

## A Comparison Between First and Third Party Special Needs Trusts and ABLE Act.\*

	<b>Payback Special Needs Trust under OBRA 42 USC 1396 p(d)(4)(A)</b>	<b>Pooled Special Needs Trust under OBRA 42 USC 1396 p(d)(4)(C)</b>	<b>Third Party Funded Supplemental Needs Trust</b>	<b>ABLE Act</b>
<b>Intent</b>	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 ABLE account in excess of \$2,000 to supplement services related to one's disability
<b>Primary Beneficiary</b>	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
<b>Population Served</b>	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
<b>Settlor</b>	The disabled 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
<b>Trustee</b>	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
<b>Legislatively Based?</b>	Yes: Federal Omnibus Budget Reconciliation Act of 1993	Yes: Federal Omnibus Budget Reconciliation Act of 1993	No. In most states, allowed by case law; in Illinois: 760ILCS 5/15.1	Yes, Achieving a Better Life Experience Act (ABLE) signed in to law by President Obama on 1/6/15
<b>Spendthrift Language?</b>	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 and Illinois trusts only; however, much of the information is also applicable in other states. Please consult an attorney licensed in your state.*

	<b>Payback Special Needs Trust under OBRA 42 USC 1396 p(d)(4)(A)</b>	<b>Pooled Special Needs Trust under OBRA 42 USC 1396 p(d)(4)(C)</b>	<b>Third Party Funded Supplemental Needs Trust</b>	<b>ABLE Act</b>
<b>Source of Funding</b>	Assets which the individual has 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 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 \$14,000 per year added to ABLE account in total from all sources
<b>Accumulation of Assets</b>	New funds may be added at any time before disabled individual / beneficiary reaches age 65	New funds may be added at any time in Illinois,* but only up to age 65 in Massachusetts <i>*may change with pending legislation</i>	Interest may accumulate and assets may be added to the trust over time, regardless of the age of the beneficiary	Maximum of \$14,000 can be added to account per year. Cap of \$100,000 to retain SSI cash benefits. Cap per 529 fund state limit. Currently \$350,000 in MA and IL
<b>Distributions</b>	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 expenses related to disability
<b>Impact on Social Security and HCFA Benefits</b>	OBRA '93 provides that 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	OBRA '93 provides that assets in the Trust will not be considered assets of the person with a disability for purposes of determining eligibility for SSI or HCFA benefits. Lookback for SSI if over 65; lookback for Medicaid enforced in many states.	Earned and unearned income limitations must still be followed. Will be viewed as any other trust. 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
<b>Impact on Death of Beneficiary</b>	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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