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2018 updates provided by Karen Dunivan Konvicka, JD

Special Needs Planning Tools

A Comparison of 529 ABLE Accounts, Pooled Special Needs Trusts, and Special Needs Trusts

The ABLE Act allows an individual with a disability to have a tax-preferred savings account without jeopardizing his or her Medicaid and SSI eligibility.

See a comparison chart of ABLE accounts and trusts at the end of this article.

The Stephen Beck, Jr., Achieving a Better Life Experience Act (ABLE Act) was signed into law on December 19, 2014. This Act allows an individual with a disability to have a tax-preferred savings account without jeopardizing his or her Medicaid and SSI eligibility. This new savings tool, modeled after the 529 college-savings plan, allows disbursements, including earnings, from the account to pay for certain qualified expenses. While these accounts were modeled after 529 accounts, there are distinct differences between a traditional 529 and a 529 ABLE account, which families and practitioners need to keep in mind.

Legislation to allow ABLE accounts was first proposed nearly 10 years ago. The concept of an exempt savings account was the result of a small group of parents in Massachusetts and Virginia who were concerned about the $2,000 cap on resources and how restrictive that was to individuals who wanted to live in the community and maintain a more normal life. In 2006, parents from Northern Virginia got the ear of their Congressmen to introduce what was initially known as the Financial Savings Account for Individuals with Disabilities Act. In 2010, after several unsuccessful attempts at passage, the name of the bill was changed to the Achieving a Better Life Experience (ABLE) Act with the hope that the

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new name would generate better understanding and support for the goals of the legislation. Proponents of the bill intended to introduce a simpler way to provide for the financial future of persons with disabilities. What began as a way of simplifying future planning has become quite complex as Congressional changes diminished the original version of this legislation. Changes to the bill are numerous but most significant is the suspension of SSI when the ABLE account exceeds $100,000. Retained in the legislation is the ability to keep Medicaid until the account exceeds the state's 529 college saving plan limit. The initial legislation had no limitation on the age of the beneficiary of an account. As passed, the onset of disability must be established prior to the age of 26 years. The initial legislation also did not include a payback clause. As passed, any funds remaining in the ABLE account are subject to a payback similar to self-settled first party special needs trusts. Payback is limited to the date the ABLE account was created as opposed to the lifetime of the beneficiary. These and other changes were necessary in order to obtain support to pass the legislation.

Despite the many changes made to the bill, it still remains as a major step forward in enabling individuals to live more independently. It is ideal for avoiding a spend down and preserving a small amounts of money without the expense of creating a first party special needs trust, gives control to competent beneficiaries who are insulted by having to give up control of their own funds to preserve SSI and Medicaid eligibility, allows an accumulation of wages over time, and avoids the penalty of the SSI one-third reduction rule for assistance with housing expenses.

Not a Replacement for Special Needs Trusts

While an ABLE account provides a flexible savings tool, it has not taken the place of the need for a third party special needs trust or in some cases, a first party special needs trusts also known as (d)(4)(A) and (d)(4)(C) trusts. All of these planning tools protect Medicaid and SSI eligibility and provide a means of paying for expenses that can enrich the quality of life of an individual with a disability. This article provides information about the similarities and differences between these planning tools in order to determine if one is a better option given an individual's circumstances, or if setting up one or more would be advantageous.

An amount equal to the annual federal gift tax exclusion (currently $15,000) can be deposited annually in the account while still maintaining the beneficiary's eligibility for Medicaid and Supplemental Security Income (SSI). It is important to note that this is a total of $15,000 from all sources and not $15,000 per year from multiple donors. As stated above, if the account balance goes above $100,000, the beneficiary's SSI payments will be suspended until the account balance falls below $100,000. A beneficiary's eligibility for Medicaid benefits will continue until the account balance reaches the amount of the state's ABLE plan maximum limit which is the same as each state's 529 college savings plan limit.

ABLE programs are open for enrollment. For updated information about the ABLE Act, available state programs and legislative updates, visit Commonwealth Community Trust or ABLE National Resource Center.

This article compares ABLE accounts with pooled special needs trusts (both first party (d)(4)(C) and third party pooled trusts), First party (d)(4)(A) special needs trusts and the traditional third party special needs trust, which have an individual and not a pooled trust as trustee.

Practitioners are familiar with the use of pooled trusts known as (d)(4)(C) SNTs, but pooled trust organizations may also offer pooled and/or traditional third party special needs trusts.

What Is a Pooled Special Needs Trust?

A nonprofit organization administers the following types of pooled special needs trusts:

- A third party pooled special needs trust is funded by someone other than the beneficiary, typically a family member or friend, and can be coordinated with a grantor's estate plan.
- A first party pooled special needs trust — also known as a (d)(4)(C) SNT — is funded with the disabled individual's own funds usually received as a personal injury or workers' compensation award, an inheritance left directly to the beneficiary, Social Security back payment, or an award of marital property or spousal support.

The following briefly summarizes the services provided by the trust administrator:

- Pools trust funds together for investment purposes and each beneficiary has his or her own sub account.
- Makes decisions on how funds from the trust are disbursed.
- Decides who manages and invests the trust funds.
- Fulfills reporting requirements to government agencies.
- Stays abreast of the Social Security Administration's Program Op-

erations Manual Systems (POMS) and state Medicaid regulations so that SSI and Medicaid, means-tested government benefits are not jeopardized.

What to Consider?

The following highlights the notable differences between an ABLE account, pooled special needs trusts (first party (d)(4)(C) and third party) and special needs trusts (non-pooled first party (d)(4)(A) and the traditional third party):

- Age requirement and proof of disability to qualify for an ABLE account
- Medicaid payback provision for an ABLE account, first party pooled (d)(4)(C) and (d)(4)(A) special needs trusts/no Medicaid payback for third party pooled and non-pooled traditional special needs trusts
- Funding restrictions for an ABLE account
- Types of expenses to be paid and whether or not expenses are related to the beneficiary's disability
- Amount of funding (i.e. lump-sum proceeds from life insurance death benefit or personal injury award that is greater than or less than $15,000)
- Costs
- Oversight that would be helpful to the beneficiary
- Flexibility and independence for the beneficiary with an ABLE account
- Investment control
- Ability to avoid one-third reduction for in-kind support through use of ABLE account

Effective in 2018, the ABLE Act has been revised by several pieces of legislation. This article and the accompanying chart have been updated to include the following:

- **ABLE to Work Act** – Eligible employed beneficiaries can contribute an amount equal to their current year gross income up to an additional $12,060 each year (current federal poverty level). If the beneficiary or their employer is contributing to a defined contribution plan (401K), annuity plan (403(b)), or deferred compensation plan (457(b)) in the same calendar year, the beneficiary is not eligible.
- **ABLE Financial Planning Act** – 529 college savings accounts can be rolled over to an ABLE account if the beneficiary is the same for both accounts, or if the beneficiary of the ABLE account is a qualified member of the family of the college savings account beneficiary. A qualified Member of the Family is defined by the 529 college savings plan as parents and step parents, aunts, uncles, siblings, children, first cousins, nieces and nephews. The rollover and any additional contributions are collectively limited to the current tax-year ABLE contribution (currently $15,000 or the annual gift tax exclusion amount).
- **In addition,** legislation has been proposed to expand the age of onset of disability from its current age of prior to 26 to age prior to age 46, but the bills have not come out of committee.

Practical Concerns of an ABLE Account

- Payback requirement
- No more than one ABLE account allowed
- Potential of overfunding from well-intended family members
- Making sure distributions are for Qualified Disability Expenses (QDE)
- Keeping track of QDE as well as non-qualifying withdrawals for income tax purposes
- Increased risk of fraud, undue influence and exploitation

As ABLE accounts are made available in more states, more clients will seek advice from experienced practitioners on the best planning tool or tools to use to address both current and future needs. It is important to keep in mind that having an ABLE account is not mutually exclusive of having a need for a special needs trust. While an individual is limited to having only one ABLE account, he or she may also have need for one of the other types of special needs trusts to manage larger amounts of money or to avoid a payback for funds and assets that are not subject to a payback if left to a third party special needs trust.

ABLE accounts have not taken the place of or the need for a third party special needs trust to protect life insurance and/or an inheritance. A combination of the two may enable individuals with greater control over their lives as well as provide a higher level of care than is currently provided by the government. ABLE accounts should be seen as another planning vehicle which, if properly utilized, will create a more comfortable and enriched life for persons with disabilities. Special needs planners must caution families that while ABLE accounts have been compared to 529 accounts, they are very different from higher education 529s. More than ever, families need the expertise of special needs planners to guide them in determining which planning tool or tools are right for each unique family situation. Special needs planners must become knowledgeable about the similarities and distinctions between the new ABLE accounts and the special needs trusts so that we can best advise our clients as to when to use ABLE vs. one of the other special needs trust options. ■

A Comparison of 529 ABLE Accounts, Pooled Special Needs Trusts, and Special Needs Trusts and Special Needs Trusts

	ABLE account	Third party pooled special needs trust	First party (d)(4)(C) pooled special needs trust	Third party (non-pooled) special needs trust	First party (d)(4)(A) (non-pooled) special needs trust
Who is eligible? Are there age restrictions?	To qualify, an individual must have a disability that occurred before age 26 and: (a) Be able to provide if requested, written, signed documentation from a licensed physician certifying blindness, "physical or mental impairment which results in severe functional limitations" or a condition listed on the Social Security Administration's list of compassionate allowances conditions. or (b) Receiving or eligible to receive SSI or SSDI (See POMS SI 01130.740.) *(continued on next page)*	Generally used for persons who are disabled but may be used for a beneficiary who is borderline disabled or is modestly employed and not eligible for SSI or SSDI but may need other needs based benefits such as Medicaid, SNAP or Housing Subsidy. Some pooled trusts require that the beneficiary has a disability that meets the SSA definition of disability. (See Social Security Administration's Disability Starter Kits.) There is no age restriction for the beneficiary.	For an individual age 64 or younger: A first party pooled trust can be established for an individual with a disability age 64 or younger with no transfer penalty. A first-party pooled trust can be established for an individual with a disability age 65 and over; however a transfer penalty may apply. Further research is recommended on a state by state basis. (See CMS Bulletin, May 12, 2008.)	While most third party special needs trusts are established for persons who are disabled, the beneficiary does not need to have a specific disability. Families who suspect that a family member may need governmental benefits in the future can set aside that family member's inheritance in a third party special needs trust	Self-settled special needs trust requires a person be disabled per SSA regulations but the trustee of a (d)(4)(A) trust can be a family member, friend, professional or corporate trust. Further research is recommended on a state by state basis.

	ABLE account	Third party pooled special needs trust	First party (d)(4)(C) pooled special needs trust	Third party (non-pooled) special needs trust	First party (d)(4)(A) (non-pooled) special needs trust
(continued) **Who is eligible? Are there age restrictions?**	Designated beneficiaries can open an ABLE account by certifying, under penalties of perjury, that they meet the necessary requirements. (See IRS Guidance, Tax Benefit for Individuals With Disabilities: IRC Section 529A January 29, 2016.)				

	ABLE account	Third party pooled special needs trust	First party (d)(4)(C) pooled special needs trust	Third party (non-pooled) special needs trust	First party (d)(4)(A) (non-pooled) special needs trust
Who can set up and fund the account?	The beneficiary or designated beneficiary's parent or legal guardian. (An agent acting under power of attorney can set up the ABLE account.) Any person can contribute to the beneficiary's ABLE account, including the designated beneficiary. "Person" is defined by the IRS to include an individual, trust, estate, partnership, association, company or corporation. (See POMS SI 01130.740; 26 U.S.C. S7701(a)(1).) A beneficiary can rollover a 529 college savings plan to his or her own ABLE account or a qualified family member's ABLE account.	The grantor can be anyone, except the beneficiary. Multiple third-parties can contribute to the trust.	The grantor can be the beneficiary, parent, grandparent, court or legal guardian. An agent acting under power of attorney can set up a first-party pooled special needs trust. The trust is funded with the beneficiary's own money usually as a result of a personal injury or workers' compensation settlement, direct inheritance, Social Security back payment, or an award of marital property or spousal support.	Same as third party pooled special needs trust.	The grantor can be the individual, a parent, grandparent, court or legal guardian. The trust is funded with funds which belong to the beneficiary as in the first party pooled special needs trust.

	ABLE account	Third party pooled special needs trust	First party (d)(4)(C) pooled special needs trust	Third party (non-pooled) special needs trust	First party (d)(4)(A) (non-pooled) special needs trust
Does the beneficiary have to reside in the state where the program or trust is located?	Some state ABLE programs are open for nationwide enrollment while others require in-state residency. (See ABLE National Resource Center.)	Many pooled trusts organizations are state-centric, but there are a number of national pooled trust organizations that serve clients throughout the United States. The Academy of Special Needs Planners provides a list of national, regional and state pooled trusts organizations. (See ASNP Directory of Pooled Trusts.)	Same as the third party pooled special needs trust.	There are no restrictions on a third party special needs trust.	Same as third party special needs trust.
Can the beneficiary have more than one account or type of trust?	A beneficiary can have only one ABLE account. (See POMS SI 01130.740.)	A beneficiary can have more than one trust account; and, a beneficiary can have both a third-party and first-party trust.	Same as third party pooled special needs trust.	Same as third party pooled special needs trusts.	Same as third party pooled special needs trust.

	ABLE account	Third party pooled special needs trust	First party (d)(4)(C) pooled special needs trust	Third party (non-pooled) special needs trust	First party (d)(4)(A) (non-pooled) special needs trust
Are there any restrictions on contributions?	A limit of $15,000 per year (or an amount equal to the annual federal gift tax exclusion) can be contributed. (See POMS SI 01130.740.) In addition, a beneficiary who does not participate in an employer pension plan may contribute an additional $12,060 (or an amount equal to the current federal poverty line) of his or her wages. Federal law stipulates that a state's ABLE plan set a limit on the aggregate account balance of a designated beneficiary, based on limits set for a state's 529 college savings plan. (See 26 USC 529A: Qualified ABLE programs, (b)(6).)	There are no limits on contributions per year but no contributions can be made by the beneficiary or with funds the beneficiary has a legal right to.	There are no limits on contributions per year but contributions can only be made by the beneficiary or with funds the beneficiary has a legal right to.	Same as third party pooled special needs trust.	Same as first party pooled special needs trusts.

	ABLE account	Third party pooled special needs trust	First party (d)(4)(C) pooled special needs trust	Third party (non-pooled) special needs trust	First party (d)(4)(A) (non-pooled) special needs trust
Are Medicaid benefits protected?	A beneficiary can retain *Medicaid* as long the disbursements are for qualified expenses, and the account does not exceed the state's ABLE plan aggregate limit that is adopted from the state's 529 college savings plan. (See Pub. L. 113-295, div. B, title I, §103, Dec. 19, 2014, 128 Stat. 4063 (b)(2); 26 USC 529A: Qualified ABLE programs, (b)(6).)	A beneficiary can retain *Medicaid* as long as all distributions are made to vendors or third parties and cash is not distributed directly to the beneficiary.	Same as third party pooled special needs trust.	Same as third party pooled SNT.	Same as third party pooled special needs trust.

	ABLE account	Third party pooled special needs trust	First party (d)(4)(C) pooled special needs trust	Third party (non-pooled) special needs trust	First party (d)(4)(A) (non-pooled) special needs trust
Are SSI benefits protected?	A beneficiary can retain *SSI* as long the disbursements are for qualified expenses and the ABLE account remains below $100,000. If the account balance goes above $100,000, then the individual's SSI benefits will be suspended but not terminated until it falls below $100,000. (See POMS SI 01130.740.) Note that funds from an ABLE Account can be used to pay for shelter expenses such as mortgage or rent, homeowner's insurance, taxes, heat, electricity, water, sewer and garbage pick-up without resulting in a reduction of monthy SSI income.	The trust is set up to protect *SSI* benefits. There are no restrictions on the account balance in order to maintain eligibility. Distributions toward food and shelter expenses may be deemed as in kind support and result in a reduction of SSI income. There is discretion to transfer up to $15,000 per year to an ABLE Account to be used for Qualified Housing Expenses which may avoid a reduction in SSI.	Same as third party pooled special needs trust.	Same as third party pooled special needs trust.	Same as third party pooled special needs trust.

	ABLE account	Third party pooled special needs trust	First party (d)(4)(C) pooled special needs trust	Third party (non-pooled) special needs trust	First party (d)(4)(A) (non-pooled) special needs trust
Is there oversight to ensure the funds are used for the individual with a disability in accord-ance with the rules?	The eligible beneficiary or person with signing authority (designated beneficiary's parent, legal guardian, or agent acting under power of attorney) will be responsible for retaining documentation about disbursements and will need to categorize distributions to determine federal income tax obligations. (See IRS Notice 2015-81.) State reporting requirements will vary.	A pooled special needs trust is helpful when a parent or other person wants to leave money for a disabled individual but fears the individual cannot prudently handle funds on his or her own or in the case where a family member needs to remain eligible for needs based benefits. Those who want to leave money for the benefit of a person with special needs may not want to burden family members with trust administration or may not have friends or family members able and/or willing to manage a special needs trust. In both cases, the individual can benefit from the services of a pooled trust administrator, regardless of Medicaid and SSI benefit preservation. *(continued on next page)*	Same as third party pooled special needs trust.	While SSI, DMH/DDS/DHS and Medicaid agencies can demand an accounting of how funds in a third party special needs trust are managed, there is less oversight than with pooled first and third party special needs trusts. With an individual trustee or Corporate trustee who is not familiar with distribution rules, there is a greater risk of naive error which may result in a loss or diminution of benefits.	Same as third party special needs trust.

	ABLE account	Third party pooled special needs trust	First party (d)(4)(C) pooled special needs trust	Third party (non-pooled) special needs trust	First party (d)(4)(A) (non-pooled) special needs trust
(continued) **Is there oversight to ensure the funds are used for the individual with a disability in accord-ance with the rules?**		The third party pooled special needs trust offers an experienced choice to families when selecting a trust administrator to manage funds left for the benefit of a disabled individual. For clients receiving SSI and Medicaid benefits, the pooled trust administrator provides oversight so as to not jeopardize these benefits. Disqualifying contributions are self-reported by the beneficiary. SSI/DHS/DSS and other agencies can demand an accounting from the pooled special needs trust administrator. Additionally, the trust administrator fulfills reporting requirements from the state's Medicaid office and/or SSA for SSI recipients.			

	ABLE account	Third party pooled special needs trust	First party (d)(4)(C) pooled special needs trust	Third party (non-pooled) special needs trust	First party (d)(4)(A) (non-pooled) special needs trust
What type of assets are accepted?	Cash assets fund an ABLE account. Real estate or other non-cash assets are not accepted. (See 26 USC 529A: Qualified ABLE programs.)	Cash assets are accepted to fund the trust. The funds are pooled together for investment purposes and each beneficiary has his or her own sub account. Some pooled trust organizations may accept real estate or non-cash assets.	Same as third party pooled special needs trust. Note: Assets that belong to the beneficiary, or to which he or she has a legal right, cannot be commingled with either a third party pooled or first-party pooled special needs trust.	Unless a corporate or other professional trustee has specific rules regarding what assets can be held in a trust, there are no limitations as to what type of assets are acceptable.	Restrictions will vary depending on the trustee's rules or practices. An individual trustee may be more willing to hold real estate in the trust than a professional trustee. Note: Assets that belong to the beneficiary or which he or she has a legal right to cannot be commingled with either a third party pooled or non-pooled special needs trust.
What are the set up and ongoing costs?	Fees vary with each state's ABLE program. Set up and ongoing costs are nominal and are typically less than those associated with setting up a special needs trust.	Enrollment and administration fees are likely higher than those associated with ABLE accounts but are often lower than for-profit businesses that offer trust services. Management fees for a pooled special needs trust can be less than one percent on an annual basis. A fee schedule should be available.	Same as third party pooled special needs trust.	Administration fees will vary depending on who is serving as trustee. If an individual family member, he or she may not charge. There are administrative costs involved with filing taxes and filing accountings.	Same as third party pooled special needs trust.

	ABLE account	Third party pooled special needs trust	First party (d)(4)(C) pooled special needs trust	Third party (non-pooled) special needs trust	First party (d)(4)(A) (non-pooled) special needs trust
What expenses can be paid?	Qualified Disability Expenses (QDE) must be related to the beneficiary's disability and include but are not limited to: education; housing*, transportation, employment training and support, assistive technology and related services, health, prevention and wellness, financial management and administrative services, legal fees, expenses for ABLE account oversight and monitoring, funeral and burial; and, basic living expenses. *To avoid any impact to a beneficiary's SSI benefits, funds from the ABLE account used to pay for housing must be spent within the same calendar month that funds are withdrawn from the account. (See POMS SI 01130.740.) As stated above, distributions from an ABLE account avoids the loss of one-third reduction in SSI due to in kind expense rule.	Disbursements can pay for goods and services that will enrich the quality of life of the beneficiary while protecting benefits of SSI and Medicaid recipients. There is greater flexibility in what the pooled trust can pay for compared to the ABLE account since expenses do not have to be related to the beneficiary's disability. The following are some examples: education, transportation, health care, cable, phone, internet, employment training and support, assistive technology, care provider, prevention and wellness, home renovations, legal fees, hobby, leisure, and recreation activities, gifts for others that are given on behalf of the beneficiary, paying for a family member companion on vacations or travel or for family and/or friends to visit the beneficiary and all funeral expenses.	Disbursements are for the sole benefit of the beneficiary and can pay for goods and services that will enrich the quality of life of the beneficiary while protecting benefits of SSI and Medicaid recipients. There is greater flexibility in what the pooled trust can pay for compared to the ABLE account since expenses do not have to be related to the beneficiary's disability. The following are some examples: education, transportation, health care, cable, phone, internet, employment training and support, assistive technology, care provider, prevention and wellness, home renovations, legal fees, recreation, hobby and leisure activities. Purchasing a pre-paid funeral is allowed but funeral expenses are disallowed following the death of the beneficiary.	Same as third party pooled special needs trust.	Same as first party pooled special needs trust.

	ABLE account	Third party pooled special needs trust	First party (d)(4)(C) pooled special needs trust	Third party (non-pooled) special needs trust	First party (d)(4)(A) (non-pooled) special needs trust
How are funds disbursed from the account?	The designated beneficiary or the person with signature authority (designated beneficiary's parent legal guardian, or agent acting under power of attorney) has account access to make disbursements by check and/or credit card. (See POMS SI 01130.740.)	Named by the grantor, an advocate is responsible for making disbursement requests on behalf of beneficiary. The advocate has access to financial statements and can be the beneficiary, guardian, conservator, power of attorney, family member, case manager, and/or someone named who is familiar with the needs of the beneficiary. The PSNT organization makes payments from a beneficiary's sub account for approved disbursements.	Same as third party pooled special needs trust.	The trustee has sole discretion regarding all distributions from an SNT. The trustee may consult with the beneficiary, his or her representative or an advocate to determine goals, prioritization of needs, wants and what is affordable given the amount and type of assets held in the trust.	Same as third party special needs trust.
Are contributions tax-deductible?	Contributions are not deductible for federal tax purposes. States may offer tax incentives for in-state eligible beneficiaries. (See POMS SI 01130.740.)	Contributions are not tax-deductible (federal or state).	Same as third party pooled special needs trust.	Same as third party pooled special needs trust.	Same as third party pooled special needs trust.

	ABLE account	Third party pooled special needs trust	First party (d)(4)(C) pooled special needs trust	Third party (non-pooled) special needs trust	First party (d)(4)(A) (non-pooled) special needs trust
Is the account revocable?	Once the account is set up, the funds in the ABLE account are irrevocable. Funds in an ABLE account can be transferred to another qualifying beneficiary who must be a sibling, whether by blood or by adoption (brother, sister, step-brother, step-sister, half-brother, and half-sister). (See POMS SI 01130.740)	The trust is revocable until funded.	The trust is irrevocable.	Same as third party pooled special needs trust.	The trust is irrevocable.
How are funds invested?	The investment options vary with each state's program. The eligible beneficiary or person with signing authority can change the way funds are invested no more than twice a year. Financial records should be made available that document all activity in the account. (See 26 USC 529A: Qualified ABLE programs.)	Trust funds are pooled, or grouped together, for investment purposes and an accounting is maintained in each beneficiary's sub account. Pooling funds can provide for greater investment opportunities and lower administrative fees. All earnings based on a beneficiary's share of the principal are allocated to each beneficiary's sub account. Account statements should be made available to authorized individuals by mail or via online access.	Same as third party pooled special needs trust.	The investment options are within the discretion of the trustee. General trust rules require that they conform to reasonable prudent person rules regarding investments.	Same as third party special needs trust.

	ABLE account	Third party pooled special needs trust	First party (d)(4)(C) pooled special needs trust	Third party (non-pooled) special needs trust	First party (d)(4)(A) (non-pooled) special needs trust
What happens to remaining funds upon the death of the beneficiary?	For a beneficiary who received Medicaid, an ABLE account is subject to Medicaid payback for medical benefits received from the time the ABLE account was established. The claim is limited to the total amount of assistance paid by the Medicaid, less premiums paid by, or on behalf of, the beneficiary to a Medicaid Buy-In program and after all outstanding Qualified Disability Expenses have been paid. (See [26 USC 529A: Qualified ABLE programs.](#)) Any remaining funds in the account are paid to the beneficiary's estate. Note: Funds remaining in the ABLE account can be used for funeral expenses prior to Medicaid payback.	For the third-party special needs trust, there is no Medicaid payback requirement. What happens to remaining funds in the trust upon the death of the beneficiary varies greatly among pooled trust organizations. Some do not retain any of the remainder funds and any remaining funds will go to the successor beneficiary(ies) named in the Joinder Agreement. Others retain all or a portion of the remaining funds. Given this disparity, it is important to ask what the remainder policy is when researching pooled trust organizations.	Federal law authorizes pooled trust organizations to pay back the state(s) for medical claims paid by Medicaid on behalf of the beneficiary during the beneficiary's lifetime or the funds can go to a nonprofit organization. (See [42 U.S.C. §1396p(d)(4)(C)](#).) Each nonprofit pooled trust organization has its own remainder policy. Some do not retain any of the remainder funds while others retain all or a portion of the funds. Given this disparity, it is important to ask what the remainder policy is when researching pooled trust organizations. Note: Paying for funeral prior to Medicaid payback is not allowed.	There is no pay-back requirement for third party special needs trusts. The grantor can designate a remainder man or can leave the beneficiary a limited power of appointment to designate a remainder man among a class of individuals or charities.	Same as first party pooled special needs trust. Note: Paying for funeral prior to Medicaid payback is not allowed.

	ABLE account	Third party pooled special needs trust	First party (d)(4)(C) pooled special needs trust	Third party (non-pooled) special needs trust	First party (d)(4)(A) (non-pooled) special needs trust
What happens if nonqualified expenses are paid?	Account earnings from the ABLE account used for *non-qualified disability expenses* will be subject to federal income tax and an additional 10 percent federal tax penalty. Penalties will also apply for failure to report (See 26 USC 529A: Qualified ABLE programs.)	Distributions are not limited to certain qualifying expenses only; but, wrongful distributions may adversely affect benefits. For a beneficiary receiving Medicaid and/or SSI, the individual's benefits could be reduced or he or she may lose eligibility for a period of time.	Same as third party pooled special needs trust.	Same as third party pooled special needs trust.	Same as for first party pooled special needs trust. However, in some cases, if a wrongful distribution is made, it may sabotage an otherwise well written trust and cause the trust to be deemed as an available asset. As a result, a beneficiary may lose SSI or Medicaid.