skilled nursing care while minimizing financial and emotional burden on loved ones
- Holistic approach – elder law should be part of every estate plan
  - Provisions in documents – will, trust, deeds, powers of attorney
- ABLE accounts (Code §529A): (1/person<sup>1</sup>, rollover to disabled sibling<sup>2</sup>)
  - Annual contributions (all sources) limit \$17,000
  - Pay for food and shelter w/o SSI impact (coordinate w/ SNT provisions)
  - Aggregate contributions limit 529 limit
  - \$100,000 cap for Supplemental Security Income (SSI) benefits
  - Medicaid payback
  - US regs and state law (IRS Notice 2015-18 etc)
    - Social Security<sup>3</sup>
    - ABLE accounts and Medicaid eligibility<sup>4</sup>
    - ABLE accounts and SNAP eligibility<sup>5</sup>
    - ABLE accounts and HUD eligibility<sup>6</sup>
    - ABLE accounts and IRS/Treasury guidance<sup>7</sup>
- Medicaid – KS \$2,000 individual limit or \$3,000 married couple limit (MO HealthNet similar limits)
  - Federal program/money, state administration/rules
  - Estate recovery
  - Gifting/Medicaid spend down – exempt assets, gifts to family, but caveat 5 year claw back
- Special Needs Trusts (federal and state law)
  - Usually irrevocable (can be revocable), may need provision allowing estate recovery for state to approve
    - 1<sup>st</sup> party/self-settled trust – 42 U.S.C. §1396p(d)(4)(A) – disabled individual funds special needs trust for their own benefit
      - SSA disability<sup>8</sup> not medical diagnosis/personal opinion, under 65

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<sup>1</sup> Code §529A(b)(1)(B)

<sup>2</sup> Code §529A(b)(1)(C)(i), (ii)

<sup>3</sup> Social Security POMS TN 75 (04-19), <https://secure.ssa.gov/poms.nsf/lnx/0501130740>

<sup>4</sup> [http://www.ablenrc.org/wp-content/uploads/2019/07/ABLE-CMS-Guidance\\_0.pdf](http://www.ablenrc.org/wp-content/uploads/2019/07/ABLE-CMS-Guidance_0.pdf)

<sup>5</sup> <https://www.federalregister.gov/documents/2017/01/06/2016-30663/supplemental-nutrition-assistance-program-snap-eligibility-certification-and-employment-and-training#p-96>

<sup>6</sup> <https://www.hud.gov/sites/dfiles/OCHCO/documents/2019-09pihn.pdf>

<sup>7</sup> <https://www.federalregister.gov/documents/2015/06/22/2015-15280/guidance-under-section-529a-qualified-able-programs>

<sup>8</sup> 42 U.S.C. §1382c(a)(3)(A)

- Self-settled with individual's assets and Medicaid payback (death or early termination)
  - Started by parent, grandparent, guardian, Court, or individual (SNT Fairness Act (2016))
- Irrevocable written trust
- No SSI/Medicaid penalty period
- Payback
  - State/US estate taxes and trust admin fees priority
  - Before debts to 3<sup>rd</sup> parties, funeral expenses, or residual beneficiaries
  - Pro rate if multi-state Medicaid
- Tax issues
- Pooled Trusts—(d)(4)(C) trusts– managed by nonprofit for disabled/special needs people, best for <\$100K assets
- 3<sup>rd</sup> party trust – family member, attorney/accountant, or friend funds special needs trust for individual
  - > 1 beneficiary allowed, any age
  - SSA disability definition N/A – medical diagnosis/personal opinion OK
  - No payback required
  - Completely discretionary
  - Assets never belonged to beneficiary
  - Supplements, not supplants, gov't benefits
  - Remaining trust corpus at death can go to any individual or other trust
  - US law silent
  - Inter vivos – revocable or irrevocable, letter to family
  - Funding by life care plan, life insurance, or family's EP
- Different programs (VA, Medicaid, SSI, etc) have varying eligibility standards and qualifying levels
  - Have to choose based on individual situation – usually can't combine them
- Make sure family aware/harmonious and working together
- Bankruptcy – Ch 7 (liquidation) vs Ch 13 (reorganization), limit on how many times in span of years