

Comparing Special Needs Trusts and the MD-ABLE



Special Needs Trust
Serving Virginia, MD & DC

Updated: January 12, 2021

Trust Type	First-Party Special Needs Trust (42 USC 1396p(D)(4)(A) (Through an Attorney)	First-Party Special Needs <u>Pooled</u> Trust (42 USC 1396p(D)(4)(C)) (Available at The Arc of Northern Virginia)	Achieving a Better Life Experience (ABLE)	Third-Party / Family-funded Trust (Available at The Arc of Northern Virginia)
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 contributions may not exceed the annual gift tax exclusion (\$15k for 2021).	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 (MD \$500,000). However, if the funds in the account exceed \$100,000 the beneficiary's SSI is suspended; Medicaid is retained.	No.
Are the earnings on the investment taxed?	Yes.	Yes.	No, not if distributions from the account are for "qualified disability expenses" directly related to the disability.	Yes.
Who may establish the trust or account?	A beneficiary, parent, grandparent, court, or guardian.	The beneficiary, parent, grandparent, court, or guardian.	The beneficiary at 18+, the parent (bene. Under 18), the Guardian, or Power of Attorney (POA).	Anyone but the beneficiary may establish this 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?	If there is a Medicaid lien, then only when permission is requested and received.	If there is a Medicaid lien, then only when permission is requested and received.	Yes, as long as the distributions are "qualified disability expenses."	Yes.
May the State seek reimbursement for Medicaid expenditures?	Yes.	Yes, to the extent that the funds are not left to the managing non-profit.	No, unless federal law requires it.	No.
May the beneficiary contribute their income to the account (in addition to max limit)?	Yes, there is no limit.	Yes, there is no limit.	Yes, the limit is \$12,760 in 2021. If beneficiary or their employer is contributing to a retirement plan, beneficiary is not eligible to make this contribution.	No.
Are there disbursement requirements?	Yes; shall not jeopardize means-tested benefits; primary benefit of beneficiary.	Yes; Shall not jeopardize means-tested benefits; primary benefit of beneficiary.	Yes; "disability related expenses" directly related to disability; shall not jeopardize means-tested benefits.	Yes; shall not jeopardize means-tested benefits; broadest use of funds.

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Are there periodic disability re-determinations?	No.	No.	Yes.	No.
What is Maryland's implementation date?	Already in place.	Already in place.	Already in place.	Already in place.
What are the investment choices?	Trustee decides.	Trustee offers 8 investment portfolios. If trust +\$250,000, you may customize investment.	ABLE -MD: Cash or 3 investment options..	Trustee offers 8 investment portfolios. If trust over \$250,000, you may customize the investment.
Are all contributions liable for Medicaid payback?	Yes.	May be left to the pooled trust in lieu of Medicaid.	No, but there are conditions re: 55+; and federal law may direct reimbursement.	No.
Does this account replace third party special needs trusts?	No.	No.	No.	This is a third party special needs trust!
How many accounts/trusts may a person with disabilities have?	Unlimited	Unlimited	One.	Unlimited.
Is a transfer from the beneficiary's 529 allowed?	You would need to cash out the 529.	You would need to cash out the 529.	Yes; there are considerations/restrictions.	No.
Who is responsible for managing the account?	Trustee.	Nonprofit in collaboration with Trustee = Checks and balances.	Designated Beneficiary or whomever assists them.	Nonprofit in collaboration with Trustee = Checks and balances.
What costs are associated with the account?	Legal fees. Trustee may collect management & investment fees; fees for outsourced accounting services.	Nonprofit management, trustee, fair establishment, close-out fee.	Determined state by state; there are minimal establishment, investment, administration, check, and management fees.	Management & investment fees; fees for outsourced accounting services. OR Nonprofit management, trustee, fair establishment, close-out fee.

***Please note: All information may be subjected to change. Every effort is made by The Arc of Northern Virginia to ensure that the information is correct. Contact: Tia Marsili, Director of Trusts 703-208-1119 TMarsili@TheArcofNoVA.org The Arc of Northern Virginia Special Needs Trust Program, 2755 Hartland Rd., Suite 200, Falls Church, VA 22043**