

ABLE Accounts and Special Needs Trusts: A Side-by-Side Review

The availability of ABLE accounts is imminent. Many people have anticipated this new way to save money for a person with special needs. But does it take the place of a special needs trust?

"A special needs trust and an ABLE account have some similarities, but one doesn't negate the need for the other," says Chris Collier¹, CLU, ChSNC, who is a Special Care Planner and has earned the Chartered Special Needs Consultant designation.² He's with the Innova Financial Group³ in Cincinnati, Ohio, a general agency of Massachusetts Mutual Life Insurance Company (MassMutual). "They're very different financial tools. Either – or both – could be used to benefit a person with special needs.

"Your decision to choose to have a trust, an ABLE account, or both should be made after thoroughly understanding the features, benefits, and drawbacks of each," Collier continues. "Once you understand the tools, look at your financial needs and goals." Keep those needs and goals in mind as you review the chart below.

Also remember that the regulations for ABLE accounts are expected to be finalized by year end. Major changes aren't anticipated, though some changes may occur before the product is available. For now, here's a side-by-side view of the features of trusts and ABLE accounts.

SPECIAL NEEDS TRUSTS	ABLE ACCOUNTS
<i>Who may have one</i>	
A special needs trust may be established for any person with special needs.	Not all persons with special needs are eligible for an ABLE account. A person's disability must have occurred prior to age 26. Eligibility will be re-determined annually (state programs may waive or adjust this requirement for certain individuals). If an ABLE account holder is determined ineligible, contributions to and distributions from the account will be disallowed until eligibility is regained.
There's no limit regarding the number of trusts a person with special needs may have.	A person with special needs who qualifies for an ABLE account may have only one ABLE account at a time.
<i>Government benefits</i>	
A trust account protects a person's eligibility for government benefits. Funds in a trust account are not counted when determining eligibility for needs-based government benefits such as Supplemental Security Income (SSI) ⁴ , Medicaid ⁵ , food stamps, and other benefit programs.	An ABLE account provides similar protection regarding a person's eligibility for government benefits, but person's receiving SSI must take precautions. If the account balance exceeds \$100,000, persons receiving SSI will temporarily lose those monthly benefits until the balance falls below \$100,000. Eligibility for Medicaid benefits and other needs-based benefits, such as food stamps and housing assistance, will continue regardless of the balance amount.
If the trust beneficiary is receiving Medicaid, no repayment of benefits from remaining trust funds is required after the trust beneficiary dies unless it is a first party trust.	If the account beneficiary has received Medicaid at any time while participating in an ABLE account, those Medicaid benefits must be repaid with account funds remaining after the person dies.

SPECIAL NEEDS TRUSTS

ABLE ACCOUNTS

Establishing an account

Meet with a financial professional and attorney who are skilled in serving people with special needs to create a trust account. You will specify how the trust will work, who will manage it and oversee distribution of funds, how it will be funded, how funds will be invested, and other details so the trust will suit the needs of the trust beneficiary. Your financial and legal professionals may charge fees for their services, and you will pay fees to the trust company that maintains the trust.

Each state will develop an ABLE program based on federal regulations or will provide for state residents to obtain ABLE accounts through another state's program. The state program will specify how accounts can be opened and whether or not fees will be included. Likely, you will meet with a financial professional and/or a representative of an institution/agency that currently offers 529 plans[®] to complete paperwork and open the account.

Funding the trust/account

There is no limit to the amount of money or assets deposited to or held in a trust account.

Currently, contributions per year may not exceed \$14,000 (2015). This amount is aligned with the annual gift tax exclusion and is subject to adjustment annually. The account also has a maximum balance limit, which is set by state law and may be about \$300,000, based on what many states have already decided.

Anyone may direct funds or assets to a trust. The trust company may require a minimum fund balance to establish the trust.

Contributions of any dollar amount may be made by anyone, but the annual total contributions may not exceed \$14,000 (or the current maximum annual contribution limit).

Trusts may be funded with proceeds from life insurance policies, inheritances, gifts of money, employment earnings, other monies meant for the financial support of the trust beneficiary, and more.

Same as for trusts, but only after-tax funds may be deposited.

Funding the trust with a gift of money is an easier transaction than, for example, naming the trust as beneficiary of a life insurance policy. A transaction may involve an attorney, and it's always wise to meet with your financial professional to ensure your intentions align with your overall financial strategy.

How contributions may be made will be defined by the state program, and as with trusts, the complexity of the transaction depends on the type of funding.

Trust funds can be invested in a variety of investment options, depending on your risk tolerance.

As with trust accounts, a variety of investment options will be available. Details are currently being defined.

Trust fund earnings are taxable in the tax year they are earned (except where exempt). Proper tax documents and returns must be filed annually. Seek the advice of a tax professional.

Earnings on account balances are tax exempt.

SPECIAL NEEDS TRUSTS

ABLE ACCOUNTS

Withdrawals

Trust funds may be used for current and long-term needs.	Account funds are more likely to be used for current needs, not left to accumulate for long-term needs. Remember, the account has limits on the total annual contributions and the maximum account balance, as well as a Medicaid payback feature (as mentioned in the <i>Government Benefits</i> section).
Funds may be withdrawn by the trustee for the trust beneficiary.	Funds may be withdrawn by the account owner/beneficiary (the person with special needs for whom the account was established) or a person legally authorized to act on behalf of the account owner (such as a person assigned by the owner as a signatory or a person with power of attorney).
Trusts can be personalized, written to include or exclude specific expenses (as long as they don't conflict with the law regarding use of funds). Funds may <i>not</i> be withdrawn to cover costs for food or residential (rent or mortgage payments). Funds may be used for education, transportation, employment expenses, medical and health costs not covered by Medicaid, recreation, travel, entertainment, sports and hobby costs, legal fees, funeral and burial expenses, and other personal expenses.	Details are still to be defined, but basically eligible expenses are somewhat similar to those allowed for a trust with the biggest difference being that housing is an eligible expense. Additionally, funds can be used for education, transportation, employment training and support, medical and health costs, assistive technology, personal services support, financial management and administrative services, legal fees, expenses for oversight and monitoring, funeral and burial expense, basic living expenses, and other expenses approved by the Secretary of the Treasury deemed consistent with the program. Withdrawing funds in excess of an expense amount may jeopardize eligibility for government benefits.

Naming contingent beneficiaries

One or more persons/charities/institutions may be named to receive any remaining trust funds after the trust beneficiary dies. Changes to the named contingent beneficiaries can be made at any time.	Contingent beneficiaries may be named (to receive funds after any required Medicaid payback). Changes to the named contingent beneficiaries can be made at any time.
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This article has provided a general overview of trusts and ABLE accounts. Additional restrictions, requirements, and specifications may apply that aren't mentioned here.

"Know your family's current financial situation, determine your goals, understand the differences between trusts and ABLE accounts, and make an educated decision regarding how either might work in your financial strategy," says Collier. A financial professional, such as a Special Care Planner, can help. For more information about ABLE accounts, please check the Exceptional Parent archives for "ABLE Accounts Are Coming! Is It Really What You've Been Waiting For?" (August 2015).

¹ www.chriscollierclu.com

² The *Special Care Planner*, a title used by MassMutual financial professionals, who have received advanced training and information in estate and tax planning concepts, special needs trusts, government programs, and the emotional dynamics of working with people with disabilities and other special needs and their families. The certificate program was offered by The American College in Bryn Mawr, PA, exclusively for MassMutual financial professionals. Additionally, a designation of Chartered Special Needs Consultant (ChSNC), which evolved from the certificate program, is now offered through the American College for financial professionals. MassMutual financial professionals who have completed the certificate program, or received the ChSNC designation can use the Special Care Planner title.

³ www.massmutual.com/connect-with-us/agencies/the-innova-financial-group

⁴ For information about SSI, go to www.ssa.gov/ssi/. Information is available by phone, mail, or in person at a social security office. The toll-free number is 1-800-772-1213.

⁵ For more information regarding benefits provided by Medicare or Medicaid (Medi-CAL in California) visit www.cms.hhs.gov. Medicaid guidelines vary by state. Contact your local Medicaid office for details.

⁶ The federal government has placed ABLE accounts in the same Internal Revenue Service code as 529 college savings plans. They will be administered by the same agencies, but they are different types of accounts.



MassMutual has carried the Exceptional Parent (EP) Symbol of Excellence since receiving it in 2004 in recognition of its commitment and service to people with disabilities and other special needs and their families.

Karen Starbowski, CLU®, ChSNC®
SpecialCare Planner

MassMutual Arizona
17550 N. Perimeter Dr. Suite 450
Scottsdale, AZ 85255

Business phone: (480) 538-2950
Fax: (480) 473-2138
Email: kstarbowski@financialguide.com
www.SpecialCareAZ.com

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