Philip Kahn-Pauli: Good afternoon and welcome to the RespectAbility webinar for today, Monday April 6th. I hope all of you are staying safe, staying well, staying indoors, maintaining good social distancing, checking in on our friends and neighbors who are also practicing good social distancing. I know that this is - I will very simply say these are some very trying times for all of us, whether or not we are a person with a disability, however we're connected to the disability community, and I know that all of us are feeling the effects of this virus, this pandemic, and the economic disruptions that are causing it. I thank you all for joining us today and our wonderful panel of experts, and we're gonna be talking about some very serious things to match up with very serious times we're living in. The title for today's webinar is of course "Hope for the Best and Prepare for the Worst" and our topic is wills and special needs trusts. Many more people are thinking very seriously about what happens when we're dead and we're gone. What happens to our loved ones, especially our loved ones with disabilities? We are all of us thinking very seriously about risk, and the dangers of medical rationing, of who's gonna have continuity of care, what's gonna happen when we're gone and all of that needs clear answers and our panelists are here to provide those answers for all of us here today. I will say that I have to give the standard disclaimer that I am not a lawyer. I'm merely a policy wonk who brings you the people you need to hear from and learn from. So next slide.

My name is Philip as you said. And as you all know, RespectAbility's mission is to fight stigmas and advance opportunities for people with disabilities so we can participate in all aspects of community. And right now that mission is ever more critical as we are trying to defeat a virus that is causing our economy to make some very serious changes and people are facing very serious challenges. Next slide.

But I also want you to meet all of our wonderful speakers today. First up we have Fred Misilo, pronounced like mistletoe, who is the president of the Arc, the chair of Fletcher Tilton PC's Trust and Estate Department, really wonderful voice in the community and really a very fine expert on these issues. We're also joined from the west coast by Michelle Wolf, founding executive director of the Jewish Los Angeles Special Trust, and Evan Krame of the Law Offices of Evan J. Krame, P.C. Thank you all for joining us and I really appreciate your time with us today. Next slide.

So Evan, thank you so much and you are our first speaker, so please take it away with your presentation about planning for people with disabilities.

Evan Krame: Excellent. Thank you so much. You can hear me well I assume and we're going to start not with talking about documents per se, because most people will call up and say I need a will or I need a trust or I need a powerful attorney. That's the end of the conversation. The beginning of the conversation is to find a little bit more about who you are, what you own and how you own it. Who you are pertains to who is the client - who is the person that needs these documents? When we are dealing with a family where one member of the family may have some different abilities, that person with the different abilities may need additional supports from the legal side in terms of thinking about what happens should they become ill or incapacitated in a way that they are unable to convey their desires, their interests, their needs, either in a medical realm or in a financial realm. To make a document that addresses those concerns we would be completing a document called a power of attorney. To complete a power of attorney one need only have minimal cognitive ability. They need to understand what the purpose of the document is and the choice that they are making. So someone can understand that should they be ill, they need someone to file their tax returns for them or make investment choices for them and they know that they want that person to be cousin Bobby, then they have sufficient capacity and they don't have to fully understand every detail of the document. If someone hasn't the ability to understand what choice they're making and what the document does and who they're picking, then they don't have the capacity to step forward and create a power of attorney. But these are the documents that one needs if you are alive certainly and if you become ill.

To the other side of this coin, should someone have passed away, they may want a list of instructions as to what happens to their assets upon their death. And by their assets I mean their stuff, their personal property their bank accounts, maybe their stocks and bonds, maybe a house if they own a house. The document that directs how property passes upon death is called a will. The person executing the will has to have a slightly higher standard of capacity. They have to understand who they are, what the document is, what the document purports to do, what the document is about. And they have to state that to the witnesses when they execute the document. So if someone understands sufficiently that they are making a document that is a list of instructions for the passing of assets, they know who they are, they know what they are oriented as to space and time, they can execute a will. They do not have to understand every provision of the document. It's a low threshold, not as low as the power of attorney, but it is not designed to be a barrier. So we need to know who the person is that wants to create this document. Often the person with the disability will not need much in the way of these documents, if - one, they have a guardian appointed for that. If there's already a guardian appointed for their person or guardian for their property, sometimes called a conservator, they may not need a power of attorney because the court has already designated who that person is that will take care of the person with the disability, the person making the decisions. If that person with the disability does not own any assets in their sole name then they may not need to worry much about a will. Now how is it possible that someone might not own much in their sole name? Well for example, if you have a retirement account like an IRA, if you have a life insurance policy, or an annuity. All of those things have beneficiary designations. When there's a beneficiary designation, the property passes, the death benefit passes automatically to the beneficiary that's named in their document. No will will have any bearing on those transfers. A will does not supersede the beneficiary designation that has been made in a life insurance policy or through an IRA or in an annuity. In addition, upon death if the disabled person owns property jointly with another person with a right of survivorship - husband and wife own a house together. If husband passes first, wife owns the entire house. No need for a will in that moment because it's an automatic procedure. It may be that bank accounts are owned jointly or that they have beneficiary designations, same can be true for brokerage accounts. So one thing we can look at first before getting into the weeds of doing documents is to look at what assets do you think you own, and what assets are owned with beneficiary designations, and which ones are owned jointly. And we may find that there might not be any assets to get much concern about in terms of creating the will, which would be the list of instructions as to how assets pass.

So for the person who has assets, we need to know who they are. We need to know something about their cognitive ability, and we need to know something about the assets they own and how they own it. Another thing we need to know is who they are in terms of their relationships. Who were they related to? If you don't have a will and you do have assets in your sole name, the will can either direct how assets pass, or in the absence of a will, the law says how that property passes to other people. It may pass to relatives you don't like. It may pass to relatives you didn't want to receive anything. So we need to consider in this picture if you have specific desires about how property should pass. When we are talking about a parent or a sibling or a grandparent who wants to make sure that a person with a disability is taken care of, we may want to take extra steps in the planning process. That means that we have to know whether or not the person with the disability is a recipient of SSI or SSDI or Medicare or Medicaid, because we wouldn't want our estate planning to disqualify anybody. And we're going to hear a little bit more about that I believe from Michelle Wolf just in a few minutes. So we are going to take a look at relationships, we're going to take a look at entitlement to public benefits and we're going to take a look at what kind of documents match up with the needs of the individual. If one has no will and has asset - owns property, upon their death, then their estate passes by what's called intestacy - without a will, intestate. And when one is without a will, we are subject to the laws of the state in which they died or in which the property is, such that the law says who receives that property. So again we want to notice whether or not there are people we want to receive that property or people who we want to redirect - or maybe direct property in a way that benefits one person more than another: for example, a person with a disability might need to inherit more from family members then other members of the family inheriting, because there's a greater need. So we talked a little bit about how guardianship can replace the power of attorney, we've talked a little bit about how assets that are on with beneficiary designations or jointly-owned can replace parts or all of the need for a will and that brings us now to the needs of a person with disabilities who may be a recipient of those public benefits - and this will be my last point for this part of our discussion, and there is something called a special needs trust that you may have heard about.

A special needs trust is a way to guarantee that a person with a disability, who is a recipient of public benefits, is able to sustain those public benefits - not to be just qualified, keep the public benefits - and yet inherit even large sums of money from another family member. The way we do that is by following some very simple rules set out through regulations under the Social Security Act and create a trust, which is for the benefit of the person with the disability who gets the public benefits. By following those rules, we are able to guarantee that the person with the disability who gets the public benefits will be able to maintain qualification for those public benefits. So we'll need to know a little bit more about those public benefits - whether or not we want to keep them, how we stay qualified for them - and we'll talk a little more about that momentarily. The final major issue regarding special needs trusts is when you create a trust, you create a three-party agreement. You have a grantor - the person who puts the money into the trust, let's say that's grandma; and then there's the beneficiary - that might be the grandchild with the disability; and there's a third party - a trustee, and it is very important to make a careful decision about who should be the trustee of a trust, especially in the context of special needs trust and I know we're going to talk a little more about the choices in that regard. So I'll cede the floor to our next speaker.

Philip Kahn-Pauli: Great, thank you very much, Evan, and all right, Fred, you're up.

Fred Misilo: Thank you, Phil. Could we move to the first slide, please - with the diagram? Well, thank you for the invitation to be here, and I really appreciate the work that RespectAbility is doing to really get the word out amongst the disability community and families around the need and the importance of this kind of planning, and to provide some resources to begin the process - perhaps some individuals may have already gone through the process and looking at this as sort of ratifying what they've done and maybe learning some things. As an attorney who has practice in this area for over 30 years and also have worked in the field in providing services to individuals and also doing a lot of work within the advocacy community, I thought it'd be helpful to provide a framework for you to consider this entire process. So we all have a role to play as lawyers or as some folks are financial planners, others are trustees, others are working in developing person-centered planning, and so what I have here is a paradigm really of thinking about planning to help you think about planning with - on top of this is really creating a strategic vision; respecting self-determination and what that one person's desires are, aspirations - where do they want to go, where do they want to live, what kind of lifestyle - do they want to live in an urban setting or a rural setting or do they want to live with individuals, they want to live alone. Where they want to work. It's really thinking about that individual's aspirations and working towards creating that vision. You see that the other portions of this almost looks like a pyramid, doesn't it, with the person-centered plan at the apex of that pyramid, at the top of the pyramid, and this person-centered plan - we'll speak more about this in a few minutes, it's a detailed description of what we're looking to create based on some history, it's a holistic approach with accurate facts contained within the person-centered plan, it's also a work in progress - it's a work that can be updated on a very regular basis - one of my law partners Terry Barnett has a daughter with cerebral palsy and - I'm sorry, intellectual disability, autism and muscular dystrophy - she works in our firm one day a week, but we have a person-centered plan for Jenny, and that's updated every year, around her birthday, and so we work on creating that plan for her. The foundation of a person-centered plan is you need to have some legal documents to support it long term as well as a financial plan, so you see the two twin foundations of the person-centered plan is the trust and estate plan, some of which Evan talked about just now, which is a supplemental needs trust - whether it's a third party trust or a payback trust or a pool trust managed by a nonprofit organization as trustee, it's there to support the person-centered plan by identifying trustees, who's going to be running the these trusts, are they're going to be trust protectors to protect the beneficiary from a trustee who may go off the rails, is there going to be a trust Advisory Committee to help inform the trustee around future decision-making as to how assets are to be distributed. And then there's a financial plan obviously. You start again with the government benefits, sometimes with SSI or the DAC benefit, but that also looks at family resources that are usually provided at the death of both parents. May look at the earning potential of the individual. So the financial plan provides the octane, or the fuel if you will, to drive the funding of the supplemental needs trust that again propels the person-centered plan into the future, so I would ask you to think about this concept, this paradigm, if you will, when you think about planning for the future. One of the tendencies that sometimes people fall into, is getting too detailed in this process, and I think if you think back and look about - what are we trying to do, what is the process, I think this can bring you back to a place where you can get your bearings. Could I have the next slide please?

So we can down on all of these items, if we can, thank you. The person-centered plan does provide the vision, the guidance - we're rudderless, really, if you don't have an idea. If you think about having someone serve as trustee but if they're have not been very much part of the individual's life, they're coming at it cold, right? And so parents really need and families need to provide that vision and guidance around how decision-making is going to be made by a trustee. The very nature of these types of trusts for individuals with disabilities creates vast amount of discretion within the trustee and you need to provide that guidance with regard to how the trustee is going to be making decisions off into the future - and remember, this special needs trust or supplemental needs trust lasts for a lifetime - it lasts for the lifetime of the beneficiary, so we really need to think about providing that information, and of course, with the plans to how do we replenish that knowledge through supported decision-making venues as well as perhaps a trust Advisory Committee that can be self-perpetuating, over a period of time. Michelle Wolf gave me a wonderful document as we were planning for this, regarding an individual life action plan, and I love that word 'action' in the person-centered plan Michelle because what it talks about is, a trustee in this type of environment, is a proactive fiduciary - it's not someone sitting back and waiting to make a decision, it's someone who's actively engaged - how many of us have been involved in plans that, when you open up, the moths fly out or you have to brush dust off them. Now, this is not that kind of a plan - it should be one that's revitalized on a very regular basis. I'm from the Boston area and I love 'Cheers' - remember that that sitcom, 'Cheers' - "where everybody knows your name," right? That's what we want to create when we're developing the future plan, is that anyone who steps into the role of a decision maker of a trustee, you want to feel like you know that person when you're engaged in this process, and that's very very important. Next slide, please.

Thank you - we can scroll all the way down. Where I spend most of my time - we have a fairly large trust apartment and we manage special needs trusts in Massachusetts, and we normally have created the overall estate plan, which includes perhaps credit shelter trust, a plan for estate taxes - Massachusetts is one of those 16 states in the country that has a state estate tax and it's the lowest in the country of a million dollars - so we have to do some trust planning around that but, we also touch upon what Evan described which is the durable power of attorney, the health care proxies, perhaps trusts for other family members, as well perhaps of Medicaid planning or asset protection. But the overall objective in my view of special needs planning is obviously to maintain government benefits - you want to maximize the receipt of government benefits, many of which are needs-based; that means you have to show that you don't have a lot of money in order to qualify for Medicaid. But you also want to maintain a standard of living: just because we're in some ways creating an impoverishment in order to maintain eligibility for these means-tested benefits, we don't want to create a sub-standard of living, we want a quality of life - that is enjoyable. We also have to face the reality that individuals with disabilities often are subject to exploitation, perhaps from third parties who would seek to gain advantage or for some folks who simply want to please and don't have the ability to protect themselves, so we must build this in to the plan as well. And ensuring future decisions - well, I think if we continue to do the person-centered planning work and we encourage others in this arena to do that, will ensure that the decisions will be made by people who are both informed and competent; one of the things that our firm does - and we're coming on about 20 years of doing this - we have an annual special needs trustee bootcamp. We do it on a Saturday - usually the first Saturday in November - and it's about four hours of listening to me, but also listening to some of our trust officers who work on a day-in and day-out basis helping manage trusts, and we also hear from other lawyers in our firm as well as family members. Could I have the next slide, please?

I've had the honor for the last several years to be on the board of directors of the Arc of the United States which is the largest and oldest civil rights and human rights organization supporting individuals with intellectual and developmental disabilities, and it's been my real privilege for the last year and a half or so been the president of that organization, chair of the board, and we have a center for future planning and I would ask you to just consider hitting that website, hitting that homepage, because what you're going to see is a roadmap for creating a future plan to help provide you with some understanding and around what a future plan is, and there are some tools there to help you build a step-by-step approach - both for individuals as well as families. We also have an ability to reach local individuals to help within your area, and we have some models - some examples of what others have done. And so we also have the ability to respond to some urgent needs within that website, so I would encourage you to take a look at that - I may have gone over the ten minutes allocated and I apologize for that, so I'll turn it back to Philip to introduce the next speaker.

Philip Kahn-Pauli: No, thank you very much, Fred. I think that's really important and you do a very good job of kind of clearly outlining what the process is - I think a clear, simple process - may not necessarily be simple but a clear process is gonna provide a peace of mind for a lot of people who have to deal with this now, so... shifting on from our East Coast offices and guests, we're gonna go to the West Coast and Michelle Wolf.

Michelle Wolf: Hi, everybody. Thank you, Phil, for the introduction. Thank you, Evan and Fred, for laying out a very good framework for what I'm going to be talking about for the next ten or so minutes. I just want to let everyone know I'm both a parent and a professional, so I know what it's like to stay up at night worrying about what's gonna happen to my adult child if I'm incapacitated or not able to take care of him. So, I created - with the help of a non-profit here in Los Angeles called Bet Tzedek Legal Services - a new pooled special needs trust, and we're going to talk about what a poll trust is in some detail and how that might be advantageous for you, particularly if you're a family without that many assets to put into a special needs trust. And next slide, please.

So, we're gonna very briefly touch upon government benefits and how some are need-based and some are not, and then we're gonna get into a special needs trust. And next slide.

So, we all know that the number one question is "what's going to happen to my child after I'm gone?" and as Phil said, with the pandemic, this question now has more urgency to it and critical thought than ever before. Next slide.

So, many government benefit programs are both asset and income limits: so asset means how much money you have in things like your savings account, stocks, bonds, gold... Bitcoin - how much money you have access to at any given time. Income is how much money comes in on a monthly time. So government benefits are really only designed to get people to the federal poverty level, which is really quite low - particularly in urban centers, and I know in Los Angeles there's no way you could live on twelve thousand four hundred and ninety dollars. Next slide.

So, it's really important to understand, as important as these government benefits are, they're not enough to live on. So what I like to tell families is, your job is to get all four of these benefits that you're seeing in front of you: SSI, SSDI, Medicaid and Medicare, and at the same time figure out how you're going to supplement those with private funds. So, just briefly on the left-hand side, those need-based benefits - both SSI and Medicaid - limit the maximum amount of assets to $2,000 at any one time. And the only exceptions to that are special needs trust and ABLE accounts. On the right-hand side are entitlement benefits, so those don't really depend on your income level - particularly Medicare, so you could be a bazillionaire, and after you turn 65, and you're a US citizen, you would still be able to get Medicare, regardless of how much money you have or how much stock you own. Next slide, please.

So this is a really important benefit that a lot of parents do not know about: it's through the Social Security Administration and it's known as both disabled adult child or childhood disabled beneficiaries: CDB. So this is what happens; if you have a parent who's worked their whole life and when they turn 65 or 66 they start to pull their own Social Security income, if they have a disabled child who is over the age of 18 and who was diagnosed before the age of 22 with a disability as defined by the federal Social Security Administration, you can get this benefit for your adult disabled child. So I'll give an example: let's say my husband, G-d forbid, who is working were to retire, and let's say he's getting twelve hundred dollars a month in Social Security retirement, my adult son who is 25 would be entitled to 50% of that or six hundred dollars, and then after my husband passes, my child would be entitled to nine hundred dollars. And it's very important to note that the parent receiving Social Security retirement benefits keeps getting his or her benefits at the same time that disabled adult child is receiving their own check. Next slide, please.

So, very briefly, SSI stands for Supplemental Security Income. In California the max is 931 - that is lower in other states, and the best thing about SSI is not just the cash benefit, but you get this great automatic categorical linkage to Medical in California, Medicaid nationally. And it's the best kind of Medicaid without any show of cost and it gives you full access to all Medicaid services. Next slide.

So Medicaid is national health insurance for the poor and disabled; it pays for medical care - very important for people with disabilities is that it can pay for in-home caregivers, it can pay for all kinds of Medicaid waiver programs, which are just so crucial for our adults with disabilities. You can have both Medicaid and Medicare at the same time - that's called medi-medi or dual eligible. You can also have private insurance and Medicaid at the same time. When that is the case, either Medicare is primary or your private insurance is going to be primary. Medicaid is always secondary because Medicaid pays at a much lower rate than any other provider of service. Next slide.

 So this is also an important, annoying and stupid federal rule regarding SSI that I like parents to be aware of, and people with disabilities - it's called in-kind services and maintenance, known by its acronym ISM. So what this is is the Social Security Administration considers any financial assistance for food, shelter or basic utilities like gas and electricity to be in-kind: so what this means is, if a parent or a special needs trust, pays for rent, mortgage, groceries, restaurants, electricity or gas, the feds will reduce your Social Security or SSI amount by one-third, which right now is about two hundred and seventy dollars or two sixty one - there's the amount. So, in general, most special needs trusts stay away from paying for rent, food and basic utilities for beneficiaries in a special needs trust because of this rule. Next slide.

So, as Evan touched upon, what is a special needs trust. So really it's a financial instrument, legal instrument, so a person with a disability can either become eligible for or keep eligibility for those government benefits we just talked about. There's other government benefits I didn't touch upon that also can be helped with the creation of a special needs trust, such as Section 8 housing vouchers and SNAP and a few other means-tested government benefits. Now, one important rule about special needs trust is they have to be used for the sole benefit of the beneficiary and they're awesome - they also have to be irrevocable. So what this means is once there's money in a special needs trust, G-d forbid another family member gets sick, you cannot take money out of that special needs trust and use it for another family member's medical bills. But the good news is, the special needs trust allows the beneficiary to have all those government benefits we just talked about, plus what the money is in the trust, plus any investment income that's in the trust. Next slide, please.

So, what is a pooled special needs trust? So, these are a unique type of special needs trust - they were created by Congress in 1993. And they can be used by someone over the age of 65, which is different than a standalone special needs trust. And one of the interesting rules is that these pooled special needs trust must be operated by a non-profit. So, I am the executive director of a nonprofit in Los Angeles: there's about a hundred pool trust across the country and there's a wonderful directory of all the pool trusts and you can find it right here at this URL: specialneedsanswers.com/pooled-trust So under our master trust, we can only sign that people who live in California. But there are sister nonprofits all across the United States, many of which are operated through Arcs, many operated by a group called Plan of various states, and we all do the same basic work. Next slide, please.

So the way all pool trusts work is there's a master trust written by an expert attorney, people come in to that master trust and enroll by signing a simple legal agreement called a joinder agreement, money is kept in sub accounts and the money is only pooled together for investment purposes - all of our accounts receive professional trustee oversight, funds and these sub accounts are protected - it's like a safe harbor or a tax shelter - and we use disbursements direct to third parties, such as writing a check to a landlord if the person is not receiving SSI, and also we use a wonderful instrument called a true link restricted-use Visa card - Next slide, please. We're gonna skip over that - next slide.

We use these special Visa cards that we are able to load up remotely based on a pre-approved monthly allotment and then the beneficiary is able to use that Visa card anywhere where Visa is accepted, but at the same time, we as trustee maintain discretion and control over how those funds are spent. So the pooled trust - they all use, like I said, a master trust with the joinder - typically there's a lower a minimum amount needed for professional trustee and wealth management, so we have a twenty thousand dollar minimum - if you wanted to use a professional fiduciary, at least in California, they're gonna want to see a minimum of half a million to a million dollars. Most of the professional trustees and banks require a minimum of 1 million, 2 million, 3 million - and that has to be typically in liquid assets. So, I like to say just like the old Mac commercial, pool trusts are designed for the rest of us who don't have a million dollars and still need a special needs trust. Next slide.

So we were launched in 2015 with funding from the Jewish Community Foundation, and we partner with our local Jewish Federation. We also partner with RespectAbility and many other agencies. We are open to all beneficiaries and what we do is we leverage the power of coming together as a community so we are able to provide lower fees and potentially higher investment returns. Next slide. We have a new future funded option - if you live in California, hit me up later. Next slide.

Here's that true link card and this can be used by anyone in the nation and it's a wonderful instrument for any trustee to use. Next slide. I want to spend just a few minutes on the new ABLE program, which was created in 2014. It's a tax-advantaged program similar to 529 tax savings accounts for college, only funds in these ABLE accounts can be used for much broader expenses than education - so it can be used for medical expenses, housing, transportation, education, health prevention, wellness and by the way, it's a wonderful workaround for the ISM rule that we talked about earlier. Next slide.

You should go to the national ABLE resource center - the URL is here: ABLENRC.org. Just a few fast facts: the beneficiary of the account is the account owner; you can deposit up to the maximum of the IRS gift exemption, which right now is $15,000 a year; you can go up to a hundred thousand in an ABLE account before SSI or state means tested benefits are suspended; and you can go all the way up to four hundred and seventy five thousand and still receive Medicaid. And next slide. And ABLE accounts and special needs trusts can work together very well; as I mentioned, there are certain advantages to using the ABLE accounts to pay for the rent, so what people are talking about are using your ABLE accounts for money in, money out, and using your special needs trust more as a savings account. Next slide. So there's all of our contact information. And we're all working remotely from home, as you can see, and it was a pleasure to present with all of you today, and I encourage all of you to check out the polled special needs trust options in your state. And back to Phil.

Philip Kahn-Pauli: Thank you so much for running us through the various different pieces of information that you've brought forward for us today. I've certainly learned a lot, and now we have an opportunity for our audience members to their questions directly to any of our experts; all of our experts. I will say that we already got one question in the chat box about will there be a recording available later - yes, after we get a chance to transcribe this and get the video saved, we will be posting a digital copy of the file as we discussed today as well as the webinar on RespectAbility's website very soon, and so for people who want to ask a question of our wonderful panelists, you can either type it directly in the chat box at the bottom of your Zoom window or ask a question via the Q&A option so you can go and do that now - for now, I actually have a quick question for all three of our panelists. I would say, very quickly, what is the biggest mistake that people make when they start thinking about setting up wills or setting up special needs trusts, so what is their biggest mistake and what is the first step that people should take to move this process forward?

Evan Krame: Am I unmuted?

Philip Kahn-Pauli: Evan, Fred and then Michelle.

Evan Krame: Okay. The Internet is a wonderful resource, and the biggest mistake many people make is believing that they can download a form, fill in the blanks and they have a perfectly wonderful document for their estate planning. Especially when it comes to wills. When it comes to powers of attorney, many states and many organizations have made accessible, easy to complete, financial power of attorney and medical directive forms that people can download, fill out, sign in front of witnesses and have perfectly valid wonderful forms, but when it comes to wills, that's where I worry the most - especially when we're talking to this community of people with family members with disabilities - this takes, as you can tell from the last 45 minutes of presentation, a lot of detail thought and consideration.

Fred Misilo: I would follow up with - I agree with everything Evan said and second would be - a lot of people think they don't need a will or a trust because they don't have enough money - I think that the resource limitation right now for Medicaid is $2,000 across the country and so everybody needs a plan to develop. A second - that not every attorney who's practicing law - or even every trusted estate lawyer who practices in this area - has the experience necessary to deal with a lot of the complexities with regard to special needs trusts. Special needs trusts are administered both at the federal level but then there are also state unique issue - there are third party trusts that do not have a payback provision, there are palms manual - if you're administering it you need to be aware of that and finally, the important distinction between what's a probate asset and what's a non-probate asset - Evan talked about that briefly where there's a beneficiary designation that says that John will get the asset; well, if someone did has a life insurance policy through work and name their son with a disability or daughter with a disability, did a will, did a special needs trust, but never changed their beneficiary designation - guess what; that life insurance policy through the group isn't going to go through the will or the trust, it'll go directly to John and thereby disqualify him from any needs benefits, so I reminder of the pyramid that we started with - we have a person-centered plan, the trust in the state and the financial assets need to be looked at together as an integrated whole so that we don't have any intestacy or any periods of disqualification: what we call the 'oops' - we don't want any oops, we want this to be a thoughtful approach.

Michelle Wolf: From my perspective, we see a lot of parents which, trying to kind of micromanage beyond the grave, the idea being they say to us, I'm gonna set up the special needs trust, I'm gonna put in money, but I only want him to have this kind of job and to go to these kinds of places and, to a certain extent, they're taking away agency from the person with a disability who, we always listen to that person first, and if they're making a reasonable request and there's sufficient funds, we try to meet those requests. So, I think sometimes parents are trying to micromanage, way beyond and into the future, where it's not really going to be appropriate and we, in our capacity as trustee, have to maintain sole discretion and we have to be able to evaluate the requests based on their reasonableness with the assets in the trust and with everything else that's happening and in the current environment.

Philip Kahn-Pauli: Wonderful, thank you. And actually we have a first question from the audience which, he touches on what I was going to ask anyway if nobody else did, so Michael Lim has a question here about, he says that he has a child who is a mental health condition which started when they were in middle school, the kid is now 23 so he's an adult, it is on a minimum-wage job, can he be retroactively deemed disabled and qualify for an ABLE account and how does one do that? So, I wanted to bring up an opportunity to talk about ABLE accounts so Michelle, Fred or Evan, whoever wants to take it, what are ABLE accounts, how do you qualify and how do you go about finding more information about them?

Fred Misilo: Well, the first instance, in order to be qualified, one needs to be considered to have a disability, and in the area of special needs planning, disability is a defined term through the Social Security Administration, and that means that one, it's a functional definition - means that one is unable to engage in what's called 'significant gainful activity,' and that means working, right? And so this is a complex area because if you're working minimum wage, the chances are that you may not be considered disabled because you're making too much money, so the substantial gainful activity amount is is established every year, usually in January by the actuary Social Security Administration, and Michelle or Evan help me out here but I think it's around 1,200...

Michelle Wolf: Yes, 1,200 - 1,200 and some change.

Fred Misilo: So, if you earn more than that, then at the first blush, they're going to say well, you're making too much money, you're engaged in substantial gainful activity, therefore you're not disabled. You can show, through appeal, that a lot of this is based on work-related expenses - so if somebody's getting you to drive, taking you their bike to drive or you have a job coach, and you have other scaffolding that helps you earn that money, you can establish that, without that scaffolding, you would be unable to engage in that kind of activity, but that's a process, right, and the challenge is, it puts people in a situation where it kind of punishes you for working, right - I mean the system is kind of messed up and there are some Ticket to Work programs that are out there that are well beyond the scope of this webinar, and the other thing is to remember is that the the application only goes forward, so if you feel as if you've had a disability for a period of time and you've been working but you feel that you really should have been considered disabled, you don't have any retroactivity to the time - it goes forward, so the eligibility begins at the date of application and forward.

Philip Kahn-Pauli: Gotcha, thank you, Fred. Michelle?

Michelle Wolf: To answer specifically the question, the one thing I was going to add is that, under the ABLE program, you are able to self-certify - there's a self certification process with the ABLE accounts and I believe Phil just put up the URL for the National Resource Center and it goes through the details of how, in this case, I think the person might try to self-certify so they can establish an ABLE account.

Philip Kahn-Pauli: Gotcha, and I will say that I think ABLE accounts have been around for a few years but they are significantly, kind of, underutilized by many people with disabilities who would otherwise qualify for it, and it's - basically for those who are unfamiliar with it, it's most analogous to a 529 college savings account - you have had your disability before you were age 26 and you have to go through different states in order to get it, due to kind of regulatory compliance but, it is a really wonderful resource for people who qualify for ABLE accounts, but only about fifty five thousand people with disabilities have ABLE accounts currently and so there's a lot of advocacy out there right now in the wider disability world to make people aware of this resource and to put it to use as best as possible. We are nearly out of time, I wanted to quickly ask - I don't see any other questions from our audience; any other kind of final thoughts from our wonderful panelists - Fred, Michelle or Evan, any parting words of wisdom for people as we navigate this very uncertain and very difficult time?

Evan Krame: Yeah, I would just like to say - while most states required that we shelter in place, there are ways to get these documents done even in these difficult times, and I am telling my clients that we can do a lot on the phone and by video chat, get the documents ready to be signed - different attorneys are handling the signing process in different ways, because the signature has to be witnessed: some are doing it in outdoor spaces, in my firm the client will come in, go straight into the conference room, we've labeled everything for where they have to sign, my staff stands outside of the room, they sign, they leave and then we are able to finish the signing process. There are ways to achieve this and I don't want people to hesitate from, say, figuring that they won't be able to get an attorney's attention at this difficult time, where the many of us and this field particularly, are working, are eager to help.

Philip Kahn-Pauli: Thank you, Evan. Michelle or Fred, any parting thoughts for us?

Fred Misilo: Well, I just think that if you haven't started planning, it's time to plan - this is a reminder that we are living in very challenging times, and I want to thank RespectAbility for the opportunity to come and if people can take a look at the website of the Center for Future Planning at the Arc, I think they'll be well informed about how to begin that process.

Philip Kahn-Pauli: Thank you, and we'll send everybody a copy of the slides and I'll make sure those links are out there and, I also have a link for some information on how to donate to a local faith-based organization as part of your future planning as well so, there's a lot of great organizations that could use some help when we are gone from this world. Alright, Michelle - parting thoughts?

Michelle Wolf: The future is now. [laughter]

Philip Kahn-Pauli: That is true. Well, thank you, everyone - I put them linked in the chat box about ABLE accounts, I appreciate all of our panelists for bringing their expertise and their clarity in these uncertain times - as I've been saying to everyone I talk to, please stay safe, keep your families healthy, wash your hands, call your mother, if they're still around, and that we are all in this together and let's kill the virus, okay? All right, take care everyone.