



NATIONAL RESOURCE CENTER
ACHIEVING A BETTER LIFE EXPERIENCE ACT



ABLE Accounts and Special Needs Trusts

Thursday, January 31, 2019



The ABLERational Resource Center

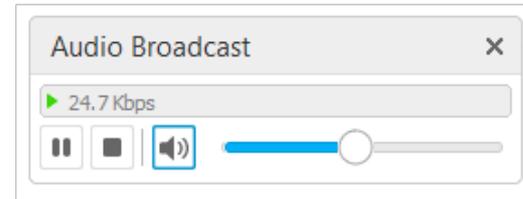
The ABLERational Resource Center (ANRC) is a collaborative whose supporters share the goal of accelerating the design and availability of ABLERaccounts for the benefit of individuals with disabilities and their families. We bring together the investment, support and resources of the country's largest and most influential national disability organizations.

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Facilitator and Presenters

Facilitator

- Miranda Kennedy, Director of ABLE National Resource Center

Presenters

- Stephen W. Dale, Esquire, LLM, The Dale Law Firm, PC, Pacheco, CA and Trustee of the Golden State Pooled Trust
- Amy Tessler, Education and Outreach Coordinator, The Dale Law Firm, PC, Pacheco, CA and the parent of a child with a disability
- Marlene Ulisky, Disability Benefits Expert, ABLE National Resource Center, Washington, D.C.



Agenda

- Special Needs Alliance and ABLE National Resource Center Partnership
- What are ABLE Accounts?
- What are Special Needs Trusts?
- Making a Decision
- Things to Consider When Using an ABLE Account and a Special Needs Trust
- Questions



Special Needs Alliance (SNA) and ABLE National Resource Center (ABLE NRC) Partnership

This webinar is part of the ANRC's ongoing collaborative efforts with the Special Needs Alliance (SNA). The SNA is a national organization comprised of attorneys committed to helping individuals with disabilities, their families and the professionals who serve them with special needs planning.



SNT and ABLE NRC Collaboration (Slide 1 of 2)

- The goal of this collaboration is to educate individuals with disabilities, their families and other stakeholders on how ABLE accounts and Special Needs Trusts (SNT) can contribute to improved quality of life.
- When used properly, funds in either are not considered a countable resource by means-tested government programs, which forms the foundation of special needs planning.



SNT and ABLE NRC Collaboration (Slide 2 of 2)

- ABLE accounts and SNTs can supplement means-tested government benefits without affecting an individual's eligibility for them.
- ABLE accounts and SNTs are governed by very different rules.



ABLE Accounts



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The ABLÉ Act is Law (Slide 1 of 2)

The Stephen Beck, Jr. Achieving a Better Life Experience (ABLE) Act became law on December 19, 2014.

- One of most bipartisan bills in history
 - 85 percent of the entire US Congress supported the ABLE Act
 - 381 out of 435 in the US House of Representatives
 - 78 out of 100 in the US Senate
- Authorized (did not require) states to establish ABLE programs



The ABLE Act is Law (Slide 2 of 2)

- States acted very quickly to pass state ABLE laws and set up ABLE programs
 - June 2016: First ABLE account available
 - To date, 41 states (plus DC) have launched ABLE programs and most accept out-of-state enrollees
 - Approximately 33,000 accounts open nationwide
 - Over \$150 million invested
- ABLE creates a new option for *some* people with disabilities and their families to save for the future, while protecting eligibility for public benefits.



Why the Need for ABLE Accounts?

- Millions of individuals with disabilities and their families depend on a variety of public benefits for income, health care, food and housing assistance.
- For the first time in public policy:
 - The ABLE Act recognizes the extra and significant costs of living with a disability.
 - Eligible individuals and their families may establish ABLE savings accounts that will largely not affect their eligibility for federally funded means tested benefits.
- The funds in an ABLE account will supplement, and are not meant to supplant, benefits provided by private insurance, Medicaid, Supplemental Security Income (SSI), the beneficiary's employment and other sources.



What is an ABLE Account?

- An ABLE account is a Section 529A tax-free savings account owned by a person with a disability that began before age 26 **and** who meets a severity of disability requirement:
 - Receives SSI and/or Social Security Disability Insurance (SSDI) benefits **or**
 - Has a disability certification document from a licensed physician that indicates a qualifying physical/mental disability or blindness which results in marked and severe functional limitations and has lasted, or can be expected to last, for at least 12 continuous months or results in death.



Who May Open an ABLE Account?

- An ABLE account may be established by:
 - An eligible individual or if he or she lacks capacity, by:
 - An agent who has power of attorney or
 - A parent or legal guardian
 - That individual has signature authority on the account and can manage the account
- Tips
 - Many state ABLE programs have forms you can download to establish power of attorney
 - Even if the eligible individual has capacity, it may be beneficial to establish power of attorney for the future



Case Study - Capacity and ABLER Accounts (Slide 1 of 2)

Fred and Wilma have a daughter named Pebbles. Pebbles was born with severe developmental disabilities.

- Fred and Wilma establish an ABLER account under their authority as Pebbles' parents.
- Pebbles is the account owner.
- Pebbles lacks capacity to manage her account or to execute a power of attorney.
- Fred and Wilma maintain signature authority over the account as parents.

Case Study - Capacity and ABLE Accounts (Slide 2 of 2)

- Fred and Wilma passed away in a tragic accident and their neighbors and best friends, Barney and Betty, step in to take care of Pebbles.
- In order for Barney and Betty to assume signature authority over Pebbles' ABLE account, they will need to become Pebbles' guardian or conservator.

Key Features of ABLE Accounts (Slide 1 of 3)

- Easy, online enrollment
- An eligible individual is not obligated to enroll in their state of residence
- The designated beneficiary is the account owner (although another person such as a parent, guardian or someone with power of attorney may have signature authority on the account)
- Account earnings grow tax-free and are tax-exempt
- Some states have deductions for contributions to ABLE accounts by in-state residents
- A 529 account may be rolled over into an ABLE account



Key Features of ABLE Accounts (Slide 2 of 3)

- Any “person” may contribute to an ABLE account
 - There is no change in the way first party contributions are counted:
 - Earned Income: Earnings
 - Unearned Income: SSDI benefits, Veterans Administration payments, alimony, child support, etc.
 - Contributions by a third party are **not** counted as “income” to the account holder
- Up to \$100,000 in an ABLE account is not counted as a resource



Key Features of ABLE Accounts (Slide 3 of 3)

- Total annual contributions by the individual and others cannot exceed \$15,000 per year unless the designated beneficiary is employed
 - If an employed designated beneficiary does not have an employer sponsored retirement plan, up to an additional \$12,140 or the account holders earnings, whichever is less, may be contributed into the ABLE account by the beneficiary
- Distributions from the account may be made for “qualified disability expenses (QDE)”
- There are features which may vary from plan to plan and may include a prepaid debit card, checking account option or ability to track purchases
- ABLE account has no affect on **most** means-tested benefits

Supplemental Security Income

When an individual receives some means-tested benefits such as SSI or Medicaid benefits, there are income and resource limits.

- Income reduces or may cause a SSI benefit and Medicaid to be suspended/terminated
 - Unearned income in the form of “in-kind support and maintenance” for food and/or shelter may cause a reduction in a SSI payment
- Excess resources cause a SSI benefit to be suspended/terminated
 - The SSI resource limit for an individual is \$2,000 and for a couple it is \$3,000
 - When SSI suspends or terminates, any associated Medicaid benefit also gets suspended/terminated



Why ABLE? (slide 1 of 3)

- **Income:**
 - Third-party contributions into an ABLE account are not income.
 - ABLE distributions are not income to a beneficiary.
 - ABLE account interest is not income.
 - Trustee contributions (distributions) from a SNT into an ABLE account are not income.
 - Small gifts or an inheritance under \$15,000 per year is not income when deposited into ABLE account.



Why ABLE? (slide 2 of 3)

- **Resources:**
 - The first \$100,000 in an ABLE account is disregarded as a SSI resource.
 - Funds above \$100,000 are counted as a resource. SSI monthly payments will be **suspended** if the balance exceeds \$100,000 by an amount which causes SSI resources to be exceeded either alone or when combined with other resources.
 - Suspension and termination are different.
 - An ABLE distribution for a housing-related QDE, or for an expense that is not a QDE, is counted as a resource if retained into the month following the month in which the distribution was made.



Why ABLE? (slide 3 of 3)

- **Resources:**
 - When SSI payments are suspended due to ABLE account balance, SSI recipient retains continued eligibility for Medicaid.
 - Eligibility for SSI payments does not terminate after 12 continuous months of suspension.
 - If/when ABLE account balance no longer causes the recipient to exceed the resource limit, and he or she is otherwise eligible, SSI payments resume.



Medicaid Payback Provision

- Upon the death of the account holder:
 - Qualified withdrawals may be made to pay:
 - Outstanding QDEs
 - Funeral and burial expenses
 - Medicaid **may** reclaim up to the amount spent by the Medicaid program from the time the account was opened
 - The state would have to file a claim for those funds
 - Remaining funds are transferred to the individual's estate



ABLE Accounts – Advantages and Disadvantages

Advantages

- Ease of start-up/online enrollment
- Small Initial deposit
- No need or limited need for attorney
- Beneficiary is account owner
- Multiple individuals can contribute
- Contributions are not income for federally funded, means-tested benefit programs
- Beneficiary decides when and how money will be used
- Distributions to pay for housing costs are not income for SSI program
- Account features such as debit card, checking account option and various investment options
- Account monies grow tax-free
- State income tax deduction/credit
- Account monies are tax-exempt as long as they are spent on QDEs
- 529 rollovers are permitted

Disadvantages

- There is no “brick and mortar” bank you can walk into to open the account
- Each eligible individual may have only one ABLE account
- Disability must occur prior to age 26
- \$15,000 annual limit on contributions unless the account owner is employed
- May only accept cash - not other assets
- Aggregate contributions may not exceed the state limit for 529 education accounts
- Medicaid payback provision in some states



Special Needs Trusts



Trusts

- A trust is a legal arrangement regulated by state or tribal law in which one party holds property for the benefit of another. Trusts may contain cash or other liquid assets and real or personal property.
- Trusts are complex legal instruments which may or may not be counted as a resource for SSI or other means-tested benefits depending upon a variety of factors.
 - Under Social Security Administration (SSA) policy, the language of the trust, along with how and by whom the trust is funded, controls whether SSA considers the trust funds to be a resource.



SSI and Trusts

- Money paid directly to a beneficiary from a trust reduces SSI benefits.
- Money paid directly from the trust to someone to provide the beneficiary with food or shelter reduces the SSI benefit up to one-third.
- Money paid from the trust directly to someone else to provide items other than food and shelter does not reduce SSI benefits (examples are medical care, educational expenses, telephone bills, entertainment, etc.).
- ABLÉ accounts are not “trusts” and are evaluated under SI 01130.740 of the SSA POMS: <https://secure.ssa.gov/apps10/poms.nsf/lnx/0501130740>.
- **Money paid from the trust into an ABLÉ account is excluded as income.**

Trust Terminology

- Key Players: Grantor, beneficiary, trustee
- Some types of trusts:
 - First-Party SNT
 - (d)(4)(A) SNT or Payback SNT
 - Pooled SNT or (d)(4)(C)
 - Miller Trust or (d)(4)(B)
 - Third-Party SNT
- The most common which will be discussed are the Non-Pooled First-Party SNT and the Non-Pooled Third-Party SNT.

First-Party Non-Pooled Special Needs Trust (SNT) (d)(4)(A) Trust

Advantages

- Can be established by individual or range of third parties
- No disability onset requirement prior to age 26
- No limitation on deposits
- There can be more than one SNT account

Disadvantages

- An attorney is needed or strongly recommended to draft documents
- May not be a great option for small amounts of money
- Deposits are limited to beneficiary's funds
- All distributions must be approved by the Trustee
- Medicaid payback required upon death of individual



Third-Party Non-Pooled Special Needs Trust (SNT)

Advantages

- Any third-party can contribute (but not the beneficiary)
- Beneficiary not required to meet strict SSI disability test
- Can deposit large sums of third-party money
- May include stocks and real estate
- Remainder not limited to estate upon death of beneficiary
- Qualified Disability Trust Exemption (QDT) exempting \$4,050 a year of trust income from federal taxes
- No Medicaid payback required

Disadvantages

- An attorney is needed or strongly recommended to draft documents
- May not be a great option for small amounts of money
- All distributions must be approved by the Trustee



Parent of Special Needs Trust and ABLE Account Owner – Amy Tessler



Scott (now 23) was diagnosed on the Autistic Spectrum when he was two years old. His mother, Amy, created a Special Needs Trust (SNT) when Scott was 10 years old to establish a funding source and provide direction for his safety and emotional well-being in the event of a worst-case scenario. Even though Scott has an SNT, they also opened an ABLE account this past year. The ABLE account funds allow him to receive the full SSI Federal Benefit Rate because these supplements help him to pay his full share of “in kind support and maintenance.”



“Scott began an internship in the Fall of 2018 as a member of the Project Search Team at the DoubleTree Hotel in Pleasanton, California. He will always need help managing money and paying his bills. It would not be prudent to give him access to a large amount of money, but having the ABLE account will allow him to gain some basic financial skills. In our situation, having both the SNT and ABLE account is ideal for maximizing his benefits and helping him achieve some financial independence.” - Amy Tessler



Making a Decision: Special Needs Trusts and/or ABLE Accounts



Comparison and Review - SNT and ABLE (Slide 1 of 2)

ABLE Account

- Grows tax-free
- State income tax deduction or credit
- In general, account owner directs their own disbursements
- Funds must be used for QDEs
- May provide frequent disbursements
- Lifetime aggregate limit: Up to the amount allowed under the 529 Educational Savings Accounts in the state where the ABLE account was established
- Remaining funds after death may go to Medicaid

Special Needs Trust

- Does not grow tax-free
- Trustee disburses funds
- Funds can be used for broader supplemental expenses
- Generally a long-term investment
- The SNT does not have a maximum amount which may be held in the trust
- Remaining funds not limited to estate/probate depending upon type of trust
- Medicaid pay back provision required on self-settled trusts



Comparison and Review - SNT and ABLE (Slide 2 of 2)

ABLE Account

- Low cost to set up
- Disability ONSET before the age of 26
- Only one account is allowed
- Up to the Federal Gift Tax Exemption Amount can be contributed annually (\$15,000 in 2019) but some employed account holders may contribute over \$15,000
- Liquid assets (cash) only
- SSI benefits suspended after the account exceeds \$100,000, the amount which causes resources to exceed the limit for SSI

Special Needs Trust

- Cost \$2,000 or more to set up
- No restrictions on type of disability or age of disability onset
- More than one account is allowed
- Any amount can be contributed each year
- May contain non-liquid assets
- Effect on means-tested benefits depends upon type of trust



Case Study: Belinda and Special Needs Trust to ABLE – Rent (Slide 1 of 2)

A SNT pays for shelter or household operating expenses and these payments would be unearned income in the form of in-kind support and maintenance by the SSI program in the month payment is made.

- Belinda has had a disability since birth and receives \$771/month in SSI.
- She is a beneficiary of a self-settled SNT.
- She would like to move to a nicer apartment that would cost \$1,000 a month. She will live alone.
- She will need assistance in order to make the move.



Case Study: Belinda and Special Needs Trust to ABLE – Rent (Slide 2 of 2)

- Bob is Belinda's Trustee. If he gives her \$1000 a month directly, it is counted as unearned income and eliminates her SSI completely.
- If Bob pays the landlord directly, the payments count as in-kind support and maintenance and her SSI is reduced.
- If Bob contributes \$1000 per month to her ABLE account instead, and the funds from the ABLE account were to pay the landlord, there is no reduction of SSI payments.



Case Study: Eva (Slide 1 of 2)

Eva, age 21, has a spinal cord injury and uses a power wheelchair full-time. She receives \$771 monthly in SSI and is Medicaid eligible because she resides in a Section 1634 state. She is the beneficiary of a third-party non-pooled SNT established by her parents. Currently, there is \$185,000 in this SNT.

Eva is in college and expects to graduate in 2020 with a degree that will allow her to become a math teacher. Her state vocational rehabilitation agency has paid for many of her college expenses and is prepared to pay about \$40,000 for modifications to a van if Eva can obtain funds to purchase the van.

Eva learned about ABLE accounts last year and opened an ABLE account.



Case Study: Eva (Slide 2 of 2)

- What are some ways to fund the ABLE account? Are there limitations?
- When Eva moves into an accessible apartment close to her college campus, what strategies can be used to pay her rent of \$950 per month along with her utilities?
- Eva anxiously anticipates graduation. She is offered a full-time job and will need transportation. What are her options for purchasing a vehicle?
- Eva begins working and is now covered through her employer's group health insurance plan. Can she retain Medicaid while working?
- Can Eva contribute more than \$15,000 into her ABLE account while working?



Things to Consider

- How much money is involved?
- Whose money is it?
- Are there assets in addition to cash?
- What are the costs involved to establish?
- Is the ABLE account owner currently receiving Medicaid?
- Is there a Medicaid payback provision? Does it matter?
- What is the effect of housing expenses paid by an ABLE account vs. a SNT?
- Has there been an unexpected windfall or small litigation settlement which could affect means-tested benefits?
- Does the individual want or need to open an ABLE account in addition to or instead of a trust? Could they benefit from both?

Conclusion

It is important to remember that when trying to decide between the ABLÉ account and the SNT, both savings vehicles are intended to work the same way:

to improve the quality of life of individuals with disabilities
by allowing savings without disqualifying them
from eligibility for means-tested benefits.

The individual's financial situation and circumstances will determine which option – or whether **both options** – are most beneficial.



This Presentation is a General Overview

This presentation is a general overview of ABLE accounts and SNTs. It is not meant to take the place of seeking specific guidance from professionals about benefits and account eligibility, tax issues or benefits counseling in specific cases.



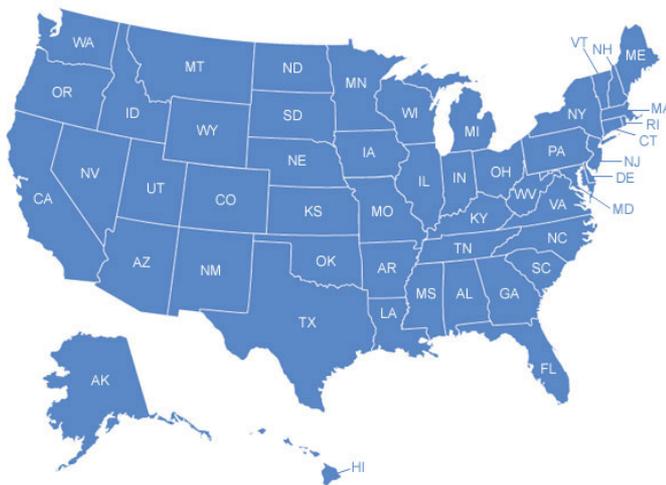
Resources

- ABLE National Resource Center: <http://ablenrc.org/>
- The ABLE National Resource Center Partners with the Special Needs Alliance to Help Expand ABLE Education: <http://ablenrc.org/news/able-national-resource-center-partners-special-needs-alliance-help-expand-able-education>
- Y-TAC SSI Youth Toolkit: <http://ablenrc.org/resources/y-tac-ssi-youth-toolkit>
- Special Needs Alliance: <https://www.specialneedsalliance.org/>
- An employed beneficiary can find a Certified Benefits Counselor called a “Community Work Incentives Coordinator” (CWIC) by visiting: <https://choosework.ssa.gov/findhelp/result?option=directSearch> (this is not legal advice)



Find a Special Needs Attorney

<https://www.specialneedsalliance.org/find-an-attorney/> or email Info@specialneedsalliance.org to research SNA attorneys in your state.



ABLE Accounts: Road Map to Enrollment and Road Map to Independence



<http://ablenrc.org/road-map-enrollment>



<http://ablenrc.org/road-map-independence>

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