

UPDATE ON SPECIAL NEEDS PLANNING September 25, 2015

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TYPES OF TRUSTS FOR PEOPLE WITH DISABILITIES

- ❑ Revocable or irrevocable trust created by beneficiary
- ❑ Discretionary support trust created by third party
- ❑ Testamentary trusts
- ❑ Conservatorship
- ❑ Custodial account
- ❑ UTMA account
- ❑ Special Needs Trusts

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KNOW THE BENEFITS OF THE PERSON WITH DISABILITIES

- SSDI (Social Security Disability Income)
- SSI (Supplemental Security Income)
- Veterans' Benefits
- Medicare
- Medicaid, which type
- Food Stamps
- Housing Subsidy
- Health Insurance

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KNOW THE RULES

- Federal Statutes
- CMS Regulations
- IRS Regulations
- SSA POMS
- Case Law
- New Mexico Regulations

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SOCIAL SECURITY BENEFITS

SSI Supplemental Security Income	SSA Social Security	SSDI Social Security Disability Income
Disability	Retirement	Disability
Cash + Medicaid	Cash	Cash + Medicare (After 2 years)
No work history	Work history	Work history
Income Cap - \$733/month in 2015	Income Cap - \$15,720/yr in 2015, if under age 66	Income Cap - \$1,090/month in 2015
Earned & unearned income	Earned income	Earned income
Resource cap - \$2000.00	No resource cap	No resource cap
Minimum cash benefit	Insurance	Insurance

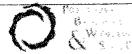
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GOVERNMENT HEALTH BENEFITS

	Medicaid	Medicare
Program:	Health Care	Health Insurance
Administered by:	States	Federal
Eligibility:	Must Qualify	Entitlement
Qualifications:	Financial & Disability	Age or Disability
Covers:	Several in-home care programs; Skilled nursing care; Long Term care; Prescriptions and co-pays	Hospitalization; 100 days maximum rehabilitation; Prescriptions
Contribution:	Reimbursement required	Premiums and co-pay
Estate Recovery:	Yes	No

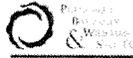
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**TYPES OF SPECIAL NEEDS TRUSTS
(SNT)**

- Self-Settled SNT
- Self-Settled Pooled SNT
- Third-Party Settled SNT
 - Third Party Pooled SNT
 - Testamentary SNT

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REQUIREMENTS OF SNTs

- ❑ Written;
- ❑ Distributions discretionary by the trustee;
- ❑ Beneficiary not entitled to receive income or principal;
- ❑ Trustee prohibited from making any distributions that would jeopardize beneficiary's eligibility for benefits;
- ❑ Disabled individual must be the sole beneficiary of the trust during her lifetime; and
- ❑ Irrevocable.

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THIRD PARTY-SETTLED SNTs

- ❑ Either an inter vivos trust or a testamentary trust;
- ❑ Irrevocable;
- ❑ Should be approved by SS and/or Medicaid;
- ❑ Can direct corpus at death of beneficiary to any remainder beneficiaries;
- ❑ Not described in federal statute.

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SELF-SETTLED SNT
42 U.S.C § 1396p(d)(4)(A)

To not be counted as a resource, the trust must:
Be established by a parent, grandparent, court, or guardian;
Be for the benefit of a disabled beneficiary, as defined in 42 U.S.C. § 1382c(a)(3);
Have a beneficiary who is younger than 65 years old; and
Provide that at the death of the beneficiary, the state must receive all amounts remaining in the trust up to the amount equal to medical assistance provided to the beneficiary by the state.

42 U.S.C. § 1396p(d)(4)(A).

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SELF-SETTLED POOLED SNTs
42 U.S.C. § 1396p(d)(4)(C)

- ❑ Beneficiary transfers her own funds to a non-profit 501(c)(3) organization as Trustee;
- ❑ Trustee manages the funds as part of a pooled trust for disabled persons;
- ❑ Must be irrevocable;
- ❑ Trust can be created by the beneficiary as well as by a parent, grandparent, court or guardian;
- ❑ Beneficiary may be over 65 depending on state;
- ❑ At the death of beneficiary, the non-profit organization may retain a portion of the trust fund.

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INCOME DIVERSION TRUSTS

- ❑ Section (d)(4)(B) of Title 1396p of SS Act
- ❑ Hold only income of Medicaid recipient
- ❑ In New Mexico, must distribute \$1.00 less than maximum income allowed per month
- ❑ In New Mexico, hold any excess income until death of Medicaid recipient
- ❑ New Mexico collects all accumulated income at death of recipient

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NEW MEXICO REGULATIONS

Recognized Medicaid Trusts:

- Special Needs Trusts
- Income Diversion Trusts
- Non-Profit Trusts for Certain Disabled Individuals

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LIMITATIONS OF SNTs

- ❑ Require written document
- ❑ Require Trustee other than beneficiary
- ❑ Restrictions on distributions
- ❑ Beneficiary has no control
- ❑ (d)(4)(A) trusts must be funded before age 65
- ❑ (d)(4)(A) and IDT payoff to New Mexico

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How does the Affordable Care Act affect people with disabilities?

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REFORMS OF EXISTING HEALTH INSURANCE COVERAGE

- ❑ No more exclusion for pre existing conditions
- ❑ No more lifetime caps of coverage
- ❑ No more annual caps of coverage
- ❑ No more rescinding coverage
- ❑ Monitoring increases in premiums by health insurance companies
- ❑ Closing the "doughnut hole" in Medicare

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ESSENTIAL HEALTH BENEFITS

- Hospitalization
- Prescription drug coverage
- Rehabilitation
- Mental Health Services
- Substance Abuse Treatment
- Preventative and Wellness Health Coverage
- Chronic Disease Management
- Pediatric Coverage (inc dental and vision)
- Maternity Coverage

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EXPANSION OF COVERAGE TO THOSE EXCLUDED FROM HEALTH INSURANCE

- ❑ Health insurers are prohibited from denying coverage to children with pre-existing conditions
- ❑ Children over the age of 19 can be covered under family policies until age 26
- ❑ Expansion of Medicaid health services to low income people in New Mexico

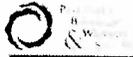
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EXPANSION OF MEDICAID COVERAGE

- ❑ Based on Modified Adjusted Gross Income (MAGI) of household
- ❑ 138% of Federal Poverty Level
- ❑ No resource criteria
- ❑ No other health insurance coverage
- ❑ Persons age 19 up to 65
- ❑ No disability requirement; similar to New Mexikids

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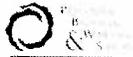


ABLE

Achieving A Better Life Experience Act of 2014

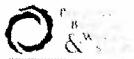
- ❑ Amendment of Section 529 of Internal Revenue Code
- ❑ Income tax deferred account
- ❑ Anyone including beneficiary can contribute funds
- ❑ Qualified disabled beneficiary requirement
- ❑ Beneficiary can control account
- ❑ Qualified disability distributions allowed including housing

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ABLE

- ❑ IRS issued proposed regulations for new Section 529A in June, 2015, for administration of ABLE accounts

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ABLE

- ❑ States must pass enabling legislation
- ❑ New Mexico Legislature failed to consider ABLE enabling bills in 2015
- ❑ 25 other states have passed ABLE bills as of July, 2015

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LIMITATIONS OF ABLE ACCOUNTS

- ❑ One account per beneficiary
- ❑ Beneficiary must live in same state as account
- ❑ Total contributions from everyone limited to \$14,000 per year
- ❑ Disability must have been evident prior to age 26
- ❑ Maximum account balance \$100,000 for SSI eligibility
- ❑ At death of beneficiary, balance goes to Medicaid
- ❑ States must elect into ABLE with legislation

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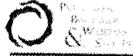
OTHER FEDERAL LEGISLATION

❑ Disability Military Child Protection Act of 2015

❑ Special Needs Trust Fairness Act of 2015

❑ Victims of Terrorism Tax Relief Act of 2002 ("Patriot Act")

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Disabled Children of Military Veterans May Now have Survivor Benefits Paid to Special Needs Trusts

In December 2014, Congress passed Section 624 of the National Defense Authorization Act of 2015 which allows the disabled children of military veterans to have their survivor benefits paid into Special Needs Trusts. This development will allow military families to create trusts that can receive these military survivor benefits after the death of the military parent. Previously these benefits were only able to be paid directly to the child. This often caused the child to lose other benefits the child had been eligible for prior to the death of the military parent. As of June, the DOD was working on guidelines to implement.

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The Special Needs Trust Fairness Act of 2015

This bill was introduced into the U.S. House (H.R. 670) by Representatives Glenn "GT" Thompson (R-PA) and Frank Pallone (D-NJ). It was introduced into the Senate (S. 349) by Senators Chuck Grassley (R-IA) and Bill Nelson (D-FL). This bill will allow a beneficiary to create a self-settled (d)(4)(A) trust. The Senate bill was approved by the Senate Finance Committee on July 30, 2015. The House of Representatives has not acted on it as yet.

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QUALIFIED DISABILITY TRUSTS

26 USCA section 642(b)(2)(C)(i), (ii).

(C) Disability trusts

(i) In general. A qualified disability trust shall be allowed a deduction equal to the exemption amount under section 1512, determined:

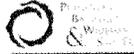
(I) by treating such trust as an individual described in section 151(d)(3)(C)(ii), and
 (II) by applying section 671(c) (without the reference to section 642(b)) for purposes of determining the adjusted gross income of the trust.

(ii) Qualified disability trust. For purposes of clause (i), the term "qualified disability trust" means any trust if:

(I) such trust is a disability trust described in subsection (c)(2)(B)(iv) of section 1917 of the Social Security Act (42 U.S.C. 1309p), and

(II) all of the beneficiaries of the trust as of the close of the taxable year are determined by the Commissioner of Social Security to have been disabled (within the meaning of section 1614(a)(3) of the Social Security Act, 42 U.S.C. 1382c(a)(3)) for some portion of such year.

A trust shall not fail to meet the requirements of sub clause (II) merely because the corpus of the trust may revert to a person who is not so disabled after the trust ceases to have any beneficiary who is so disabled.



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(d)(4)(A) v. (d)(4)(C)

(d)(4)(A)

Any Trustee
 Payback to Medicaid at death of beneficiary
 No limit on amount
 Expensive to create trust
 Type of disability does not matter

Limited to younger than 65

(d)(4)(C)

Corporate non-profit Trustee required
 Non-profit retains balance at death of beneficiary
 No limit on amount
 More cost effective for smaller amounts
 In NM, generally limited to clients served by the non-profit
 Ambiguous about funding after 65



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ACA MEDICAID V. WAIVER MEDICAID

ACA

No disability required
 Age 19 to 65 only
 Basic health insurance
 May work full time
 All income counted and limited
 No resource test

Waiver

Must be disabled
 No age restriction
 Health and custodial care
 Restrictions on earnings
 Income limitation
 Resource limitation



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ABLE V. THIRD PARTY SNT

ABLE

Beneficiary must be disabled
Annual amount limited to \$14,000
Total amount limited to \$100,000
Payback to Medicaid
Limited cost to establish
Beneficiary can fund
Beneficiary can direct distributions

Only qualified disability distributions

Beneficiary must live in state of account

3rd Party SNT

Beneficiary must be disabled
No annual contribution limitation
No total amount limitation
No payback
Cost for attorney to establish
Beneficiary cannot fund
Beneficiary cannot direct distributions
Distributions for special needs as determined by Trustee
Beneficiary can live anywhere

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CASE STUDY

Sixty-one year old female with disabling traumatic brain injury now receiving SSDI. Lives in a house given to her by her mother, who is 87 and lives with her. House is worth \$500,000 and she has a \$200,000 IRA. She can no longer live in her home. Is currently receiving ACA expanded Medicaid.

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