Differences Between ABLE Accounts and Special Needs Trusts

Using an ABLE Account and/or a Special Needs Trust (SNT) are ways for a person with a disability to save money while not compromising their SSI/SSDI/Medicaid benefits. An ABLE Account is a savings account owned by the individual with a disability, and a SNT (self-settled, third party, or pooled) is a relationship where the property of a person with a disability is held by a trustee (bank, person, or organization) for the beneficiary (person with a disability).

The main differences lie in **ownership, what the money can be used for (distributions), fees/taxes, and limits on how much money can be in the ABLE Account or SNT**. If you have a little extra money or are working and want to set money aside, then an ABLE account is recommended. An ABLE account allows for more flexibility. If you have a larger amount of money (especially from one-time large sums, like lawsuit settlements, SSI Back payments, or inheritance) or are looking towards long-term planning (i.e., a will, life insurance beneficiary), then a SNT is recommended. You can have both an SNT and an ABLE account.

The differences between an ABLE account and an SNT are outlined in greater detail below:

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|  | ABLE Account (**A**chieving a **B**etter **L**ife **E**xperience) | Special Needs Trusts (SNT) |
| *Account limits* | * $15,000 per year (subject to change in accordance with the individual gift tax exclusion in effect for each calendar year- $15,000 is the limit for 2018) * Exception in which account can exceed $15,000: Under the ABLE to Work Act of 2017, an ABLE account beneficiary will be able to make *additional* contributions to an ABLE account less than his/her compensation or equal to the federal poverty line for a one-person household (currently $12,060) * If exceeds $100,000, SSI/SSDI is suspended, but beneficiary will continue to receive Medicaid benefits * $370,000 total limit (subject to change in accordance with 529 Educational Savings Account limit in each state - $370,000 in Texas in 2018) * Only 1 ABLE Account allowed per person | * No maximum limits (annual or overall) * No point at which SSI/SSDI would be suspended * A beneficiary can have more than 1 SNT |
| *Taxes and fees* | * Tax free * $50 enrollment contribution in Texas | * Fees vary * Attorney fees associated with establishing a SNT, anywhere from $1,000-$5,000 * Fees to nonprofit when participating in a pooled trust, around $500 * Fees to a trustee to manage SNT * All types of SNTs are taxed, but the type of tax depends on the type of trust |
| *Eligibility* | * Must have onset of disability before age 26 AND either * Eligible for SSI/SSDI,   OR   * Diagnosis of blindness, physical, or cognitive disability   OR   * Qualifies under SSA list of “compassionate allowances”   \*Must be resident of Texas for Texas ABLE account  \*Do not need to have a physician-signed diagnosis or other proof of these eligibility requirements upon enrollment, but must be able to provide proof if requested by IRS | * At the time the SNT is established, must be under age 65 and meet SSI program’s disability criteria if setting up a self-settled SNT * If setting up a third party trust or joining a pooled trust, beneficiary does not need to be under age 65 but must meet SSI program’s disability criteria |
| *Expenditures/Distributions* | “Qualified disability expenses” that relate to the designated beneficiary’s disability and are for the benefit of that beneficiary in maintaining or improving his or her health, independence, or quality of life:   * Education * Housing * Transportation * Employment training and support * Assistive technology and personal support services * Health * Prevention and wellness * Financial management and administrative services * Legal fees * Expenses for oversight and monitoring * Funeral and burial expenses * Any other expenses that may be identified in future guidance published in the Internal Revenue Bulletin   \*Tax free  \*A distribution for housing expenses is considered a resource when determining eligibility for SSI and should be expended within the same month it is withdrawn.  \*If a distribution is not used for a qualified disability expense, it could be subject to income tax and a 10% penalty and could affect other benefits.  \*Debit card feature expected to launch  \*Beneficiaries required to maintain documentation (receipts) that prove that expenses are qualified | * Two different types of SNTs: Supplemental and Discretionary * Supplemental trusts * Disbursements only allowed for *supplemental needs*, which includes most items that are not food or housing costs. * Examples: health/dental treatment and equipment for which there are not funds otherwise available, rehabilitative and occupational therapy, medical procedures, medial insurance premiums, supplemental nursing care, supplemental dietary needs, eyeglasses, travel, entertainment, companionship, private case management, cultural experiences, vacations, movies, telephone, television, training and education programs and materials * Discretionary/general support trusts * Recommended type of trust * Reduction in SSI if spent on food or shelter. Based on presumed value rule – 1/3 of highest amount of SSI you can get. 1/3 of $750 and add $20 – it would be reduced that much * Reduction in SSI benefits if money in any SNT is spent on food or shelter. Reduction based on presumed value rule (1/3 of SSI benefits plus $20) * Some trustees may place a fee or limit on expenditures * Must go through trustee first to determine if an expenditure is qualified * Generally, need to document every expenditure and send to trustee |
| *Medicaid Payback* | * Upon death of designated beneficiary, funds remaining in ABLE account that were paid by Medicaid *during the time the ABLE account was set up* can be reclaimed by the state * Any outstanding qualified disability expenses (including funeral and burial expenses) are given priority over any Medicaid claims. * After Medicaid claims are paid back, remaining funds go to beneficiary’s estate | * Self-settled trust must include a provision that, upon the beneficiary’s death, the state is designated as the residuary beneficiary to receive funds remaining in the trust equal to the total amount Medicaid paid on their behalf *throughout their lifetime*. * Not applicable for third party trusts- no money in a third party trust goes back to Medicaid. Medicaid payback only applies to self-settled trusts |
| *Ownership* | * Designated beneficiary (person with a disability) is account owner, but can be managed by guardian, parent, or power of attorney if needed * Managed online | * Trustee (family member, friend, professional, organization) has control over SNT and how the assets are used to the benefit of the beneficiary. Assets cannot be given directly to beneficiary; trustee must make purchases on behalf of beneficiary * Beneficiary cannot have any control over assets in the SNT |
| *Contributions* | * Anyone can make a contribution * Cash or cash-equivalent only * Contributions made above the annual individual gift tax exclusion ($15,000 in 2018) will be returned to the contributor | * Anyone can make a contribution to a self-settled trust * Only third party can make a contribution to a third party trust |
| *History* | * President Obama signed the ABLE Act into federal law December 2014. Each stat required to pass law to create ABLE program * Texas passed Senate Bill 1664 to establish the Texas ABLE Program in 2015 * Administered by the Texas Comptroller’s Office * Texas ABLE Program will launch early 2018, but eligible persons can open ABLE account in states that accept out-of-state residents | * Established by the Omnibus Budget Reconciliation Act of 1993 * Under the 21st Century Cures Act of 2016, people with disabilities able to establish their own SNT |
| *Account options* | * “Tax-advantaged savings” option - any money in ABLE account can be put into a bank savings account insured by FDIC * Investment option– any money in account can be placed into 3 different investment options ranging from low to higher risk, but not insured by FDIC * Money between 529A (ABLE Account) and 529 (college savings) accounts can rollover, but each capped at $370,000 (for 2018 in Texas) | * Third Party Trust * Established by the beneficiary’s parent, grandparent, legal guardian, or a court on behalf of an individual with a disability (usually used for a will or life insurance policy beneficiary) * Can be supplemental or discretionary trust * Can be established for individuals over age 65 * Self-Settled Trust/First Party Trust * Established by the individual with a disability his/herself with own money (usually from savings, lawsuit settlements, SSI Back payments, or inheritance) * Can be supplemental or discretionary trust * Cannot be established for individuals over age 65 * Pooled Trust (i.e. Arc of Texas Master Pooled Trust): * managed by a nonprofit * separate account maintained for each beneficiary, but accounts are pooled for investment and management purposes * Minimizes fees * trustee appointed by nonprofit * Can be supplemental or discretionary trust * Can be established for individuals over age 65 * Usually only one investment option. Less control with SNT over investment than with ABLE accounts |

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