

NC ABLE Accounts & Special Needs Trusts Webinar

NC ABLE Accounts & Special Needs Trusts



REID CHISHOLM
Assistant General Counsel
Department of State Treasurer



KARA GANSMANN
Partner, Cranfill Sumner LLP

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Let's get started with ABLE accounts first.

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ABLE stands for Achieving a Better Life Experience.

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An ABLE account is a special type of savings account that has tax advantages and generally

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doesn't jeopardize public means-tested benefits such as Medicaid and SSI if withdrawals from

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the account are spent on qualified disability expenses.

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Contributions are generally capped per year, but employed account holders may be able to

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contribute more.

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The eligible individual with a disability is the owner of an ABLE account, but the owner

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can have an authorized individual, such as a parent or guardian, help with opening and

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managing the account.

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ABLE accounts are offered by 46 states and the District of Columbia.

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And it's important to note that an eligible individual can have only one ABLE account.

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The NC ABLE Program was launched in January of 2017 as a member of the National Able Alliance,

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which is a group of 17 states in the District

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of Columbia that work together to offer competitively

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priced programs with six investment options and a checking account with a debit card.

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The program is administered by the Department of State Treasurer and the NC ABLE Program

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Board of trustees.

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You do not have to be a North Carolina resident to open an NC ABLE account.

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And we currently have more than 1700 account owners across North Carolina and many other

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states.

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When we talk about an overview of supplemental needs, trust, I may also refer to these as

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Supplemental Needs Trust, Special Needs Trust or SNTs

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and they typically all do the same thing.

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In essence, these are legal entities that are created to allow money or assets to be

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held for a person who may have a mental or physical disability or an illness.

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The trust documents themselves are created by an attorney.

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I often think of these like an instruction manual and the trust itself is an account

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or it is real estate that is titled in the name of the trust.

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These Special Needs Trusts (SNTs) can hold funds in the trust for a person's benefit.

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The beneficiary is the person who's going to benefit from the trust or those assets.

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And these Trusts are truly most helpful when a person is on a means-based public benefits

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program like Medicaid or SSI or other benefits programs like subsidized housing.

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In essence, this is a protective trust.

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It prevents a disabled person from becoming ineligible for those public benefits programs

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by having too many assets in their own name.

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Instead, those assets are held in the name of the trust.

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And this Trust also allows funds to be held for the benefit of a disabled person to provide

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for their needs beyond what public benefits often allow.

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The goal of an SNT is to supplement and not supplant or replace the public benefits.

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Our goal is always to enhance the quality of life and keep someone the beneficiary as

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independent as possible, and these SNT funds can provide for extra needs for the beneficiary

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beyond what the public benefits would allow.

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And when you are setting up an SNT, there are really two different ways to do that.

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It can be a standalone separate document, or it can be incorporated into a living trust

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or a will through part of an estate plan.

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There are several roles involved.

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The person who creates the trust is what we call the Grantor; the person who benefits

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from the trust is the beneficiary.

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That person can be young or old.

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The beneficiary may be eligible or already receiving benefits like SSI or Medicaid.

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The beneficiary may be disabled, but they don't have to be.

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Sometimes beneficiaries are modestly employed and not yet eligible for disability benefits,

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but may be eligible for other things like housing subsidies or food assistance.

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The last role is the Trustee.

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This is someone who helps manage the money, and it cannot

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be the same beneficiary.

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ABLE accounts are available to any person whose disability occurred before the age of

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26. You can be any age when you open the account, it's just that your disability

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must have occurred before you turned 26. Generally speaking, disability for purposes

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of ABLE account eligibility means that you satisfy one of the three following tests:

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(1) you are receiving SSI or SSDI benefits; (2) you have a disability diagnosis from a physician;

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or (3) you have a condition on the Social Security Administration's list of compassionate allowances.

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And in terms of eligibility to set up a Supplemental Needs Trust,

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there are two basic kinds. One is what we call a self-settled or a first-party trust. That's one

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where the grantor is creating the trust for their own benefit. The grantor is also the beneficiary.

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With these kinds of trusts, the grantor's funds, are the beneficiary's funds, but they're still

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being held in that protective trust. This is created as a separate and standalone document.

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And we can also have a parent, guardian or power of attorney create this trust on

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behalf of that beneficiary, as long as those beneficiary funds are used to fund that trust.

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The Third-Party Trust is the other kind of trust, and that can be created by almost anyone for

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another person's benefit. Often we can see these set up in an estate plan for a loved

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one to inherit in a protected way. Sometimes these can also be stand-alone trusts as well.

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The process to set up an NC ABLE account is easy and much like setting up other types of accounts,

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it can be done online at NCABLE.org or you have the option to submit a paper enrollment form.

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There's a self-certification process which means you don't need to provide a Physician's diagnosis or proof of eligibility of SSI or SSDI.

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However, you should keep documentation of your eligibility just in case you have to provide it at some point to the Internal Revenue Service or to your ABLE program.

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Also, in most situations, authorized individuals acting on behalf of an eligible account

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owner such as guardians, are required to submit documentation of their authority to the NC ABLE Program

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For example, a guardian who opens an account for a beneficiary

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must submit guardianship paperwork as part of the enrollment process.

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NC ABLE has an enrollment checklist on NCABLE.org that can help you understand and gather any of the information you need to open an account.

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So if you're setting up a supplemental needs trust,

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you should really work with an attorney to create that and create these legal documents.

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You want to make sure that you are following the laws of the public benefits program that might be involved, but you also want to help

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make sure that the document itself is sound.

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As you're creating the trust, you could create it as part of an estate plan with the attorney and so.

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You would work with the attorney to create that or you would be creating that

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separate standalone document so that it actually currently exists.

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If we're talking about a self-settled or those first-party supplemental needs trust.

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Those are documents that have to be created and that currently exist

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but those are funds where the grantor is using their own funds and the grantor is also the beneficiary.

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And you've got to seek approval from the state of North Carolina through the Division of Health Benefits

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in order for that trust to be approved.

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As you're working to create a trust, you should also think about who would be a trustee.

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That trustee would manage the funds in the trust,

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and they can distribute the funds for the benefit of the beneficiary from the trust.

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This is also a person who may oversee investment of the funds or handle trust taxes, or any other matters on behalf of the trust, like buying or selling property.

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You want to think about having trustworthy individuals in this role as trustee

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and sometimes corporate entities can serve in the same role

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as you're choosing a trustee. You want to consider

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the complexity of the trust and the nature of the relationship between

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the trustee and the beneficiary and the time that might be

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required to administer the trust or make distributions from trust.

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One big thing is people want to consider the potential fees involved.

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Corporate trustees usually will charge fees for trust administration.

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after the trust is set up, a trustee would need to establish a bank account to handle those funds.

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This is the process that we call funding the trust with assets and then the trust is really set up and created.

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There's no charge to set up an account with NC ABLE,

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although similar to opening a new bank account

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a small initial deposit is required, and there are two ongoing costs to maintain an account with NC ABLE

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First, there's an annual fee, which is assessed if you choose one or more

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of the investment options available through NC ABLE.

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This fee is based on the amount of money in your account.

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The fee doesn't apply to the checking account options.

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Instead, the checking account has a monthly service charge.

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But that's waived for certain account balances

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or if you receive electronic delivery of statements.

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and other communications.

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Second, there's a fixed fee that's charged for each account,

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regardless of the amount of money in the account.

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However, the fee is reduced significantly if you opt into electronic delivery.

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Let me give you a high-level example of account fees.

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Keep in mind fees can change and I'm not including any fees

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for optional transactions or services.

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Also, I'm assuming a constant account balance throughout the year.

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So as an example, an account balance of \$10,000

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divided equally between the checking account option and the moderate investment option

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would cost around \$64 per year.

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If you received electronic document delivery.

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and if you want more information, the NC ABLE program has an explanation of fees on its website.

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The kinds of costs and fees for Supplemental Needs Trust will really vary by attorney

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Depending on which attorney you might work with

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there, there may be fixed fees or flat fees or hourly fees involved,

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but that will really vary by attorney

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As far as maintaining a supplemental needs trust,

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there are some expected costs.

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Some of those could be trustee fees,

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particularly if you use a corporate fiduciary as a trustee.

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Umm, often trust will permit trustee compensation

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and if the trust doesn't allow that, the law certainly would.

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Corporate trustees often charge a percentage of the trust each year,

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but they may also charge hourly for services.

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Individual trustees may or may not charge for compensation,

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particularly if that's not

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something they've done before, and so we would look to the terms of the trust

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to see what the trust would allow

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in terms of compensation for an individual trustee.

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The other expected cost for a trust would be taxes.

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These are usually trust as separate entities by the IRS,

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but the tax would be on the interest or the income earned or generated by the trust.

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For an ABLE account, anyone can contribute to an ABLE account,

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the account owner, or their parents or family members, or any other person.

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A beneficiary can even set up direct deposit to the account from a paycheck,

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but funds from any source can be contributed to an ABLE account.

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For example, a grandparent can make a gift to the account

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or federal benefits like SSI or SSDI can be directly deposited.

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The standard annual contribution limit is the amount of the federal gift tax exclusion.

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Account owners who earn money from work

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may be able to contribute more than the annual limit through the ABLE to Work Act.

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is capped at the lesser of 1.

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The amount of income earned by the account holder

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or (2) the federal one-person poverty level for the prior year

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Contributions can be made at any time and as often as needed

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In fact, we saw over 19,000 separate contributions made to NC ABLE accounts

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Also, you can make one time or recurring contributions online or by mail.

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In the first nine months of this year,

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approximately \$1.00 out of every \$7.00 contributed to

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NC ABLE accounts was made through recurring contributions.

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So with the supplemental needs trust if it's a self-settled or first-party trust,

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that's where the grantor may contribute their own funds. But the grantor is also the beneficiary,

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only that person's funds may be used.

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No one else can contribute money to that self-settled trust.

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If we have a third-party, supplemental needs trust anyone except the beneficiary,

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may contribute money to that kind of supplemental needs trust

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As far as the amount or type of assets that could be contributed to a supplemental needs trust.

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Those assets will vary.

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You might see real estate or financial accounts or other investment accounts.

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life insurance policies can be diverted to a supplemental needs trust.

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Some trustees, like corporate trustees, may have restrictions on the types of assets they wish to handle.

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Often I'll see banks in this role as trustee,

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and they don't want to handle real estate.

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Some trustees also like corporate trustees,

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may have restrictions on amounts that they want to handle, like a minimum.

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As far as setting up the trust, there's no restriction on the account balance

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It could hold as much or as little property or money as it holds.

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There may be times that having a trust with little money in it may no longer make sense.

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and so the trustee has some discretion about how to handle those funds.

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The timing of those contributions, though

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an SNT can receive a lump sum settlement.

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This can receive distributions along the way.

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There's a lot of flexibility when you have a supplemental needs trust

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on the timing or amount of those contributions.

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Money in ABLE account can be spent on a broad range of what are called

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qualified disability expenses.

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These are expenses that directly benefit the account holder

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in maintaining or improving health, independence, or quality of life.

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Qualified disability expenses also include basic living expenses,

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and they're not limited to items for which there is necessarily a medical necessity.

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Examples of qualified disability expenses include food, housing, education,

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transportation, employment support, assistive technology, support services, health, and funeral and burial expenses.

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For an ABLE account, the ABLE owner, who is also the beneficiary of the account, or a person with

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authority to act on behalf of the account owner, the authorized individual decides when and how funds are spent.

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An account owner or authorized individual can withdraw money from an ABLE account

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at any time and use the money to pay for any qualified disability expenses.

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Remember in, in addition to investment options,

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NC ABLE offers a checking account

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with a debit card which makes it easy to make day-to-day purchases.

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When we talk about the kinds of expenses that can be paid for from a supplemental needs trust, there are some differences.

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Beneficiary who is on SSI for example.

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The SSI rules prohibit a supplemental needs trust from paying for food or shelter expenses.

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So typically, an SNT cannot pay for those kinds of things, \

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or even power or water for a home without reducing a person's SSI benefits.

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One option would be to work with an ABLE account

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to distribute funds from an SNT to an ABLE account

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to help pay for those food or shelter options.

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If a beneficiary is not receiving public benefits,

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then the trustee may have a little more discretion about what that trust may pay for.

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But as a general rule, anything

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that the public benefits program would not pay for

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can be paid for by a supplemental needs trust.

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and some examples would be as supplemental needs would be,

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paying for a vehicle or paying for car insurance.

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Even taking a vacation, even paying for a caregiver to come on vacation with a beneficiary.

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Paying for cell phones and cell phone service, laptop computers, hobby equipment.

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It's really a wonderful tool to allow someone's quality of life to be expanded even when they are receiving benefits.

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In terms of who decides when and how those expenses are used from the SNT,

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the trustee is the person who manages those funds.

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The trustee is bound to follow both the law as well as the

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terms of the trust. But there may be some considerable

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discretion by the trustee in how that money is spent or invested or otherwise distributed or handled.

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One big rule for the supplemental needs trust is that money can never be distributed directly to the beneficiary from the trust

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but the money can from that trust can be used to pay for things on the beneficiaries behalf

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There is no restriction on the SNT purchasing a home or making accessibility to adaptations for the home either.

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Well, the funds in an ABLE account and withdrawals that are spent on qualified disability expenses

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generally do not affect the beneficiary's eligibility for public benefits.

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For example, a beneficiary's ABLE account balance generally doesn't count toward the resource limit for SSI and Medicaid.

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One exception is for ABLE accounts with a balance greater than \$100,000

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In this situation, the amount by which the account exceeds \$100,000 counts towards the resource limit for SSI.

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Just to put that in perspective, the average account balance in NC ABLE is at this point is around \$9,000.

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Another exception is withdrawal from an ABLE account that is intended to pay for housing

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and that is not spent in the same month as the withdrawal

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In this case, the amount of the withdrawal counts as a resource for SSI.

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However, if the money is spent on housing in the same month

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that it's withdrawn, then it doesn't count as a resource.

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And with supplemental needs trust when someone is a public benefits recipient,

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their eligibility is not impacted with a supplemental needs trust

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As in when someone may be on Medicaid and that person receives funds that are transferred to a supplemental needs trust

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that is not subject to Medicaid's look-back period

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and really can't cause disqualification for eligibility for those Medicaid benefits.

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Instead, those funds are held in that supplemental needs trust

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The beneficiary still continues to receive the Medicaid benefits that they're eligible for

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and the trust can pay for things for that person's needs that Medicaid wouldn't otherwise cover.

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As long as distributions from the trust are not made directly to the beneficiary.

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Instead, the trust has to pay to vendors or third parties on behalf of the beneficiary.

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Things like recipients who may be on SSI disability, for example

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Their eligibility is also preserved with a supplemental needs trust and that those funds are protected.

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For ABLÉ accounts, yes, NC ABLÉ accounts and all ABLÉ accounts are subject to Medicaid recovery

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but it's important to note that funds are first used to pay

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for any outstanding qualified disability expenses, including funeral and burial expenses.

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Any remaining funds in the account are subject to a Medicaid reimbursement claim.

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In North Carolina, the Department of State Treasurers

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are required to notify the Medicaid office of an account owner's death within 30 days.

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The state Medicaid office then may file a claim within 60 days.

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Medicaid claim is paid directly from the NC ABLÉ account at the department's direction.

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And then any funds remaining after the payment of qualified disability expenses and the payment

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of the Medicaid reimbursement go to the beneficiary's estate or successor account owner

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So for self-settled SNT, the answer is yes,

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those are funds that are created by a grantor who is also the beneficiary.

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Those funds are used for the beneficiary, and they belong to the beneficiary first.

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So, one rule in law requires that self-settled,

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supplemental needs trust, are subject to Medicaid estate recovery

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upon the death of the beneficiary.

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Any remaining funds that are not subject to that recovery do go back to the beneficiaries named within the Trust.

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Third-party Supplemental needs trust don't have that Medicaid estate recovery.

For more information about the NC ABLE Program visit NCABLE.org.



Dale R. Folwell, CPA
STATE TREASURER OF NORTH CAROLINA
DALE R. FOLWELL, CPA