

FINANCIAL PLANNING SEMINAR FOR INDIVIDUALS WITH DEVELOPMENTAL DISABILITIES

O'KEEFFE
O'BRIEN  LYSON
ATTORNEYS

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ABLE Accounts & Special Needs Planning

Basic Public Benefits Program

Social Security's
Supplemental Security
Income Program

Medicaid Program

Social Security's Disability
Income Program

Medicare Program

Childhood Disability
Benefits (CDB) and
Disabled Adult Child (DAC)

Means-Based Programs	Entitlements
Social Security's Supplemental Security Income (SSI)	Social Security's Disability Income (SSDI)
Medicaid	Medicare

CHILDHOOD DISABILITY BENEFITS (CDB) / DISABLED ADULT CHILD (DAC)

ABLE Accounts & Special Needs Planning

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Medicaid – joint federal and state program that helps with medical costs for individuals with no or low income and no or low resources.

Medicaid Waiver – Medicaid Waiver programs help provide services to individuals who would otherwise be institutionalized to receive long-term care in the community.

A few examples of Waiver Services:

- ✓ PT or OT
- ✓ Caregivers
- ✓ Employment Assistance
- ✓ Transportation
- ✓ Housing
- ✓ Accommodations & Equipment

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Social Security's Supplemental Security Income – monthly income payment to a disabled individual based on financial need for an individual with no or low income and no or low resources.

- Maximum in 2024 = \$943.00
- Some states have a supplement.* It is for food and shelter. *

Social Security's Disability Income – monthly income payment to a disabled individual that has worked a certain number of credits but cannot currently work because of a medical condition and can no longer engage in substantial gainful activity (SGA).

- The medical condition must be expected to last at least 1 year; or
- result in death

SGA limit for 2024 is \$1,550 for non-blind; \$2,590 for blind.

*Minnesota = Supp Aid \$81 for single, \$111 for couples, & Housing Assistance \$457

*food may be eliminated in future.

ABLE Accounts & Special Needs Planning

Public Benefits:

Social Security defines income as “anything you receive during a calendar month and can use to meet your needs for food or shelter. It may be in cash or in kind. In-kind income is not cash; it is food or shelter, or something you can use to get food or shelter”. Food is likely to be removed from the ISM calculations very soon;

If someone else provides food or shelter to the disabled individuals, Social Security considers the disabled to have received In-Kind Support and Maintenance (ISM). Social Security defines ISM as food, room, rent, mortgage payments, real property taxes, heating fuel, gas, electricity, water, sewerage, and garbage collection services. Therefore, the individual’s monthly payment from SSI will be reduced by either one-third [the VTR rule] or one-third and \$20 [the PMV rule].*

NOTE:

If funds in a Special Needs Trust are used for food or shelter Social Security considers it ISM either the VTR rule or the PMV rule (depending upon the disabled beneficiary’s living situation).

*See [POMS SI 00835.200](#)

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Public Benefits, continued:

Childhood Disability Benefits provides cash assistance based upon the Social Security contributions of the disabled child's parent, so long as the child is found to be "disabled" before reaching the age of 22.

Not payable until the sponsoring parent retires, becomes disabled, or dies.

ABLE Accounts & Special Needs Planning

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Public Benefits, continued:

Medicare: is a federal health insurance program for individuals 65 years or older and for disabled adults under the age of 65 (and individuals with end-stage renal disease).

- Part A – hospital insurance, certain care in skilled nursing, hospice care;
- Part B – medical insurance, covers certain doctors' services, outpatient care, medical supplies, and preventative services;
- Part D – prescription drug coverage that helps cover the cost of prescription drugs (and some recommended vaccines)

ABLE Accounts & Special Needs Planning

FIRST PARTY SPECIAL NEEDS TRUSTS

- The law regarding 1st party Special Needs Trusts is found at 42 USC Section 1396p(d)(4)(A) and 1st party pooled Special Needs Trusts are at (d)(4)(C). These trusts are **established with the assets of the individual with disabilities**. The individual must be under the age of 65 at the time the trust is established and funded. The individual must be disabled as defined in the Social Security Act.
- The 1st party Special Needs Trust may be established by a parent, grandparent, legal guardian, the court, and now, the competent individual with disabilities.
- There are payback requirements for 1st party Special Needs Trusts. Medicaid is entitled to be reimbursed to the extent they paid. Reimbursement is dollar for dollar, but there is no inflation on these expenses paid.
- These trusts must be irrevocable.
- Money belonged to disabled beneficiary.

ABLE Accounts & Special Needs Planning

THIRD PARTY SPECIAL NEEDS TRUSTS

- No federal law on third party Special Needs Trusts.
- May be drafted as revocable or irrevocable.
- May be by living (*inter vivos*) trust or testamentary (by Will). In general the terms may be less restrictive than 1st-party Special Needs Trusts.
- No payback requirement; Third party decides remainder beneficiary(ies).
- Money in trust belonged to someone other than trust beneficiary.
- Trust funds can be used to fund an ABLE Account.

ABLE Accounts & Special Needs Planning

POOLED SPECIAL NEEDS TRUSTS

- Established and administered by a non-profit association;
- Can be First Party or Third Party; Funds are pooled for investment purposes;
- Administered for multiple beneficiaries, but each beneficiary has a separate account;
- Lower set-up costs and administration cost;
- Managed by individuals experienced with public benefits; and
- Useful option if funding with limited assets. Helps spread the costs.

ABLE Accounts & Special Needs Planning

To be a [Qualified Disability Trust](#) (QDTs), the trust must be:

- Created for a beneficiary who is receiving SSI or SSDI and is under the age of 65 when the trust is established;
- A third-party special needs trust (cannot be a grantor trust);
- Irrevocable with the donor no longer having rights to the assets;
- Established for the sole benefit of a disabled beneficiary

ABLE Accounts & Special Needs Planning

Qualified Disability Trusts (QDTs)

- Eligible for the same exemption as an individual who files a personal return (\$5,050 for 2024)
- Income distributions are taxed to the beneficiary (who has little income and minimal liability).
The beneficiary can also take a standard deduction of \$14,600 (for 2024)
- Beneficiaries often have medical expenses that may be deductible

ABLE Account Overview

Eligibility for an ABLE Account: (Achieving a Better Life Experience Act)

1. Must be disabled before the age of 26 (set to increase to the age of 46 in January of 2026), it is a common myth the account has to be established before 26; and
2. Must be receiving benefits under Social Security's Supplemental Security Income (SSI) or Social Security's Disability Income (SSDI); or
3. A doctor's certification that the individual meets the Social Security definition and criteria regarding functional limitations. [see ablenrc.org for a form*]

*ABLE National Resource Center www.ablenrc.org

Opening an Account: <https://savewithable.com/mn/home.html>

ABLE Account Overview

- An individual may only have one ABLE Account;
- A qualified individual may join an ABLE account in any state (\$25 minimum in Minnesota to start);
- Contributions to an ABLE Account may be made by any person (could be a trust);
- In some states, contributions to an ABLE Account qualify for write-offs or deductions (no state income tax deduction in MN);
- The owner of the ABLE Account is always the disabled beneficiary; and
- If the disabled individual cannot establish the ABLE Account on his or her own, an individual's agent under a power of attorney, his or her parent or the legal guardian may establish the ABLE Account for the disabled individual.

ABLE Account Overview

- Total annual contributions is limited to the federal annual gift tax exclusion (for 2024, that is \$18,000)
- If the individual does not participate in an employer-sponsored retirement plan, the individual may contribute above the annual contribution limit the lesser of:
 - \$14,580 (2024); or
 - the account owner's compensation for the taxable year.

ABLE Account Overview

Individuals with ABLE Accounts may maintain eligibility for means-based benefits as follows:

Supplemental Security Income (SSI)	Medicaid
The first \$100,000 in the ABLE Account is excluded as a resource. If over \$100,000 in ABLE Account, SSI is suspended.	The entire ABLE Account balance up to the state's limit for Section 529 Accounts.

For Example: The maximum 529 amount in Minnesota is \$425,000. At \$18,000/year (for 2024) it would take 23 years for the account to reach the maximum. If this took place, SSI would be suspended at \$100,000, but Medicaid would not stop until over the \$425,000.

ABLE Account Overview

Limited Investment Directions & Taxes in an ABLE Account:

1. A beneficiary may direct the investment of any contributions to the ABLE Account (or earnings thereon) no more than 2 times in any calendar year; and
2. As with 529 College Savings Accounts, the range of investment options available for a 529 ABLE Account is determined by each state.
3. Income earned, including investment earnings, in the account is not taxable; Tax free and/or differed growth. Contributions are in after-tax dollars, but earnings would grow tax-free (just like a 529 College Savings Account).
4. Account withdrawals, including portions attributable to investment earnings, used for Qualified Disability Expenses are not taxable.

Bruce saves \$85,000 in 5-years and during that time the account earns \$10,000 for a total amount of \$95,000. If Bruce were to use all of the \$95,000 as a down payment on the purchase of a home, he would pay no taxes. But, if Bruce used \$8,000 for a trip to Disneyworld, the \$8,000 would be taxable, plus a possible 10% penalty. **Vacationing is not a Qualified Disability Expense.**

ABLE Account Overview

Contributions to an ABLE Account:

- ✓ CASH only; This means cannot accept appreciated asset or be beneficiary of a qualified plan (retirement account). No real property.
- ✓ Rollovers from 529 College Savings Plans are limited to the federal annual exclusion amount;
- ✓ ABLE Accounts may be transferred to another family member that is disabled only if the new beneficiary is eligible for an ABLE Account for the taxable year of the transfer and a member of the beneficiary's family; and
- ✓ No rollover at ABLE beneficiary's death. There are limited circumstances in which an ABLE Account may allow a transfer during the beneficiary's lifetime. For example, all account funds may pass in a program-to-program transfer or rollover to a disabled sibling even if the annual contribution has already been made during that tax year.

ABLE Account Overview

Qualified Disability Expenses:

- Food
- Education
- Housing
- Transportation
- Employment training & support
- Assistive technology & personal support services
- Health, prevention & wellness
- Financial management & administrative services
- Legal fees
- Expenses for oversight & monitoring
- Funeral & burial expenses

Remember that the normal SSI resource counting rules and exclusions apply to any assets purchased with funds from an ABLE Account.

ABLE Account Overview

ABLE Account with assets remaining at death of qualified beneficiary:

- The remaining assets can be used to pay off outstanding bills for Qualified Disability Expenses, and then funeral/burial expenses, prior to distributing funds to Medicaid. [This is important because funds in a first-party (d4A or Payback) trust cannot be used for funeral/burial after the beneficiary dies.]
- If the state has a Medicaid Buy-In program, the amount of any premiums paid can also be deducted prior to the payback.
- Remaining assets are then distributed to any state Medicaid plan that provided medical assistance to the designated beneficiary. This is if the state files a claim for reimbursement. Some states are prohibiting the state from filing a claim for the payment under the ABLE Act.
 - Minnesota must be reimbursed dollar for dollar.
- Remember that the amount paid back to Medicaid is only from after the creation of the ABLE Account.

ABLE Accounts & Special Needs Trusts

PROS of ABLE Accounts:

- ABLE Accounts avoid the ISM reduction;
- Low investment expenses;
- No or low management fees;
- The individual can set up the account;
- There is no Trustee;
- Earnings are Tax Free (if used for Qualified Disability Expenses);
- Gives beneficiary access to funds via the debit card;
- No distinction between first- and third-party money at set up; and
- Certain payments permitted after beneficiary's death.

ABLE Accounts & Special Needs Trusts

CONS of ABLE Accounts:

- Social Security does not understand how ABLE Accounts work;
- ABLE Accounts do not operate like bank accounts;
- Loss of SSI at \$100,000;
- Investment options are limited;
- ABLE Account cards can be dangerous if in the wrong hands;
- It can take days to transfer money from the ABLE Account onto the card;
- For some states, ABLE Accounts require Medicaid payback upon beneficiary's death; and
- ABLE Accounts cannot be used for vacations/recreation.

ABLE Accounts & Special Needs Trusts

Pros of Special Needs Trusts (in General):

- Special Needs Trusts can accept any amount of money (not limited to the annual exclusion amount);
- Special Needs Trusts can hold real estate;
- Can hold appreciated assets;
- Can be remainder beneficiary of retirement plans;
- Can be the remainder beneficiary of life insurance policies; and
- Funds in the Special Needs Trust can be used for Vacations/recreation.

ABLE Accounts & Special Needs Trusts

Pros of Third-Party Special Needs Trusts:

- No payback;
- More flexibility by Trustee;
- More investment options;
- The Trustee can set up routine payments;
- The Trustee can make distributions in emergency situations;
- Money can easily and quickly be contributed to a Special Needs Trust; and
- Qualified Disability Trusts (QDTs).

ABLE Accounts & Special Needs Trusts

CONS of Special Needs Trusts:

- Investment fees can be high (typically 1%);
- Retained income in the trust could subject it to a high tax rate if not managed properly;
- Management fees by professionals;
- Mistakes by unknowledgeable family member(s) serving as Trustee;
- Possible reporting requirements;
- Amendments; Early termination;
- EIN/Tax ID required; and
- Trust tax returns and other time-consuming paperwork.

HOW DO YOU CHOOSE?

ABLE Accounts
vs.
Special Needs Trusts



- ✓ Who is the beneficiary;
- ✓ Is the beneficiary on Medicaid now? In the future?
- ✓ How much money will the beneficiary have now and in the future?
- ✓ What are the beneficiary's expenses?
- ✓ What is the housing situation?
- ✓ What is better for the beneficiary: autonomy or structure/control?
- ✓ How about BOTH?

ABLE Accounts & Special Needs Trusts

QUESTIONS?

THANK YOU!

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