

# Choosing a Financial Vehicle for Your Child With Special Health Care Needs

Currently there are three options available to accumulate funds to be used for the benefit of a person who is eligible for government assistance that are not counted as assets. Earned income counts toward the Social Security limit, regardless of the account it is placed in. However, it will not count as an asset, an important distinction. The three types of accounts are:

- 1) **ABLE account:** Achieving a Better Life Experience Act of 2014: Accepts funds from anyone
- 2) **Special needs trust:** Accepts funds from the beneficiary
- 3) **Supplemental needs trust:** Accepts contributions from anyone other than the beneficiary

Each of these accounts have been described in separate articles that you can access by clicking on the account named above. A [comparison chart](#) is also available.

## **What do I need to consider when choosing a funding option?**.....

It is important to understand the advantages and limitations of each of the financial account options to determine your best option(s). It may be necessary to have a combination of accounts to meet your loved one's financial needs and goals. If possible, families should consult with a special needs financial planner or attorney who specializes in this area.

### **Factors to consider:**

- The amount of money involved
  - ABLE accounts have strict limits. As of 2021, the contribution limit is \$15,000 per year (or up to \$27,760 if employed) not to exceed a total balance of \$100,000. Amounts above this will count as assets and cause the loss of SSI funds. The total amount allowed is the amount determined by each state for 529 accounts and is higher. This can be an excellent way to start a savings account, provided one complies with these limits. If a lump sum payment is involved that exceeds these limits, such as in funds from a will or a court settlement, other trust options must be considered.
- Where the funds will come from
  - Employment earnings, excess Social Security funds and gifts can be contributed to either an ABLE account or special needs trust if they are in the beneficiary's name.
  - All contributions to a special needs trust must be made from the beneficiary's assets.
  - All contributions to a supplemental needs trust must be made by a third party rather than the beneficiary.
  - Contributions from a third party, such as gifts or proceeds from a will, can be directed to a supplemental needs trust, or to an ABLE account if the amount is within the limits allowed.
  - A court settlement should be directed to a special needs trust or an ABLE account (provided the annual limit stays below \$15,000).

- How the money will be used
  - An ABLÉ account provides for a low-cost, easy-entry way to save limited amounts of money to meet shorter-term goals without exceeding asset limits. It also provides the opportunity for the individual to have ownership and learn money management skills. ABLÉ accounts can be used as tax-advantaged investment accounts, which may be desirable when there is not a trust set up for this purpose.
  - A supplemental needs trust provides the opportunity to plan ahead and prepare for the individual's life-long needs after their parent or guardian is no longer alive. These funds can be used to supplement their public benefits and improve their quality of life, now and in the future. A trustee will be responsible for managing the account.

**What are the advantages of each type of account?**

ABLE accounts are easy to set up, inexpensive, and do not require an attorney. They can be a great way to get started, and anyone can contribute to an ABLÉ account. Many ABLÉ account options are easy to use and come with a debit card for withdrawals and investment options within the account. ABLÉ accounts encourage more independence for the beneficiary and help teach financial management skills. Additionally, 529 college funds can currently be rolled into an ABLÉ account, up until the end of 2025. Both a special needs trust and a supplemental needs trust require an attorney to draft and are fairly expensive. Trust monies are generally managed by a trustee and not the beneficiary, and funds cannot be rolled over from a 529 account.

The major advantage of a trust is that there are no annual or lifetime limits to contributions. A trust also gives administration and decision-making authority to a trustee if the beneficiary is unable to manage a financial account independently. The advantage of a supplemental needs trust compared to an ABLÉ account or special needs trust is that at the end of the beneficiary's life, the funds remaining in the supplemental account are not subject to a reimbursement for Medicaid and will be dispersed to the remaining beneficiaries selected by the grantors of the trust. Although a beneficiary should be identified to receive residual funds for an ABLÉ account, at this time in Minnesota and some other states, funds remaining in an ABLÉ account must be used to pay back Medicaid if the individual was on Medical Assistance during the time they had an ABLÉ account. Any remaining funds could then go to the beneficiary if one is named. In some states Medicaid no longer needs to be paid back first. There is interest in removing this requirement in additional states, including Minnesota.

**What are the drawbacks of each type of account?**

The biggest drawback of the ABLÉ account as an instrument for long-term planning and accumulating resources is the limits placed on annual contributions and total limits. The other downside of both the ABLÉ account and the special needs trust is that funds left at the end of the individual's life must first be used to reimburse Medical Assistance for expenses incurred during the individual's life, before any other beneficiary receives funds. Once the special needs trust is established, the county will ask for copies of statements at the time of renewal, to keep track of the money within these accounts. The cost of setting up a special needs trust or a supplemental needs trust can also be expensive.

Parents and guardians must also recognize that Minnesota state law does not give guardians any authority to make financial decisions. As a result, the ABLÉ account can be established by a guardian pursuant to the statute, but the account must thereafter be managed either by the beneficiary or by a person holding a valid Power of Attorney. If the beneficiary is unable to manage a financial account and make decisions independently or lacks the legal capacity to execute a Power of Attorney, a special needs trust would be a more appropriate option, as a trustee would be responsible for managing the assets and making spending decisions.

**What life events may impact my consideration?**

There are two considerations to consider when large sums of money are potentially involved. If there is a potential court settlement for the individual, it should go into a special needs trust, as it would be a payout to that person and qualify as a personal asset. The second consideration is an inheritance, especially if it exceeds \$15,000. Ideally, a supplemental needs trust should be set up proactively so that people can will gifts or funds directly to the trust rather than the individual with a disability.

## **Where do I start?**

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Consider your loved one's needs and the goal is for having the account. Is it to protect the individual with a disability's income? Is it to start a savings account for others to contribute to on behalf of the individual's future? What are the amounts of money involved? Is it within the limitations of an ABLÉ account? Are there other potential contributions (e.g., proceeds from a grandparent's will or a pending court case) that could exceed the ABLÉ account limits? If so, consider a supplemental needs trust or a special needs trust. If an ABLÉ account starts nearing annual or lifetime limits, a special needs trust or a supplemental needs trust can always be set up in the future, however ABLÉ account funds cannot be rolled over to a special needs trust or a supplemental needs trust.

It is important to make a well-informed decision before proceeding. A lot of thought and planning is required, based on your situation. PACER Center offers free workshops annually conducted by special needs financial planners and attorneys to educate families about their options.

For further information contact PACER Center's Health Information Center by calling (952) 838-9000 or emailing at [PACER@PACER.org](mailto:PACER@PACER.org).