

# Loud and Clear: A Special Needs Conversation

## SNA Members at The Arc Convention

Members of the Special Needs Alliance played an active role at [The Arc's](#) recent convention in San Diego. Mary E. O'Byrne, SNA board member, shared the podium with Robin Shaffert, The Arc's Senior Executive Officer, Individual and Family Support, during a popular session on ABLÉ accounts and special needs trusts (SNTs). Mary, along with SNA member attorneys, Stephen Dale, Jennifer Steneberg and Mary Waltari, then continued the discussion with family members who visited the SNA exhibit table.



SNA board member Mary O'Byrne explained how SNTs and ABLÉ accounts can work together.

Both ABLÉ accounts and SNTs can hold assets without affecting eligibility for means-tested government benefits, but they're governed by very different rules. Families were eager to understand the pros and cons of each. ABLÉ programs are established and administered by individual states, in accordance with federal legislation, and representatives from programs managed by California, Massachusetts, Nebraska and Virginia introduced themselves to attendees.

While ABLÉ accounts are easier and less expensive to create than SNTs, they are only available to individuals with qualifying disabilities that began prior to the age of 26. ABLÉ accounts can be accessed by the owner/beneficiary, unlike SNTs, which are administered at the sole discretion of trustees. But ABLÉ accounts have limits on both annual and aggregate contributions.

Both ABLÉ accounts and first party SNTs, created with the beneficiary's assets, are subject to a Medicaid payback upon the beneficiary's death. However, third party SNTs, created with assets belonging to others, do not have that requirement.

### Best of Both Worlds

For these and other reasons, depending upon the specific circumstances, one or the other instrument may best suit the beneficiary's needs. On the other hand, there are situations where the two can work together to great advantage. Some examples include:

- Deposits from a larger SNT can be made into an ABLE account, then used to pay for food and shelter without affecting SSI. If an SNT were to handle such expenses directly, SSI payments would be decreased.
- While an SNT trustee may not give funds directly to the beneficiary, SNT-to-ABLE deposits make the money available without consequences.
- While child support cannot be directly deposited into an ABLE account, if first assigned to an SNT, it can subsequently be transferred to an ABLE account for the beneficiary's use.

## Gray Areas



(From left) Mary O'Byrne, Stephen Dale, Mary Waltari, Anthony Battaglia and Jennifer Steneberg answered family questions at the SNA's exhibit table.

Because ABLE accounts are relatively new, certain questions remain. It's unclear, for instance, what "basic living expenses" are considered "qualified disability expenses. Similarly, it's not known with certainty if entertainment, travel, hobbies and other leisure activities are approved uses of ABLE funds.

Another area of concern involves situations in which a parent is managing an ABLE account for a minor or for an adult who lacks the capacity to handle it themselves. When a child reaches legal adulthood (at an age between 18 and 21, depending on the state) can the parent retain their role or must a power of attorney or guardianship be established in order for them to do so? If parents have been administering an account belonging to an adult who lacks capacity, what happens upon their death or in the event that they themselves become incapacitated As our clients, and the IRS, gain more experience with ABLE plans, we look forward to clarifying these questions.

Read more about ABLE accounts and SNTs [here](#).

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