

A Comparison Between First and Third Party Special Needs Trusts and ABLÉ Act.*

	Payback Special Needs Trust under OBRA 42 USC 1396 p(d)(4)(A)	Pooled Special Needs Trust under OBRA 42 USC 1396 p(d)(4)(C)	Third Party Funded Supplemental Needs Trust	ABLE Act
Intent	Supplements existing services or expands services without the loss of needs based entitlements	Supplements existing services or expands services without the loss of needs based entitlements	Provides care, support services, therapy, and personal and recreational items which enhance a beneficiary's quality of life, but are not covered [adequately] by publicly funded programs such as SSI, Medicaid and Food Stamps	Allows savings in an ABLÉ account in excess of \$2,000 to supplement services related to one's disability
Primary Beneficiary	Named person with a disability eligible for services from SSA	Named person with a disability eligible for services from SSA	Named person with any special need	Named person with a disability eligible for services from SSA if disabled prior to the age of 26
Population Served	All persons with a disability as defined by SSA regulations	All persons with a disability as defined by SSA regulations	All persons with special needs that impair the individual's ability to provide for his/her own care or to manage his/her funds	All persons disabled prior to the age of 26 per SSA regulations
Settlor	The disabled individual, the individual's parent, grandparent, guardian or court of law	A non profit agency licensed as a d4C trustee	Any family member or other interested party	No limit. The disabled individual, family member or other interested party
Trustee	Any individual, corporate or non profit corporate trustee	A non profit agency licensed as a d4C trustee	Any individual, corporate or non profit corporate trustee	Any individual (including the disabled individual), corporate or non profit association or professional trustee
Legislatively Based?	Yes: Federal Omnibus Budget Reconciliation Act of 1993	Yes: Federal Omnibus Budget Reconciliation Act of 1993	No. In most states, allowed by case law	Yes, Achieving a Better Life Experience Act (ABLE) signed in to law
Spendthrift Language?	Yes, but creditors other than the state can access funds	Yes, but creditors other than the state can access funds	Yes	Until regulations are written, not clear if funds are exempt from creditors

*Please note: this comparison is for Massachusetts; however, much of the information is also applicable in other states.

	Payback Special Needs Trust under OBRA 42 USC 1396 p(d)(4)(A)	Pooled Special Needs Trust under OBRA 42 USC 1396 p(d)(4)(C)	Third Party Funded Supplemental Needs Trust	ABLE Act
Source of Funding	Assets which the individual has a legal or has an equitable right to such as an inheritance, personal injury settlement, child support or SSI back payment or assets belonging to a family member who requires long term care	Assets which the individual has a legal or has an equitable right to such as an inheritance, personal injury settlement, child support or SSI back payment or assets belonging to a family member who requires long term care	Assets of family members or friends, transferred during their lifetime or upon their death	No limit, including assets which the individual has control of or an equitable right to. Limit of \$15,000 per year added to ABLE account in total from all sources
Accumulation of Assets	New funds may be added at any time before disabled individual / beneficiary reaches age 65	New funds may be added, but could incur penalty if funded after age 65	Interest may accumulate and assets may be added to the trust over time, regardless of the age of the beneficiary	Maximum of \$15,000 can be placed into the account per year. Cap of \$100,000 to retain SSI cash benefits. Cap per 529 fund state limit. Currently \$400,000 in MA
Distributions	All distributions must be for the sole benefit of the beneficiary	All distributions must be for the sole benefit of the beneficiary	All distributions must be for the enjoyment and best interest of the beneficiary	All distributions for sole benefit of account holder but limited to list of allowable disability related expenses
Impact on Social Security and HCFA Benefits	Assets in the Trust will not be considered assets of the disabled person for purposes of determining eligibility for Supplemental Security Income (SSI) or Medicaid benefits	Assets in the Trust will not be considered assets of the person with a disability for purposes of determining eligibility for SSI or Medicaid benefits. Lookback for SSI if over 65; lookback for Medicaid enforced in many states.	Earned and unearned income limitations must still be followed for SSI recipients. Requires compliance with SSI and Medicaid regulations to insure continued eligibility	Assets in the account will not affect SSI nor Medicaid if less than \$100,000. SSI will be suspended if account reaches \$100,000 but will restart when spent down below \$100,000
Impact on Death of Beneficiary	Requires a payback to the state for all Medicaid funded services	Requires that a percentage of the funds remain with the nonprofit agency and a percentage be paid back to the state for Medicaid funded services	Will not be invaded to reimburse the state of services previously rendered. Funds are distributed to other family members, friends or non-profit agencies, etc. as directed in the trust document	Requires a payback to the state for all Medicaid funded services retroactive to date of the account

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