

COMPARISON OF SPECIAL NEEDS TRUSTS AND ABLE ACCOUNTS

COMPARISON CRITERIA	FIRST-PARTY SPECIAL NEEDS TRUST	THIRD-PARTY SPECIAL NEEDS TRUST	ABLE ACCOUNT
Eligibility	Disabled beneficiary with trust established before age 65	Disabled beneficiary – no age limit	Beneficiary who was disabled before age 26
Number of trusts or accounts allowed	No limit on number of trusts	No limit on number of trusts	Only one ABLE account per beneficiary
Settlor/Maker	Trust established by parent, grandparent, legal guardian, court, or beneficiary (if competent)	Trust established by anyone other than beneficiary	Online account opened by person with disability, parent, legal guardian, or POA agent
Allowable Use	Distributions for sole benefit of disabled beneficiary as determined by trustee. Distributions for food and shelter may reduce SSI payments by 1/3 (“ISM”).	Distributions for benefit of disabled beneficiary as determined by trustee. Distributions for food and shelter may reduce SSI payments by 1/3 (“ISM”).	Qualified disability expenses (QDE’s) for benefit of disabled beneficiary. QDE’s including food and shelter do not cause ISM reduction.
Startup Cost and Management Fees	Attorney fees vary and may include court costs. Corporate trustee fees often 1% - 2% (with required minimum funds). Pooled trusts enrollment fees of \$200-\$1,000 with varying administrative costs (typically 1%-2%).	Attorney fees vary and may include court costs. Corporate trustee fees are typically 1% - 2% with required minimum funds. Pooled trust enrollment costs of \$200-\$1,000 with varying administrative fees (typically 1%-2%).	\$0 to establish (but there may be a minimum deposit amount). Ongoing fees vary by state (average \$0 - \$60 per month).
Annual Contribution Limit	No limit.	No limit. Other family members may contribute, but no funds belonging outright to the beneficiary may be added.	\$15,000 total annual limit (2020) from all sources. Additional contribution allowed from beneficiary’s work earnings up to poverty amount (\$12,490 for continental U.S.; \$15,600 for Alaska; \$14,380 for Hawaii – 2020)
Maximum Holdings	No limit	No limit	Varies by state (\$100,000 - \$529,000). Anything beyond \$100,000 is not exempt from SSI resource limit – SSI benefits are suspended until balance falls below \$100,000.
Medicaid Payback	Yes. Funds may not be used for funeral expenses prior to payback.	No Medicaid payback. The Grantor determines how remaining funds are distributed upon the beneficiary’s death.	Yes. Funds may be used for funeral, burial and QDE’s prior to payback. (Some states do not require Medicaid payback for ABLE participants who are residents of the state and enrolled in the state’s plan.)
SSI Income	Cash, including gift cards or certificates paid directly to the beneficiary, is unearned income. Food and/or shelter is in-kind support and maintenance.	Cash, including gift cards or certificates paid directly to the beneficiary, is unearned income. Food and/or shelter is in-kind support and maintenance.	Disbursements may be made for QDEs without resulting in a one-third reduction in SSI. However, money taken out for rent or housing expenses must be paid in same month or it is counted as a resource.

THE PACKARD LAW FIRM

1100 NW Loop 410, Suite 100, San Antonio, TX 78213
Phone: (210) 340-8877 www.packardfirm.com