



ABLE Accounts and Special Needs Trusts: *What you need to know*

Interhab PowerUp! 2022

State Treasurer's Office

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- ***ABLE to Earn***
- ***ABLE to Save***
- ***ABLE to Thrive***

What is ABLE?

- ABLE (“Achieving a Better Life Experience”) Savings Program was implemented in Kansas in 2015
 - Modeled after “529” savings accounts
- ABLE accounts are available to individuals living with qualified disabilities that occurred before the age of 26
- Can be used to pay expenses that improve health, independence, and quality of life, without jeopardizing SSI (up to certain limits), SSDI, Medicaid and other means-tested benefits

Benefits of ABLE

- **ABLE accounts are not a “countable asset” for federal means-tested benefit programs**
 - Helps avoid spend-down situations
 - Supplemental Security Income (SSI) eligibility is “paused” if account balance exceeds \$100,000
 - No affect on Social Security Disability Insurance (SSDI), Medicaid, and HUD
- **State and federal tax benefits**
- **Flexibility and liquidity**

ABLE Eligibility

- **Disability qualification**
 - A disability that would qualify the individual for SSI or SSDI benefits
 - Written diagnosis from a qualified medical professional
- **Age qualification**
 - Qualifying disability must have first onset prior to age 26
 - Can open an account at any age

What are “Qualified Disability Expenses”?

- *Qualified disability expenses* are any expenses:
 - (a) incurred at a time when the account owner is an eligible individual, and
 - (b) that relate to the blindness or disability

“including expenses that are for the benefit of the designated beneficiary in **maintaining or improving his or her health, independence, or quality of life.**”

What are “Qualified Disability Expenses”? *continued*

- Education
- Housing
- Transportation
- Employment training and support
- Assistive technology and related services
- Personal support services
- Health, prevention and wellness
- Financial management and administrative services, legal fees, expenses for oversight and monitoring
- Funeral and burial expenses
- Basic living expenses

Keep good records!

What exactly are “Qualified Disability Expenses”? *continued*

- Very little specific guidance from IRS
- “The Treasury Department and the IRS continue to view the definition of qualified disability expenses as **expansive**.”
- Whether a particular expense is a qualified disability depends on each designated beneficiary's **unique circumstances** and whether the expense is for maintaining or improving the health, independence, or quality of life of the designated beneficiary.”
- The definition is “broad, but not unlimited”

ABLE Savings Program



Contributions

- Contributions can come from any source
- Various ways to contribute
 - Check, ACH transfers, payroll deduction, etc.
- Annual contribution limits:
 - Basic annual limit: **\$16,000**
 - Annual “ABLE to Work” contribution limit: **\$13,590** for Kansas residents
- Aggregate “contribution limit” for all years is **\$455,000**

Enrollment options

- Enroll online or through a paper application
- Adults with legal capacity may open and manage their own ABLE account
 - Directly, or through a designated agent under a Power of Attorney
- For account owners without legal capacity, the account can be opened by an “Authorized Individual” in the following order of priority:
 - Power of Attorney*
 - Conservator or Guardian with financial authority*
 - Spouse, Parent, Sibling, Grandparent, or*
 - SSA-appointed Representative Payee*

Frequently Asked Questions

Do individuals have to open their ABLE account in their state of residence?

- A person with a disability may open an ABLE account with any state program that offers nationwide enrollment.
- Individuals are encouraged to look at their own state's program first for special tax advantages and compare investment options, fees and expenses.

What happens to an ABLE account when an account owner passes away?

- First, the balance can be used for funeral and burial expenses
- Second, to Medicaid reimbursement if applicable
- Any remaining balance is disbursed through the probate process (through a will, or to statutory heirs)
 - Small-estate affidavit for estates less than \$40,000
- Starting November 2022, owners can designate a successor beneficiary
 - Successor must be an ABLE-eligible individual

Can an entity open an ABLE account for a client?

- Under new rules, an entity could be qualified to open and manage an ABLE account as representative payee
- Subject to hierarchy rules
- Application process
 - Paper application
 - Entity resolution authorizing specific individuals to manage the account

Is a special-needs trust a better option than an ABLE account?

- ABLE accounts are designed to be simple and targeted, but they have limitations
- Special-needs trusts are flexible and can be used to address a variety of needs, but can get complicated
- ABLE accounts and trusts can be used together
- Discuss options with qualified financial and legal counsel

Important considerations

- The Kansas State Treasurer's Office does not endorse or recommend any specific services or service providers. The Kansas State Treasurer's Office cannot provide legal, investing, or tax advice. Please consult qualified advisors to obtain advice applicable to your unique situation.
- All investments carry a degree of risk. ABLE accounts, principal, and investment returns are not insured by the Kansas State Treasurer's Office or the State of Kansas. Please carefully consider your options before opening an ABLE account or investing.
- The information here is a general summary, and additional considerations and limitations may apply. Please review the full Program Disclosures before investing (available at SaveWithABLE.com/KS).
- This presentation is current as of October 2022.

Kansas State Treasurer's Office



For more information

Program website

- [SaveWithABLE.com/KS](https://www.savewithable.com/KS)

Email

- Kansas ABLE service center: ks.clientservice@savewithable.com
- State Treasurer's Office: ABLE@treasurer.ks.gov

Telephone

- Kansas ABLE service center: (888) 609-8919
- State Treasurer's Office, Savings Program Administrator: (785) 296-6251



Special Needs Trusts

One Financial Tool, Many Options



Two Categories of SNTs

Proactive Tool

If the source of the funds are from someone other than the person with the disability, the trust is categorized as a *Third Party Special Needs Trust*.

Reactive Tool

If the source of the funds are from the person with the disability, then the trust is categorized as a *First Party Special Needs Trust, self settled or Medicaid Payback Trust*.

Third Party Special Needs Trust



Third Party Trust

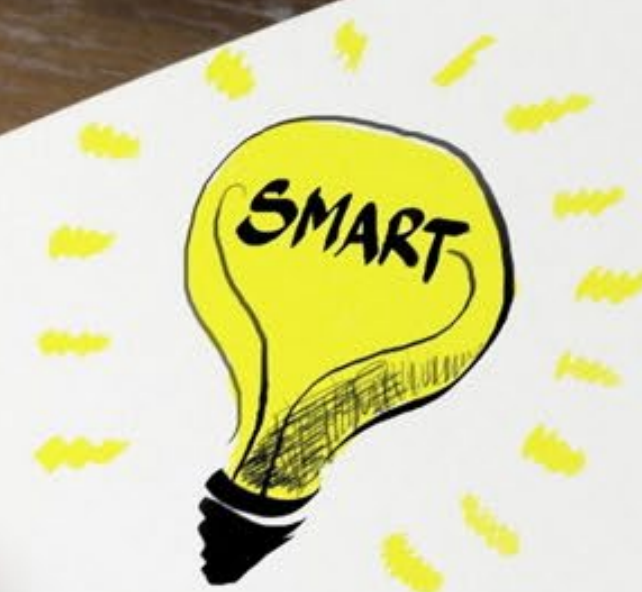
- SI 01120.200 A 17
 - A **third-party trust** is a trust established by someone other than the beneficiary as grantor. For example, a third-party trust may be established by a grandparent for a grandchild, or by a parent, sibling or anyone who wants to give or leave money to a person with a disability.
 - Most frequently, third-party trusts are funded for the person with the disability after the grandparent/parent has died.

Third Party Trust

- A third-party trust can have great latitude, and upon the death of the beneficiary can be left to anyone you wish.
- There are no limits on how much can be placed in a Third-Party Special Needs Trust
- A third-party trust has no age limit for the beneficiary

First Party Special Needs Trust

Special
Needs
Plan



Private First Party Trust

- 42 USC § 1396p(d)(4)(A)
 - Under age 65
 - Asset of the individual with disability
 - Must meet SSA standard of disability
 - Created by individual , parent, grandparent, guardian, or court
 - For the sole benefit of the individual
 - Supplemental language, discretionary
 - Payback Provision- The trust must include language that says: to the extent that amounts remaining in the beneficiary's account upon the death of the beneficiary are not retained by the Trust, the Trust pays to the State from such remaining amounts in the account an amount equal to the total amount of medical assistance paid on behalf of the beneficiary under the State plan.

Pooled First Party Trust

- 42 USC§1396p(d)(4)(C)

A trust established in a State for the benefit of an individual if:

- I. The trust is established and managed by a non-profit association
- II. A separate account is maintained for each beneficiary of the trust, but, for purposes of investment and management of funds, the trust pools these accounts
- III. Accounts in the trust are established solely for the benefit of individuals who are disabled (as defined in section 1382c(a)(3) of this title) by the parent, grandparent, or legal guardian of such individuals, by such individuals or by order of a court.
- IV. To the extent that amounts remaining in the beneficiary's account upon the death of the beneficiary are not retained by the trust, the trust pays to the State from such remaining amounts in the account an amount equal to the total amount of medical assistance paid on behalf of the beneficiary under the State plan under this subchapter.

A Pooled Trust is a Trust!



- Cost effective- little to no lawyer/legal fees to establish the trust
- Works well for Individuals without family or someone responsible to serve as Trustee
- Beneficiaries communicate directly with the nonprofit, and they often have social workers on staff and are well versed in public benefits
- Nonprofits often offer case management and other social services

Trust Type	Third Party Private or Pooled	1396p(d)(4)(A) Private 1 st party Medicaid Payback	1396p(d)(4)(C) Pooled 1 st party Medicaid Payback
Established By	Third party – not PWD	Individual, Parent, grandparent, legal guardian, court	Individual, Parent, grandparent, legal guardian, court
Funded By Assets From	Third party	Person w/disability	Person w/disability
Beneficiary	Person w/disability	Sole benefit – only person w/disability	Sole benefit – only person w/disability
Distributions	Payments to third parties	Payments to third parties	Payments to third parties
Medicaid payback?	No	Yes	Yes
Disability	SSA Definition & Determination	SSA Definition & Determination	SSA Definition & Determination
Age Limit	No	Funded before age 65	Varies state to state- KS allows over 65
Uses	<ul style="list-style-type: none">•Parent planning for child with disability•Inheritance directed to SNT•Life insurance directed to SNT•IRA directed to SNT w/o penalties per IRS rulings	<ul style="list-style-type: none">•Personal Injury•Inheritance or life insurance payable to person with disability•IRA w/o penalties per IRS rulings	<ul style="list-style-type: none">•Personal Injury•Other court settlements•Inheritance or life insurance payable to person with disability•Retroactive SS benefits•Conserved funds•IRA w/o penalties per IRS



Trust Distributions

Trust Distributions: The Do's

- Advocacy services
- Pre-Paid Burial Expenses of beneficiary
- Cable television
- Camp tuition
- Clothing for the Beneficiary
- Computer hardware and software
- Curtains, towels, linens, decorative items
- Education, tuition, books or transportation to same
- Entertainment and recreation tickets
- Equipment (electronic, entertainment, adaptive)
- Expenses related to owning and operating one car
- Eyeglasses
- Furniture and household items
- Gardening and lawn care
- Guardianship and advocacy services
- Home appliances
- Home renovations to improve accessibility
- Homeowner insurance premiums
- Independent evaluations
- Insurance premiums (health, dental, life, care and renter)
- Internet access
- Job coaching
- Legal fees
- Magazine subscriptions
- Medical equipment
- Medical, nursing and dental care, not covered by another source
- Medications
- Massage therapy
- Office supplies
- Personal assistance
- Pet care and supplies
- Private counseling and case management
- Private lessons and materials
- Stamps and writing supplies
- Supplemental dietary needs
- Telephone service
- Testing (vocational, medical, psychological, etc.)
- Vacation expenses including transportation and hotel

Trust Distributions: The Do Nots

- Don't distribute cash directly to the beneficiary
- Discourage payments for food or shelter if the beneficiary is an SSI recipient- in kind support and maintenance (this includes rent, gas, electric, water and waste disposal.)

In Kind Support and Maintenance (ISM)

In-Kind Support and Maintenance Defined

- “In-Kind income includes ISM (i.e., food and shelter) and other noncash items that the claimant uses to obtain food, clothing and shelter.”

Shelter Defined

- “Shelter includes room, rent, mortgage payments, real property taxes, heating, fuel, gas, electricity, water, sewerage, and garbage collection services.”

Impact of ISM distributions from SNT

Example

- Tom receives SSI. He lives in an apartment by himself. The trustee of a Pooled Trust makes a one-time rent payment of \$350 for Tom. According to SSA regulations, shelter is considered ISM and will be counted as income and reduce his SSI benefit by 1/3 for that month (SSA presumed maximum value rule).

Impact of unearned income on SSI beneficiary

Example

Cash Distributed directly to the SSI beneficiary (impact of unearned income)

- First \$20.00 of any income disregarded
- After that, unearned income will reduce SSI dollar for dollar.



There can still be flexibility in
spending with a Special Needs
Trust!

Medicaid Recovery	ABLE Account	3 rd Party SNT	First Party Trust
Medicaid used for medical purposes after age 55, and any long term care or Waiver services.	<p>The amount of any such Medicaid payback is calculated based on amounts paid by Medicaid after the creation of the ABLE Account</p> <p>Kansas has eliminated Payback on ABLE Accounts</p>	No payback	All Medicaid paid during lifetime

Income Taxes: Striking a Balance

ABLE vs. SNT

- Need to focus on all tax options
- One value of an ABLE Account is it is tax free like a 529 plan
- Probably as simple as it gets
- A special needs trust can often qualify as a Qualified Disability Trust- and many distributions are deductible at the beneficiaries tax level
 - May require a tax return for trust and beneficiary

Case Study 1:

The \$10,000 inheritance

Bob has a disability that occurred before the age of 26 and is on SSI and Medicaid

Bob inherited \$10,000 that was not directed to a third party SNT

What are his options?

1. Spend down the assets in the month of receipt
2. Establish a payback trust
3. Put the funds in an ABLE Account



Case Study 2: The Personal Injury Settlement



- Jane has a disability that occurred before the age of 26 and receives SSI and Medicaid benefits
 - She is awarded a personal injury settlement of \$30,000
 - What are her options?
1. Spend down the assets in the month of receipt
 2. Establish a first party trust (Medicaid payback)
 3. ABLE
 - she cannot use an ABLE account for the entire amount (annual limit \$16k)
 - She could spenddown to \$16,000 and then use an ABLE account
 - She could split it between an SNT and ABLE

SNTs and ABLE Working Together

Using a third-party or
payback trust to fund an
ABLE account

Distributions may be
made from ABLE
account for food and
shelter and will not
cause a reduction in
SSI benefit



Overview of ABLE vs. SNT

	ABLE	3 rd Party SNTs	1 st Party SNTs
Age Limit?	Pre-26	NO	YES
Person with a disability can manage?	YES	NO	NO
Person with disability can fund?	YES	NO	YES
Allow maintenance of public benefits?	YES	YES	YES
Limitations on annual contributions?	YES	NO	NO
Income grows tax-free?	YES	NO	NO
Unlimited number of accounts?	NO	YES	YES
Medicaid payback?	Depends	NO	YES

Overview of ABLE vs. SNT

	ABLE Account	Standalone SNT	Pooled SNT
Contribution Amount	\$16,000/year	Unlimited	Unlimited
Shelter Payments w/0 SSI reduction	YES	NO	NO
Taxable Income	NO	YES	YES
Beneficiary Eligibility Requirements	Onset of disability must occur before age 26	Federal definition of disability before age 65 (3 rd party- any age)	Federal definition of disability before age 65 (3 rd party- any age)
Medicaid Recovery	YES- for 1 st and 3 rd party funds (KS Minimized)	YES- 1 st Party NO- 3 rd Party	YES- 1 st Party NO- 3 rd Party
Disqualification from SSI	Account balance over \$100,000	NONE	NONE
Abuse/Vulnerability	Fraud, coercion, disqualification from benefits	MINIMIZED if administered by professional Trustee	MINIMIZED



Questions?

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