

## Comparison of Special Needs Trusts and ABLE Accounts

	Third Party Special Needs Trust	ABLE Act Account
<b><i>Created and Managed by</i></b>	Family, Friends, Guardians, Trustees, Caregivers	Families and Qualified Individuals
<b><i>Who can serve as Trustee</i></b>	Family, Friends, Advisors, Institutions appointed by creators of the trust, Court	No Trustee. Custodian of account
<b><i>Hire/Fire/Change Trustee</i></b>	Yes	Not applicable - Program Administrator
<b><i>Successor Trustees</i></b>	Appointed by Trust creator (Grantor)	Not applicable - Program Administrator
<b><i>Authority to remove Trustee</i></b>	Yes	No - Program Administrator
<b><i>Authority to make investment decisions</i></b>	Trustee has sole authority. Beneficiary may not have any authority.	Program Administrator
<b><i>Control Investment Risk</i></b>	Family has authority as Trustee	Program Administrator Range of available investment accounts determined by States
<b><i>Length of Time to Withdraw Funds</i></b>	Immediate by Trustee	Must be approved by managing agency unless there is a Debit Card, then bill is submitted for approval.
<b><i>Distribution of remaining trust funds after death of beneficiary</i></b>	Creators of Trust (Grantors) decide who receives trust remainder	Payback to Medicaid first, then balance to heirs
<b><i>Tax Penalties Non-Qualified Withdrawals</i></b>	None	Earning Portion subject to regular income tax, 10% penalty and possible State penalty
<b><i>Who Qualifies</i></b>	May be established for anyone	<b>Person diagnosed prior to age 26* and receiving SSI or DI under Title II of SS or has an impairment that will result in death or last at least 12 months or is blind and provides a diagnosis by doctor. Eligibility for ABLE does not mean eligibility for SSI or Medicaid.</b>
<b><i>Authority to change who receives funds after death of beneficiary</i></b>	Yes, Trust Grantors during their lifetime.	Subject to Payback

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<b>Payback to Medicaid after death of beneficiary</b>	No	Yes – The amount is based on payments <i>after</i> the ABLE acct begins
<b>Ability to choose Financial Advisor</b>	Yes	No – investments limited by States
<b>Administrative Fees charged</b>	Family members usually would not charge. Professional managers and institutions have regulated fees	Yes
<b>Unique Benefit of Trust</b>	Family retains complete control	Provides an option to put aside funds in a tax free accumulation and distribution account without jeopardizing government benefit eligibility as long as the account is in compliance.
<b>Maximum Annual Deposit</b>	Unlimited	<b>\$15,000 – If amount is exceeded, it is no longer considered an ABLE Account. Assets are a “countable resource.”</b>
<b>Maximum Total without jeopardizing SSI eligibility</b>	Unlimited	<b>\$100,000 If exceeded SSI is suspended. Reinstated if below acct max with no reapplication.</b>
<b>Maximum Total without jeopardizing Medicaid eligibility</b>	Unlimited	<b>Account must be below State 529 plan max for eligibility Example: Arizona - \$421,000/California - \$371,000</b>
<b>When Can It Be Created</b>	Any time prior to age 65	Anytime as long as the disability began prior to age 26
<b>Taxation</b>	Files 1041 Income Tax return for Trusts.	Tax Free earnings and distributions
<b>Transferring Assets</b>	Remainderman named to receive assets after death of the beneficiary	Funds may be “rolled” over to another account or to another family member who qualifies.

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<b>What can funds be used for</b>	Supplemental needs that do not duplicate government benefits	Qualified expenses ie education, housing, and transportation
<b>Who Can Give Funds</b>	Anyone except the beneficiary (person with special needs)	Anyone
<b>Tax Deductible Deposits</b>	No	No
<b>Number of Trusts/Accounts per Individual-</b>	Unlimited	One - Aggregate Contributions are subject to State limits for 529
<b>Assets Allowed</b>	Anything	Cash or rollovers from another family member's account who also qualifies.
<b>Gift Tax</b>	Cannot use \$15,000 gift tax exclusion (2018).Can use the Lifetime Exclusion	Can use \$15,000 gift tax exclusion (2018).Can use the Lifetime Exclusion
<b>Income Tax</b>	<p>A special needs trust can often qualify as a Qualified Disability Trust – and many distributions are deductible at the beneficiaries tax level – Requires tax return for trust and beneficiary.</p> <p>If a 3rd party special needs trust is drafted as a Qualified Disability Trust</p> <ul style="list-style-type: none"> <li>• It has a full \$4,000 exemption in 2015, &amp; all distributions from the Trust for the benefit of the beneficiary are taxed to the beneficiary, AND</li> <li>• The beneficiary has his/her own, a 2nd exemption of \$4,000, &amp; a standard deduction in 2015 of \$6,300.</li> <li>• A 3rd party special needs trust can shelter a total of \$14,300 in 2015 of taxable income.</li> </ul>	<p>Tax Free</p> <p>An ABLE Account with \$100,000 (maximum not to lose SSI) would need to earn over14% for any income tax benefit over a 3rd party SNT.</p> <ul style="list-style-type: none"> <li>• Keep in mind the ABLE Account is subject to a Medicaid Payback.</li> </ul>



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