

Special Needs Trusts and ABLE accounts

Catherine E. Davey, JD, LLM
Davey Law Group, P.A.



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The Why



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What is a Special Needs Trust?

- A type of trust that allows an individual who is/would be determined to be disabled according to Social Security guidelines to have the benefit/use of the funds held in the trust to improve their quality of life during their lifetime, in addition to their government benefits.

42 USC 1396p(d)(4)(a), et seq.



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What is the Purpose of a Special Needs Trust?

- Maximize resources received for an individual with disabilities and improve their quality of life (1993 OBRA Act)
- Protect federal and state means-tested (needs-based) public benefits
- “Support and Health” vs. “Comfort and Happiness”
- Supplement, not supplant (get everything you can from government benefits first and then go to the SNT, etc.)
- Receive and administer assets for the sole/primary benefit of the individual



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Who can have a SNT?

Does the person have a disability?

If yes, then yes!

If no, then no.



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How is “disabled” defined?

- Disabled as defined in 42 USC 1382c(a)(3)
- (3)(A) An individual shall be considered to be disabled for purposes of this subchapter if he is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than twelve months (or, in the case of an individual under the age of 18, if he suffers from any medically determinable physical or mental impairment of comparable severity).





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Does the client really need a SNT?

That depends on a number of factors including:

- Level of disability
- Which benefits are they on?
- Do they need to stay on means-tested government benefits, either now or in the future; and/or
- Concerns about the individual's ability to manage money based on their disability(ies)



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Which Government Benefits is the Individual Receiving and Why?

- Some are means tested:
 - Supplemental Security Income (SSI)
 - Medicaid
- Others are not:
 - SSDI
 - SSDI
 - Medicare

It would be very expensive for many individuals to replace these public benefits and services by privately purchasing them in the event the individual receives income and/or assets that exceeds eligibility limits for public benefits programs.



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SSI-Related Programs & Coverage Groups – Financial Eligibility Standards: October 2023

PROGRAMS & TYPES OF COVERAGE	INCOME		ASSETS		MAINTENANCE NEEDS STANDARDS / OTHER		
	Individual	Couple	Individual	Couple			
PROGRAMS MANAGED BY SOCIAL SECURITY (eff 04/01/2023)							
Supplemental Security Income (SSI) Federal Benefit Rate (FBR) Cash payment of SSI from SSA; Includes Full Medicaid	\$943 (FBR)	\$1,415 (FBR)	\$2,000	\$3,000	Disregards: Standard Disregard = \$20 Earned Income Disregard = \$65 + 1/2 Student Earned Income Disregard = \$2,220 monthly, maximum \$8,950 for calendar year		
**Low Income Subsidy (LIS) or Extra Help (150% FPL) Helps with costs associated with Medicare Prescription Drug Plans Automatic with full Medicaid or Medicare Savings Programs (QMB, SLMB, Q11). Income asset limits change annually	\$1,823	\$2,465	\$15,510 (w/ Burial Exc)	\$30,950 (w/ Burial Exc)			
COVERAGE GROUPS FOR PEOPLE 65+ OR DISABLED (Community Medicaid Programs) (interim 04/01/2023) *							
**MEDS-AD (MM S) (88% FPL) Full Community Medicaid	\$1,069	\$1,446	\$5,000	\$6,000	Ineligible Spouse Deeming: 1/2 FBR = \$457 Child Allocation = \$457/child (Difference between the couple and single FBR)		
Medically Needy (No Income Limit) Medically Needy Income Level (MNIL) Full Community Medicaid <u>when</u> Share of Cost is met	Subtract \$180 from gross income	Subtract \$241 from gross income					
PROGRAMS FOR PEOPLE WITH MEDICARE (Medicare Savings Programs/Buy-In) (interim 04/01/2023) * not incl. \$20 disregard							
**QMB (100% FPL) Pays Medicare A & B premiums, coinsurance & deductibles only	\$1,215	\$1,643	\$9,090	\$13,630	Disability Substantial Gainful Activity (SGA) = \$1,470 non-blind \$2,460 blind Medicare Part B Premium = \$164.90, Part A free for most or \$506 *Interim figures are calculated based on the 2022 8.7 % Cost of Living Adjustment (COLA) until the official Federal Poverty Levels (FPL) are published in the Spring of 2023. **These Standards change effective April 1 of each year in accordance with federal law		
**SLMB (120% FPL) Pays for Medicare Part B premium only	\$1,458	\$1,972					
**Q11 (135% FPL) Pays for Medicare Part B premium only	\$1,640	\$2,219					
**Working Disabled (200% FPL) Qualified Disabled Working Individuals (QDWI) Program Pays for Medicare Part A only. Must have lost SSDI due to employment	\$2,430	\$3,287	\$5,000	\$6,000			
PROGRAMS BASED ON INSTITUTIONAL POLICY – Patient Responsibility and Income Trusts may apply. (eff 01/01/2023)					PERSONAL NEEDS ALLOWANCE		
*Institutional Care Program (ICP) Pays Nursing Home (NH) room, board & care Pays Medicare A & B premiums, coinsurance & deductibles	\$2,742 (MEDS-AD Institutional Income Limit \$1,084)	\$5,484 (MEDS-AD Institutional Income Limit \$1,460)	\$2,000 ((\$5,000 if MEDS-AD eligible)	\$3,000 ((\$6,000 if MEDS-AD eligible)	Individual	Couple	SSI Individual \$30 only in NH = \$100 (SPS) Transfer of Asset Divisor = \$10,809 (eff 8/2022) Community Hospice Allocations: Spouse only = FBR (\$914) Spouse + Dependents or Dependents Only = CNS Standard Spousal Impoverishment: (eff 07/01/2022) MMMNA = \$2,289 Excess shelter = \$687** Standard Utility Allowance = \$376 (eff 1/1/2023) Maximum Income Allowance = \$3,716 Community Spouse Resource Allowance = \$148,620 Family Members Allowance with Spouse = (MMMNA-income) divided by 3 Dependents with no Spouse = CNS Standard Home Equity Interest Limit = \$688,000
*Hospice Pays Hospice services related to terminal illness Pays Medicare A & B premiums, coinsurance & deductibles					\$130	\$260	
*Home and Community Based Services (HCBS) Waivers or PACE Pays Medicare A & B premiums, coinsurance & deductibles					Community \$1,133 NH \$130	Community \$1,456 NH \$260	
					PACE /HCBS in ALF: *R&B+ \$243 / \$486** PACE /HCBS @ home: \$2,523/\$4,764 PACE in NH: \$130 / \$260 iBudget: \$2,742 / \$5,484		
STATE FUNDED PROGRAMS (eff 01/01/2023)							
*OPTIONAL STATE SUPPLEMENT (OSS) REDESIGN Maximum Payment = \$78.40 single / \$156.80 Couple Assists with paying room & board at alternate living facilities	\$992.40	\$1,911.80	\$2,000	\$3,000	\$54 Provider rate \$938.40	\$108 Provider rate \$1,803.80	
*PROTECTED OSS (Reference OLM 2040.0822) Maximum Payment = \$239 single / \$478 Couple Assists with paying room & board at alternate living facilities	\$1,099	\$2,125			\$54 Provider rate \$1,099	\$108 Provider rate \$2,125	
HOME CARE FOR DISABLED ADULTS (HCDA) Pays small stipend to caregivers of disabled	\$2,742	\$5,484					

What are Some of the Expenses That a SNT Can Pay?

VERY BROADLY DEFINED

- Home renovations generally and to accommodate the disability
- Supplemental medical and dental expenses (not covered or paid for by Medicare/Medicaid)
- Quality of life items, electronic equipment (very broad)
- Care Manager, Residential Caregiver (compensation and expenses)
- Vehicle (including insurance, maintenance, etc.)
- Professional expenses (lawyers, CPAs, etc.)
- Anything to improve the quality of life of the person with a disability?
- Creditor protection for the person with a disability as well (may be limited)



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What Are Some of the Expenses That a SNT Cannot/Should Not Pay?

- Anything that government benefits can/should pay FIRST!
- Payment of these expenses can be treated as income to the person with a disability and therefore, at best reduce their monthly SSI distributions and worst case eliminate their eligibility to Medicaid and other programs that may be critical for their long-term care



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How Does it Work Practically?

- Trustee distributes directly to third-party vendors (doctors, therapists, contractors, etc.) NOT to the person with a disability
 - Why? If paid to them directly, SS/DCF would treat those funds as income to the person with a disability and disqualify them based on being over income (remember their benefits are typically both income and asset based)

Types of Special Needs Trusts

Ask the question: Whose funds are these?

- **Third-Party:** someone other than the beneficiary or spouse
- **Self-Settled or First-Party:** with beneficiary's own funds
 - Stand Alone
 - Pooled SNT



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Comparing Third-Party and First-Party SNTs

	3 rd Party	Self Settled
Whose Money?	Family, Friend, Other	The Person with the Disability
Revocable?	Yes	No
How Used?		
Medicaid Payback?	No	Yes
Who can be Grantors?		Parent, Grandparent, Guardian, Court or Person with the Disability

Third-Party Special Needs Trusts

- Whose money? Funds do not belong to the person with a disability
 - So it is created/established up by a family member or friend for a person with disabilities
- What type of document?
 - Stand-alone Third Party-SNT
 - Testamentary SNT; or
 - Contingent Beneficiary Third Party-SNT provisions
- After the Beneficiary's lifetime, no Medicaid payback
 - Grantor decides where the funds go



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First-Party (self-settled) Special Needs Trusts

- Medicaid payback is required after the lifetime of the beneficiary
- Trust must be Irrevocable (with caveats that it could be changed by court for very limited reasons)
- Person with a disability must be under the age of 65
- Must be the funds of the person with a disability
 - Inheritance
 - Personal Injury Award
 - Earnings and Savings
- After the beneficiary's lifetime, debt to Medicaid paid



First-Party Special Needs Trusts

Who can be the Grantor?

- Parent
- Grandparent
- Guardian (upon court approval)
- Court; or
- Person with a Disability



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What Happens if There is a Settlement or Unexpected Inheritance?

Who has legal authority over the funds?

Is it possible to reform the Will/Trust to create a SNT?

Does the person with disability already have control of the funds directly or through a guardian?

- If a disabled individual has control of the funds
 - requires a first-party (payback) SNT
- Other People's Money
 - requires only a third-party SNT



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Settlement or Unplanned Inheritance

- Do you need an SNT?
 - Financial ramification
 - Penalties
 - Professional fees
 - Exclusions
- Options
 - Retain \$2,000 maximum in checking/savings account
 - Fund the Florida ABLE United account if eligible to the maximum
 - Spend-down plans
 - Preserve/improve existing exempt resources
 - Home repairs, car repairs, etc...
 - Purchase new exempt resources
 - Home, car, items for the home
 - Prepaid funeral expense
 - Prepaid living expenses
 - Legally transfer wealth
 - Reduce debt



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Who is/Should be the Trustee?

- Especially for SNTs, I generally DO NOT recommend that well-intentioned family members or friends act as Trustees. These trusts are very complicated, with many duties for the Trustee including:
 - Understanding of Medicaid eligibility and spending rules
 - Investing
 - Tax Filings; and
 - Annual Accountings to DCF, SSA, and even potentially the remaindermen
- This is the time for a corporate trustee who is well versed in managing SNTs



Pooled Trusts (D4C SNT)

- By combining funds with others similarly situated (pooling), administrative costs and trustee fees can be lowered, and “minimum fees” can be avoided
- Some pooled trusts have one-time enrollment fees as low as \$500
- Many pooled trusts do not have minimum monthly or annual fees
- Non-profit organizations also administer trusts
- Requires signing a Joinder Agreement

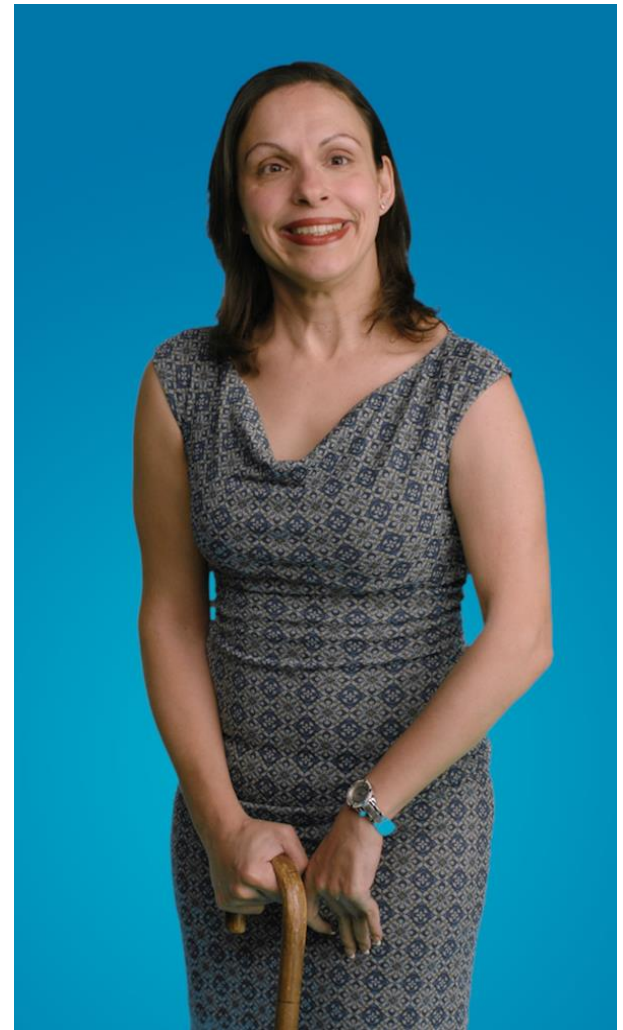


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What is ABLE?

Achieving a Better Life Experience.

- The Stephen Beck, Jr. Achieving a Better Life Experience Act encourages individuals with disabilities to **save private funds** to support health, independence, and **quality of life**.
- Added a new section to the Internal Revenue Code, Section 529A.
- In July 2015, Florida created a not-for-profit and direct support organization of the Florida Prepaid College Board to administer Florida's ABLE Program.
- ABLE United launched July 1, 2016.



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How it Works



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ABLE United Overview

Tax-free savings to support disability expenses while maintaining benefits

Must be a **Florida resident** at the time of application and have a **qualifying disability** with **onset prior to age 26**

What does “qualifying disability” mean?

If an individual is not receiving SSI or SSDI, then self-certify is an option, and that individual must:

- Have a diagnosis of a physical or mental impairment prior to age 26.
- Be “marked and severe with functional limitations.”
- Be expected to last for at least 12 months.

The Internal Revenue Service categorizes several groups of eligible disabilities.

Developmental Disorders, Intellectual Disability, Psychiatric Disorders, Nervous Disorders, Congenital Anomalies, Respiratory Disorders, and Other.



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Ownership

The individual with a disability is the owner of the ABLE account.

Another person, referred to as Authorized Legal Representative, may assist in opening or maintaining the ABLE account.

- Parent
- Legal Guardian
- Power of Attorney

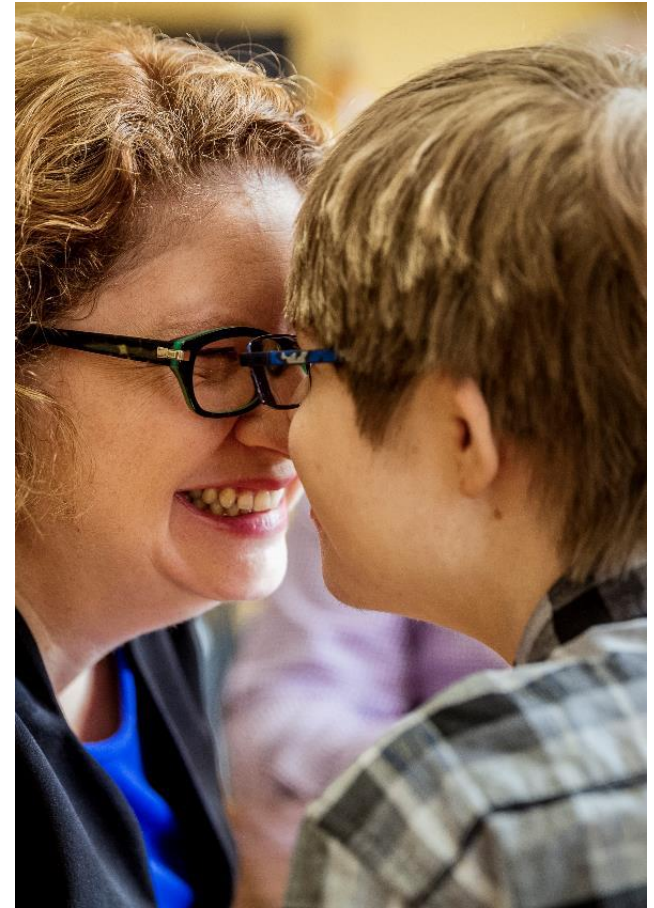
Additional points of interest.

- One ABLE account nationwide (exception for rollovers).
- Accessed through a secure website.

ABLE United Overview

Tax-free savings to support disability expenses while maintaining benefits

- Enroll:** Open an account online, a minimum of \$25. *Upload documents if opening an account for an adult Beneficiary.*
- Contribute:** Save up to \$18,000 per year. *Anyone may contribute to the account.*
- Grow:** Choose from 8 investment options. *Predesigned and custom portfolios, including FDIC Option.*
- Withdraw:** Withdraw at any time, for any reason. *No tax if used for qualified expenses.*



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Qualified Disability Expenses

Relates to disability and maintains/improves health, independence, or quality of life

Qualified disability expenses, including “living expenses,” are not required to be medically necessary or to be limited for the sole benefit of the individual with a disability.



Health



Education



Housing



Transportation



Legal Fees



Financial Management



Employment Training and Support



Assistive Technology and Personal Support Services



Oversight and Monitoring



Funeral and Burial



Other Expenses Approved by the Treasury Regulations



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What If I Am Receiving Medicaid?

Save for the future without losing Medicaid.

Funds in (or withdrawn from) an ABLE account are disregarded when determining eligibility for Medicaid.

- If a beneficiary passes and after all qualified disability expenses have been paid, funds would revert to the person's estate. The person's estate may be subject to Medicaid Estate recovery.
- Accounts can grow up to \$418,000 before contributions are no longer accepted.



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What If I Am Receiving SSI?

Save for the future without losing Supplemental Security Income.

Generally, funds in (or withdrawn from) an ABLE account are disregarded when determining eligibility for Supplemental Security Income (SSI).

- The first \$100,000 in an ABLE account does not count as a resource.
- All housing and non-qualified expenses withdrawn, but not spent, in the same month count as a resource.

For more information, visit the Social Security POMS website at: <https://secure.ssa.gov/poms.nsf/lnx.0501130740>



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How Does an ABLE Account Work With an SNT?

ABLE can do things that SNTs cannot and vice versa:

If the SNT pays into an ABLE account which then pays rent for the person with a disability (and the funds are used within the same calendar month), then the distribution for support and/or health would not reduce the monthly SSI payment as it is not treated as income for SS benefit purposes.



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Comparison of ABLE and SNTs

	ABLE	Self-Settled Trust (d4a)	Pooled Trust (d4c)	Third Party SNT
Can be Established by Beneficiary Directly	√	√	√	
Can be controlled by Beneficiary Directly	√			
No Limited Annual Contributions		√	√	√
Funds Grow Tax Free	√			
Low Fees	√		Depends	Depends
No Lifetime Limits on Account Size		√	√	√
Can be Used to Pay for Food/Shelter for SSI Recipient Without Impacting Benefits	√			
Broader Distribution Standard Than Just Sole Benefit of Beneficiary	√			√
Exempt From Creditors Claims	√	Depends	Depends	√
Allows For Limited Disbursements After Death	√			√
No Medicaid Payback upon Death	Depends			√



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Questions

Visit www.DaveyLG.com for more information about **Davey Law Group, P.A.**

407-645-4483 (Monday-Friday: 8:30 am – 5 pm)

Email: reception@daveylg.com

Visit www.ableunited.com for more information about **ABLE United.**

1-888-524-ABLE (2253) (Monday – Friday, 9 am – 6 pm ET)

1-844-888-2253 TTY (Monday – Friday, 9 am – 8 pm ET)

Thank You!



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