

On April 18, 2016, PA Gov. Tom Wolf signed the ABLE Act (or Achieving a Better Life Experience Act) into law. Many families with children and loved ones with special needs or disabilities have anxiously awaiting this federal law to be enacted in Pennsylvania so they, too, can save in a way to benefit their child or loved one even if he or she does not attend college.

Families with a member living with disabilities share the common desire to plan for the stable long-term care of their loved one. Between extensive medical expenses and equipment, housing, transportation, legal fees, education, and so on, families take advantage of every means of public assistance available, but often times, it usually ends up running short. Therefore, disabled individuals and their families have to arrange a supplemental way to protect their assets to allow additional funds to be used to enhance the disabled individual's quality of life, meanwhile ensuring that public benefits are not lost (supplemented but not supplanted).

Traditionally, the predominant way families and disabled individuals did this was through the "special" or "supplemental" needs trust (SNT). When properly drafted, SNTs enable a disabled beneficiary to concurrently use property held in trust for their benefit while receiving essential needs-based government benefits. However, with the ABLE Act disabled individuals and their families now have another savings option to supplement their public benefits.

ABLE was modeled after the 529 education savings plan, and designed as a way for people with disabilities and their families to save money exceeding the \$2,000 resource cap without disqualifying them from receiving SSI and Medicaid benefits. Unfortunately, the law as passed has significant limitations.



KEY DIFFERENCES IN SPECIAL NEEDS TRUSTS AND THE ABLE ACT

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For example, funds in an ABLE account may only be used for a narrow list of disability related expenses, while SNTs broadly allow funds to be spent on items and services contributing to the happiness and comfort of the disabled individual. ABLE is also subject to the maximum contribution amount noted under the annual gift tax exclusion (currently \$14,000 per year) whereas SNTs have no limit as to how much can be contributed each year. Additionally, leftover assets in the ABLE account must be used to repay Medicaid, even when the account was funded by someone other than the disabled individual. In a properly drafted third-party SNT, upon the death of the disabled individual, the remaining assets can be designated by the trustee to go to another family member rather than to the government as a payback. ABLE savings accounts grow tax-free and the costs to establish are considerably less than establishing a SNT. There are age restrictions for becoming eligible for an ABLE account where no such restriction exists for SNTs.

The bottom line is: do not feel that you must choose one or the other because SNTs can work well in conjunction with an ABLE account to maximize savings for your loved one. You should consult with an experienced estate planning attorney and a financial advisor before deciding how to save in the most cost-efficient way to protect your disabled or special needs loved one through a SNT or ABLE account.

This **Industry Insight** was written by Brooke B. McMorrow, Esquire of McMorrow Law, LLC.

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