PFA Tips

ABLE Accounts vs Special Needs Trusts

People with disabilities have choices when it comes to savings vehicles that will augment government benefits without jeopardizing government benefits. On November 28, 2017, Maryland 529 launched Maryland ABLE (Achieving a Better Life Experience) Accounts, which allows up to a $2,500 ($5000 for joint filers) income deduction for contributions by Maryland State income taxpayers. ABLE Accounts are an excellent means to save money for people with disabilities and can work in conjunction with Special Needs Trusts and Pooled Trusts.

There is a common misconception that Special Needs Trusts are only appropriate for large sums of money and ABLE accounts are appropriate for smaller sums. Generally, it is not an either-or when it comes to choosing the appropriate savings vehicle. Below is a brief overview of the different options as well as a key feature(s) of each vehicle.

ABLE Accounts

ABLE Accounts offer individuals with disabilities and their families a tax deferred savings vehicle to save for their future needs, much like the current 529 college savings plans that help families save for college. ABLE accounts help people save and invest their money without affecting SSI benefits until the account reaches $100,000 and while maintaining the ability to continue Medicaid benefits. Money in these accounts are also not counted as assets and therefore cannot be counted to exclude them from other federal and state means tested programs.

Key Features:

• An individual with disabilities is the owner of the account and can contribute his/her own money into the ABLE account. Others are also able to contribute to an ABLE account on behalf of the beneficiary. Contributions are limited to $15,000/yr unless the beneficiary qualifies for ABLE To Work. (see page 2 table Funding Cap)

Special Needs Trusts

There are different types of trusts and the difference between them typically is dependent on how the trust is funded.

Self Settled Trusts

A trust that is funded by the individual will likely have to be a first person (Self Settled) trust. First party trusts (and some state 's ABLE accounts [Maryland does not] have a payback provision, which means upon the passing of the individual, if there are any residual funds, the state would have first claim on those assets (to repay any Medicaid related costs incurred during the individual's life).

Key Features:

• There is no dollar limit for contributions but contributions cannot be made after the individual reaches age 65

Third Party Trusts

A trust funded by someone other than the individual could be established as a third party trust. Third party trusts do NOT have a payback provision. For estate planning purposes, most people prefer to set up a third party trust so that they can control where any residual funds could be directed. Special Needs Trusts investment accounts can be set up and held with just about any financial institution and the investments can be tailored to the individual's unique goals and needs.

Key Features:

• Can be named as a beneficiary in a will, life insurance, retirement accounts, etc.

• Investments options are very flexible and can be tailored to the needs of the beneficiary

Pooled Trusts

Special Needs Pooled Trusts are slightly different in that they are held and administered by the Pooled Trust (i.e. The First Maryland Disability Trust). Laws permit a non-profit organization to create a trust which can bring together (or "pool") the assets of many individuals with disabilities in a way that protects each one's assets and income from being counted in determining eligibility for certain public benefits, such as SSI or Medical Assistance. However, we will not be using Special Needs Pooled Trusts in our comparison.

Key Features:

• Simplicity – The Pooled Trust Administrator can do record keeping, investment management, file taxes and serve as trustee

• Investments options are very flexible and can be tailored to the needs of the beneficiary

continued on back

	ABLE Account	Special Needs Trusts (Pooled Trusts, Self Settled, and Third Party)
Age Restriction	**YES** - disability onset prior to age 26	**NO** - disability may occur at any age
Payback Provision*	**Maybe** – Maryland State Medicaid will not seek recovery from a Maryland ABLE account unless federally mandated to do so.	**NO** - Third Party Trusts** **YES** - Self Settled Trusts
Funding Cap	**YES** - $15,000.00/year. If the beneficiary qualifies for ABLE to Work they may qualify to contribute additional money to their account. (See plan disclosure)	**YES** - $15,000.00/year based on the current year IRS gift tax exclusion
Taxable	**NO** - account asset growth is tax-deferred and withdraws are tax-free if used for Qualified Disability Expenses	**YES** - taxable and would likely require filing a tax return
Asset Limits	**YES** - ABLE accounts can only accept contributions up to the state's lifetime contribution limit for their 529 College Savings Plan. For Maryland that is currently $350,000. Accounts can continue to earn interest; however, no further contributions can be accepted after the lifetime limit is reached.	**NO**
Investment Limitations	**YES** - investment options limited to the funds in the approved plan	**NO** - investments may be tailored to individual goals and risk tolerances **YES** – pooled trusts options are limited
Require Trustee	**NO**	**YES**
Expenses Limited	**NO** – but with consequences. If withdraws are used for Qualified Disability Expenses (QDEs), there are no taxes on the earnings. QDEs are broadly defined and include expenses that support the health, independence and quality of life for the person with the disability. If funds are withdrawn and used for expenses that are not QDEs, there are tax penalties.	**YES** - may be used to cover a variety of expenses that are not already being met by government benefits. Can't be used for food or shelter without causing SSI reduction and must spend funds on allowable expenses.

*Payback provision means that upon the passing of the individual, the state would have first claim on any residual funds in the account to repay any Medicaid related costs incurred during the individual's life.

**Estates for anyone over the age of 55 who has received long-term care benefits in the US has the potential to have the federal government make a claim against the estate to recapture monies paid for long term care services for the person since age 55.

Additional Resources

What are ABLE Accounts? | ABLE National Resource Center
http://ablenrc.org/about/what-are-able-accounts

2015 Webinar Series 3: Supported Decision-Making and the ABLE Act, Achieving Better Life Experience | Supported Decision Making
http://supporteddecisionmaking.org/events/supported-decision-making-and-able-act-achieving-better-life-experience

Social Security Administration Releases Updated Guidance on ABLE | ABLE National Resource Center
http://www.ablenrc.org/news/social-security-administration-releases-updated-guidance-able

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