

Analysis of Funding Options for Special Needs Planning

Special Needs Trust
◊
Medicaid Payback Trust
◊
Pooled/Master Trust
◊
ABLE Act Account
◊
Miller Qualified Income Trust



The Special Needs
PLANNING INSTITUTE

	Special Needs Trust	Medicaid Payback Trust	Pooled/Master Trusts	ABLE Act Account	Miller Qualified Income Trust
Created and Managed by	Family, Friends, Guardians, Trustees, Caregivers	Parent, Guardian, Power of Attorney, Court Order	Non-profit Organization - Trust Account established by parents, grandparents, guardians, court	Families and Qualified Individuals	Parent, Guardian, Power of Attorney, Court Order <i>Not Available in all States</i>
Who can serve as Trustee	Family, Friends, Advisors, Institutions appointed by creators of the trust, Court	Family, Friends, Advisors, Institutions appointed by creators of the trust, Court	Non-profit Organization only	No Trustee. Custodian of account	Third Party. Not the beneficiary
Hire/Fire/Change Trustee	Yes	No	No (no expertise requirements)	Not applicable Program Administrator	No
Successor Trustees	Appointed by Trust creator (Grantor)	Appointed by Trust creator (Grantor)	Appointed by Non-profit	Not applicable Program Administrator	Appointed by Trust creator (Grantor)
Authority to remove Trustee	Yes	Only by petitioning the Court	No	Program Administrator	Based on provisions in trust
Authority to make investment decisions	Family has authority as Trustee. Beneficiary may not have any authority.	Trustee has sole authority. Beneficiary may not have any authority.	Family has no authority nor do future guardians and conservators. Beneficiary may not have any authority.	Program Administrator. Person named in Will or Family Trust. Beneficiary may directly or indirectly direct the investment no more than twice in a calendar year.	Funds are not retained in this trust. It is used to pay monthly expenses. Therefore, there are no investments. Beneficiary may not have any authority.
Control Investment Risk	Family has authority as Trustee	Trustee has sole authority	Family has no authority nor do future guardians and conservators	Program Administrator. Range of available investment accounts determined by States	Not applicable
Length of Time to Withdraw Funds	Immediate by Trustee	Immediate by Trustee	A few days to weeks	Must be applied for from State agency	All funds must be used monthly
Distribution of remaining trust funds after death of beneficiary	Family (Trust Grantors) decide who receives trust remainder	Payback to Medicaid first, then balance to Remainderman	Non-profit retains funds for others or to run non-profit (few allow family input)	Payback to Medicaid first, then balance to Remainderman	Not applicable

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<i>Tax Penalties Non-Qualified Withdrawals</i>	None	None	None	Earning Portion subject to regular income tax, 10% penalty and possible State penalty	All funds must be withdrawn monthly to pay expenses
<i>Who Qualifies</i>	May be established for anyone	Persons with special needs with assets from any source	Persons with special needs	Person diagnosed prior to age 26 and receiving SSI or DI under Title II of SS or has an impairment that will result in death or last at least 12 months or is blind and provides a diagnosis by doctor. Eligibility for ABLE does not mean eligibility for SSI or Medicaid.	Person with Special Needs receiving income in excess of Medicaid qualifying limits
<i>Authority to change who receives funds after death of beneficiary</i>	Yes, Trust Grantors during their lifetime.	No, Trust is Irrevocable	No, non-profit retains all remaining trust funds	Yes, but Subject to Payback - Except in CA & PA	Not applicable. Trust terminates
<i>Payback to Medicaid after death of beneficiary</i>	No	Yes	Yes	Yes – The amount is based on payments <i>after</i> the ABLE acct begins Except CA/PA	Not applicable
<i>Ability to choose Financial Advisor</i>	Yes	Grantor or Trustee only	No	Yes – investments limited by States	Not applicable
<i>Administrative Fees charged</i>	Family members usually would not charge. Professional managers and institutions have regulated fees	Family members usually would not charge. Professional managers and institutions have regulated fees	Yes	Yes	Family members usually would not charge. Professional managers and institutions have regulated fees
<i>Unique Benefit of Trust</i>	Family retains complete control	Ability to remove assets from person's name and maintain eligibility for gov'n't benefits	Useful for families with few assets and no family or friends to succeed as trustees	Provides an option to put aside funds in a tax free accumulation and distribution account.	A trust used to receive all income payable to the beneficiary. The result is continued eligibility for certain gov'n't benefits.

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Maximum Annual Deposit	Unlimited	Unlimited	Unlimited	\$15,000 – If amount is exceeded, it is no longer considered an ABLE Account + Income up to \$12,060	Income only 300% of the Federal Benefit Rate (FBR) \$2,199/month (2015)
Maximum Total without jeopardizing SSI eligibility	Unlimited	Unlimited	Unlimited	\$100,000 If exceeded SSI is suspended. Reinstated if below acct max with no reapplication.	Not Applicable
Maximum Total without jeopardizing Medicaid eligibility	Unlimited	Unlimited	Unlimited	Account may need to be below State max for eligibility	Not Applicable
When Can It Be Created	Any time prior to age 65	Any time prior to age 65	No Age Restriction	Anytime as long as disability began prior to age 26	Any time prior to age 65
Taxation	Files 1041 Income Tax return for Trusts.	Files 1041 Income Tax return for Trusts.	Files 1041 Income Tax return for Trusts.	Tax Free earnings and distributions	Not applicable as no funds are invested or retained
Transferring Assets	Remainderman named to receive assets after death of the beneficiary	Government receives “Payback” first, then Remainderman receive any balance	Funds remain in Pooled Trust	Funds may be “rolled” over to another account or to another family member who qualifies.	Not applicable
Who Can Give Funds	Anyone except the beneficiary	Anyone	Anyone	Anyone-	Income of Person with Special Needs only
Tax Deductible Deposits	No	No	No	No	Not Applicable
Number of Trusts/Accounts per Individual-	Unlimited	Unlimited	Unlimited	One - Aggregate Contributions are subject to State limits for 529 (CA \$371K)	One
Assets Allowed	Anything	Anything	Anything	Cash or rollovers from another family member’s account who also qualifies.	

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When Established	Anytime	Any time prior to age 65	Established by Non-profit	Prior to person attaining age 26	Any time prior to age 65
Gift Tax	Cannot use \$14,000 gift tax exclusion (2015). Can use the Lifetime Exclusion	Gifts should not be made to this Trust.		Can use \$14,000 gift tax exclusion (2015). Can use the Lifetime Exclusion	Not applicable
Income Tax	<p>A special needs trust can often qualify as a Qualified Disability Trust – and many distributions are deductible at the beneficiaries tax level – Requires tax return for trust and beneficiary.</p> <p>If a 3rd party special needs trust is drafted as a Qualified Disability Trust</p> <ul style="list-style-type: none"> • It has a full \$4,000 exemption in 2015, & all distributions from the Trust for the benefit of the beneficiary are taxed to the beneficiary, AND • The beneficiary has his/her own, a 2nd exemption of \$4,000, & a standard deduction in 2015 of \$6,300. • A 3rd party special needs trust can shelter a total of \$14,300 in 2015 of taxable income. 	<p>For a 1st party “pay back” trust, ALL income is taxed to the beneficiary, NOT to the Trust. Again, the beneficiary has a \$4,000 exemption & a standard deduction of \$6,300.</p> <ul style="list-style-type: none"> • Therefore, no tax until the trust income exceeds \$10,300, and, then at the lowest tax bracket (10% on next \$9,225). 	<p>The beneficiary may still have to file an individual tax return, including any income and deductible expenses. Of course, the beneficiary may not have sufficient income — even with the trust’s income added in — to need to file a return, and the fact of the trust won’t change that.</p> <p>If someone else puts the money into a pooled trust account, that may (or may not) set up a requirement for separate tax filings.</p> <p>If the third-party trust share is not a grantor trust, then the trustee will need to file a federal Form 1041 — the fiduciary income tax return</p>	<p>Tax Free</p> <p>An ABLE Account (s) with \$100,000 (maximum not to lose SSI) would need to earn over 14% for any income tax benefit over a 3rd party SNT.</p> <ul style="list-style-type: none"> • Keep in mind the ABLE Account is subject to a Medicaid Payback. <p>Saver’s Tax Credit: ABLE account owners who choose to contribute into their own ABLE account, as opposed to just contributions made by others (friends and family), may be eligible to use the Retirement Savings Contributions Tax Credit (Saver’s Credit).</p> <ul style="list-style-type: none"> • There are additional requirements that must be met in order to qualify for the Saver’s Credit. • This is a non-refundable credit. 	Not Applicable

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<i>What can funds be used for</i>	Supplemental needs that do not duplicate government benefits	Supplemental needs	Supplemental Needs	<p>Qualified expenses ie education, housing, and transportation.</p> <p>The guidance states that so long as distributions from an ABLE account are used for qualified disability expenses (QDEs), the funds distributed will not be counted as income for purposes of determining eligibility for Medicaid. Funds used for non-qualified expenses or distributions that exceed the costs of the QDEs may be counted as income of the beneficiary when determining eligibility for Medicaid.</p>	Monthly expenses

Able Information Website: ABLENRC.ORG

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