

Comparing Special Needs Trusts and the VA-ABLE

Updated: September 18, 2020

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 2020).	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 \$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 in the account investments taxed?	Yes.	Yes.	No, if the distributions from the account pay for "qualified disability expenses" per IRS and SSA POMS.	Yes.
Who may establish the trust or account?	The beneficiary (18+), parent, court, grandparent, Guardian, or POA with the authority to do so.	The beneficiary, parent, grandparent, court, Guardian, or POA with the authority to do so.	The beneficiary at 18+, parent (of a minor child), 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 alive or dead.
May distributions be made after the beneficiary's death to pay outstanding qualified expenses including a funeral?	If there is a Medicaid lien, then only when permission is requested and received. No lien, then yes.	If there is a Medicaid lien, then only when permission is requested and received. No lien, then yes.	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.	Yes for Federally funded Medicaid, No for State funded Medicaid.	No.
Are disbursements limited?	Yes, in that they shall not jeopardize means-tested benefits and are for the primary benefit of the beneficiary.	Yes, in that they shall not jeopardize means-tested benefits and are for the primary benefit of the beneficiary	Yes. They shall be allowable disbursements that are "disability related expenses" per IRS and SSA POMS. They shall not jeopardize means-tested benefits.	Yes. They shall not jeopardize means-tested benefits <i>but</i> otherwise this trust allows for a broader use of trust funds.
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Are there periodic disability redeterminations?	No.	No.	Yes.	No.
What is Virginia's implementation date?	Already in place.	Already in place.	December 14, 2016	Already in place.
What are the investment choices?	Trustee decides.	Grantor(s) decides with Pooled Trustee/Manager.	State ABLE manager decides with Designated Beneficiary.	Grantor(s) decides with Pooled Trustee/Manager
Are all contributions liable for Medicaid payback?	Yes.	May be left to the pooled trust in lieu of Medicaid.	Not State, Federal, Yes.	No, as long as the beneficiary's money is never deposited into it.
Does this account replace third party special needs trusts?	No.	No.	No.	This <i>is</i> 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; & ABLE account rollovers from one qualified ABLE Program to another qualified ABLE Program; to a sister, step-sister, brother, step-brother who qualifies.	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.
May the beneficiary's income be saved?	Yes, and there's no maximum.	Yes, and there's no maximum.	Yes, the additional annual maximum is \$12,490 (2020) if not contributing to an employer-sponsored retirement plan.	No
What costs are associated with the account?	Legal fees. Trustee may collect management fees, investment fees may be applied; fees for outsourced accounting services.	Nonprofit management, trustee, minimal establishment, close-out fee.	Determined state by state; there may be establishment, investment, administration, check, and management fees.	Nonprofit management, trustee, establishment, close out fees. OR Legal; management, investment, tax reporting & accounting fees may apply.

**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 TMarsili@TheArcofNoVA.org
The Arc of Northern Virginia Special Needs Trust Program, 2755 Hartland Rd., Suite 200, Falls Church, VA 22043**