

Comparing Special Needs Trusts with an ABLE Account

Trust Type	First-Party Special Needs Trust (42 USC 1396p(D)(4)(A))	First-Party Special Needs <u>Pooled</u> Trust (42 USC 1396p(D)(4)(C))	ABLE Account	Third-Party Special Needs Trust "Mom & Pop" Trust
Is there an age limitation?	This trust must be established and funded before age 65 in Virginia	This trust must be established and funded before age 65 in Virginia	Beneficiary must have been determined disabled before age 26.	No age limitation.
Is there a limit on annual contributions?	No.	No.	Yes. The aggregate of all contributions may not exceed the annual gift exemption (\$14k for 2015).	No.
Is there a limit on the total amount that may be held in the trust or account?	No.	No.	Yes, the limit will be set by the state (VA \$350,000). However, if the funds in the account exceed \$102,001, the beneficiary's SSI is suspended; Medicaid is retained.	No.
Are the earnings in the account investments taxed?	No.	Yes.	No, if the distributions from the account pay for "qualified expenses."	Yes.
Who may establish the trust or account?	A parent, grandparent, court or guardian.	The <i>beneficiary</i> , parent, grandparent, court, or guardian.	The <i>beneficiary</i> or "someone" on behalf of the beneficiary.	Any third party may establish a special needs trust.
May the beneficiary be changed?	No.	No.	Yes, as long as it is a brother, sister, step-brother or step-sister who meets the ABLE Act requirements.	It depends on the language in the document and/or whether the third party is dead or alive.
May distributions be made after the beneficiary's death, to pay outstanding qualified expenses including a funeral?	No.	No.	Yes, as long as the distributions are "qualified expenses."	Yes.
May the State seek reimbursement for Medicaid expenditures?	Yes.	Yes, to the extent that the funds are not left to the Trustee/non-profit for the benefit of other disabled beneficiaries.	Yes.	No.

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Are disbursements limited?	Yes. Should not jeopardize means-tested benefits.	Yes. Should not jeopardize means-tested benefits.	Yes. Must follow allowable disbursements that are 'disability' related expenses, and should not jeopardize means-tested benefits	Yes. Should not jeopardize means-tested benefits.
How many accounts/trusts may a person with disabilities have?	Unlimited	Unlimited	One.	Unlimited.
Are there periodic disability redeterminations?	No.	No.	Yes.	No.
What is Virginia's implementation date?	Already in place.	Already in place.	Late 2016/early 2017	Already in place.
What are the investment choices?	Trustee decides	Pooled Trustee determines.	State ABLE manager decides.	Trustee/nonprofit trustee decides.
Are all contributions liable for Medicaid payback?	Yes.	May be left to the pooled trust in lieu of Medicaid.	Yes.	No.
Does this account replace third party special needs trusts?	No.	No.	No.	This <i>is</i> a third party special needs trust!
Who is responsible for managing the account?	Trustee	Trustee/nonprofit	Designated Beneficiary or whomever assists them.	Trustee/nonprofit
What costs are associated with the account?	Legal fees; trustee may collect management fees; investment fees; services outsourced to others may charge a fee.	Nonprofit management, trustee, and establishment fee.	Determined state by state; there may be establishment, investment, and management fees.	Legal fees; trustee may collect management fees; investment fees; services outsourced to others may charge a fee. OR with nonprofit management, trustee, and establishment fee.

**Please note: all information may be subjected to change. Contact our Special Needs Trust Director, Tia Marsili at*

The Arc of Northern Virginia, 2755 Hartland Rd., Suite 200, Falls Church, VA 22043 703-208-1119 for more information.