

# ABLE Accounts vs. Special Needs Trusts: Which Is Better for Your Child With a Disability?

Any parent of a child with a disability has likely heard of a “special needs trust.” As information has become more easily available online, a simple Google search for “special needs trust” is likely to garner hundreds of results. More recently, ABLE accounts have gained popularity as a common financial planning tool for individuals with disabilities. But what are the primary differences between a special needs trust and an ABLE account? Which is better for your child?

There are two main types of special needs trusts: a first-party “payback” special needs trust and a third-party special needs trust.

A first-party special needs trust is funded with assets that already belong to the person with a disability. Some examples are a bank account or Uniform Transfers to Minors Act (UTMA) account, assets gifted or inherited outright, and lawsuit settlement funds. Generally, a first-party trust may only be funded with assets of a person with a disability under age 65. When drafted properly, assets held in a first-party special needs trust do not count as assets of an individual for purposes of need-based disability benefits, such as SSI and Medicaid. However, this type of trust is also commonly referred to as a “payback trust” since the trust assets must be used to pay back the state for any Medicaid benefits the individual received during his/her lifetime.

A third-party special needs trust is a trust that is funded with assets of someone other than the person with a disability. Usually, a third-party trust is created by parents, grandparents, or other family members who wish to give assets to a child with a disability, either during life or at death. It is a common estate planning tool for families with a child who has special needs. Unlike the first-party trust, there is no payback required on the death of the beneficiary — remaining trust assets may pass on to contingent beneficiaries selected by the grantor.

An ABLE account is a tax-advantaged savings account for individuals with disabilities, created pursuant to federal legislation known as the Achieving a Better Life Experience Act of 2014 (ABLE Act). The primary purpose of the ABLE Act was to provide an alternative tax-free savings option similar to a [qualified tuition/529 plan](#) for parents of children with disabilities.

ABLE account funds grow income tax-free, and so long as funds are used for qualified disability expenses, are not subject to income tax when distributed. The ABLE account does not impact the beneficiary’s means-tested benefits, such as SSI and Medicaid, as long as the ABLE account balance is less than \$100,000. Upon the death of the ABLE account beneficiary, the remaining funds must be used to reimburse the state for Medicaid payments made on behalf of the beneficiary.

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**Want to compare ABLE accounts between states?** Visit the ABLE National Resource Center website for more information.

[Visit the ABLE National Resource Center](#)

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Given the tax benefits, an ABLE account is an effective way to save money for your child's benefit without causing the child to become ineligible for any means-tested benefits they would otherwise receive. However, it is not a solution that should be used in isolation. Given the \$100,000 limit and mandatory "payback" at the beneficiary's death, an effective estate plan for any parent of a child with a disability will most likely also include a special needs trust.

For additional considerations, please read ["ABLE Account or Special Needs Trust – Which One Is Best?"](#)

*If you would like to learn more about ABLE accounts, special needs trusts, or any of the various estate and special needs planning strategies available to you, please reach out to me, Leah Mitchell, or another member of our [Estate Planning](#) team.*