

# Comparison of ABLE Accounts, Third Party Supplemental Needs Trusts, Pooled Trusts and (d)(4)(A) Trusts\*

Developed by Michael Dalto, High Note Consulting, LLC & Mary O'Byrne, Esq., O'Byrne Law, LLC

Eligibility	ABLE Accounts	3 <sup>rd</sup> Party Supplemental Needs Trusts	Self-Settled Pooled Trusts ((d)(4)(C))	Self-Settled Stand Alone Trusts ((d)(4)(A))
	<p>Must have a severe disability that has lasted or is expected to last at least a year that causes marked and severe limitations to daily activities. Disability must have started before age 26, although account may be opened at any age.</p>	<p>Does not need to meet disability or age requirements. <b>NOTE:</b> A 3<sup>rd</sup> party supplemental needs trust may either (a) be created to benefit a single individual, or (b) established by a nonprofit agency to benefit a number of people with disabilities (third party pooled trust).</p>	<p>Must meet SSA disability definition for age of beneficiary. No age limit for when trust is created. However, for SSI, if beneficiary's own funds are contributed after reaching age 65, beneficiary will lose SSI eligibility for up to 3 years. No restriction on contributions after age 65 for Maryland Medicaid. <b>NOTE:</b> Self-settled pooled trusts accept deposits of funds owned by the person with the disability. Others accept funds from third parties – see 3<sup>rd</sup> Party Supplemental Needs Trusts.</p>	<p>Must meet SSA disability definition for age of beneficiary and be under age 65 when trust created and funded. Trust can remain in place for lifetime, but no contributions allowed on or after 65<sup>th</sup> birthday.</p>

Creation	May be created by beneficiary or another person acting on behalf of the beneficiary (parent, guardian or agent with power of attorney). Does not require an attorney to create.	Individual trusts created and funded by anyone, under will or during the donor's lifetime. If a donor to the trust later applies for Medicaid to fund his/her long-term care services, s/he may be ineligible for Medicaid for a period of time after contributing to the trust, unless the trust beneficiary is either (a) the donor's disabled child of any age, or (b) any person with a disability under age 65 and the trust meets certain "sole benefit" requirements (See Medicaid payback section below for description of these requirements.) Third-party pooled trusts – one option for a third-party special needs trust - created by a nonprofit agency; account opened by anyone other than the beneficiary. Individual trust requires an attorney to create; account in a third-party pooled trust does not.	Account created by person with disability (or person with power of attorney for person with a disability), parent, grandparent, guardian or court. Does not require an attorney. For SSI, if beneficiary's own funds are contributed after reaching age 65, SSI eligibility will end for up to 3 years. No restriction on contributions after age 65 for Maryland Medicaid.	Created by person with disability or person with power of attorney for person with a disability (as of December 2016), parent, grandparent, guardian or court. Must be created and funded before beneficiary reaches age 65. If established by a parent or grandparent, they need to fund it with their own cash. Maryland does not have a statute that permits an empty trust.

<p><b>Contributions Restrictions</b></p>	<p>Annual limit - \$15,000 in 2018. Limit on total lifetime contributions - \$500,000 beginning December 1, in 2018 in Maryland. Beneficiary's or other person's funds may be contributed. No upper age limit for contributions.</p>	<p>No dollar limit. Beneficiary's own funds may NOT be contributed. NOTE: For some third-party trusts, contributions by the donor may cause a transfer penalty for the donor if s/he applies for Medicaid-funded long-term care or Waiver services within 5 years, or SSI within 3 years. If the trust is created for a person with a disability (other than the son/daughter of the donor), and the donor wants to avoid a transfer penalty, the person with a disability must be under age 65 when the trust is created and funded.</p>	<p>No dollar limit, but for SSI, deposits of beneficiary's own funds after beneficiary reaches age 65 will cause SSI ineligibility for up to 3 years. No limit on contributions after age 65 for Maryland Medicaid.</p>	<p>No dollar limit. Beneficiary's own funds are contributed. Funds cannot be contributed after beneficiary reaches age 65.</p>
<p><b>Allowable Expenses</b></p>	<p>Education, housing, transportation, employment support, assistive technology, personal support, health, financial management, burial, etc. Expenses may incidentally benefit other people. "Basic living expenses" are also allowed.</p>	<p>Allowable expenses are detailed in the trust document. For SSI, funds can't be used for food or shelter without causing SSI reduction. Trustee may not withdraw funds and give cash to beneficiary – must spend funds on allowable expenses.</p>	<p>Goods and services for the sole benefit of the beneficiary; generally for those not provided by the beneficiary's public or private benefits. For SSI, funds can't be used for food or shelter without causing SSI reduction. Trustee may not withdraw funds and give cash to beneficiary – must spend funds on allowable expenses.</p>	<p>Goods and services for the sole benefit of the beneficiary; generally for those not provided by the beneficiary's public or private benefits. For SSI, funds can't be used for food or shelter without causing SSI reduction. Trustee may not withdraw funds and give cash to beneficiary – must spend funds on allowable expenses.</p>

<b>Fees</b>	Varies according to state and plan option chosen. Fees much lower than for trusts.	Individual trust - typically about \$3,000 - \$5,000 to create; additional fees if trustee must be paid. Third-party pooled trust – see Fees under <b>Self-Settled Pooled Trusts</b>	Enrollment fee (typically about \$1,000) and continuing administrative fees (typically about 1.7% - 2.5% of principal)	Typically about \$3,000 - \$5,000 to create; additional fees if trustee must be paid
<b>Impact on Public Benefits</b>	Funds excluded from income and resources for all need-based federal programs. Limit of \$100,000 excluded from resources for SSI. Funds can be used for food or shelter without reducing SSI.	Generally excluded from income and resources for SSI, Medicaid and other benefits, so long as beneficiary has no power to revoke or terminate the trust or compel the trustee to make distributions, i.e., trust must be fully discretionary. For SSI, funds can't be used for food or shelter without reducing SSI.	Funding of trust is excluded from transfer penalty for SSI (for beneficiary under age 65) and Medicaid; assets in trust excluded from countable resources. For SSI, funds can't be used for food or shelter without reducing SSI.	Funding of trust is excluded from transfer penalty for SSI and Medicaid; assets in trust excluded from countable resources. For SSI, funds can't be used for food or shelter without reducing SSI.
<b>Control of Funds</b>	May be controlled by beneficiary	Must be controlled by trustee	Must be controlled by trustee	Must be controlled by trustee
<b>Medicaid Payback</b>	Generally applies, but only for Medicaid expenses paid after account created. <b>NOTE:</b> Maryland Senate Bill 550, passed by the General (as of 4-10-18), would prohibit Medicaid payback for Maryland ABLÉ accounts as of 6-1-18, except where required by federal law (i.e., estate recovery required for people aged 55 or older for whom Medicaid has paid for nursing facility services, home and community-based services, and	Generally does not apply. If trust is created during the donor's lifetime for a disabled son/daughter of the donor, or another person with a disability under age 65, AND the donor wants to avoid a transfer penalty, then the trust must be considered for the "sole benefit" of the beneficiary and must specify that either (a) trust funds will be spent on an actuarially sound basis, or (b) funds remaining in the trust when the beneficiary	Applies to all Medicaid expenses paid during the beneficiary's lifetime, unless funds are retained by the trust after the beneficiary's death	Applies to all Medicaid expenses paid during the beneficiary's lifetime

	related hospital and prescription drug services).	dies are subject to Medicaid payback for benefits provided during the beneficiary's lifetime (not the donor's).		
<b>Revocability</b>	Revocable – account may be closed out and money retained by the individual, although funds may then affect means-tested benefits	May be revocable	Not revocable	Not revocable

\* **NOTE:** This chart is provided for comparison purposes only. It does not provide a comprehensive description of all the important features of the four options presented. Each person's situation is unique, and finding the right solution for an individual requires an analysis of his or her circumstances.