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 Okay. Today's presenter and close myself, Christopher Rodriguez at the ABLE national resource Center . Marty Ford, senior executive officer of public policy at arc of the United States. Morris client with the national Academy of Elder Law attorneys. And Kathleen mcGrath , director of the Pennsylvania ABLE program .

On the agenda today we will be discussing giving a brief, basic understanding of ABLE so everyone is on the same page when we dive into more substantive information about the guidance recently released okay. That will include able history and basics. After that we will dive into the Medicaid guidance itself, given analysis and a brief summary of the different areas of the letter concerns itself with. We will then move on to a couple of brief slides about the ABLE national resource Center . We will cover some questions and answers with our panelist. And then really some information regarding a ABLE Congressional briefing that will take place in early December.

Okay. Let's go ahead and get started. I wanted to briefly, before we get again into the substance of the Medicaid guidance, we want to make sure everybody has a jumping play or some bacon that is basic understanding. So related to the history of ABLE . What is ABLE ? The Stephen back Junior achieving a better life experience at that amended the federal tax code to in section 529 A. When it does is create a new option for eligible people with disabilities to save money in a tax-exempt account that can be used for what is called qualified disability expenses, while keeping their eligibility for federal public benefits. There is a lot of loaded terminology within that statement. We will dissect what each of those terms mean including exactly who is eligible for ABLE. What exactly is a tax-exempt account, what are qualified disability expenses and what are specific federal public benefits that are excluded when determining with respect to funds in a ABLE account .

 Okay. Again a little bit about the history, where did this idea come from? It came from a group of parents sitting around the kitchen table with the idea and wondering why they cannot save for the future of their son or daughter with a disability, without putting in jeopardy there federally funded meeting benefits such as Social Security and Medicaid, that provide essential benefits, supports and benefits, that help those individuals maintain independence in the community. So they came up with his idea about ABLE. ABLE spent nearly a decade going through the legislative process within Congress, was supported and held an incredible amount of advocacy from local, state and federal applicants across the country. ABLE became law in December 2014. By the time it made its way to the president's desk and had overwhelming bipartisan support from both the house and the Senate. Is important to note that with the ABLE act does, it authorizes states to establish ABLE programs but it does not mandate them to do so. Nor did it give them any resources to help them get up and running. That being said I'm happy to report we have seen 28 different states launch ABLE programs , providing the benefits related to ABLE for eligible individuals with disabilities is a for their futures while maintaining their eligibility for most

When that I want to turn it over to Marty Ford who will get into the details about the components related to ABLE to

Thank you Chris. As Chris and I will go over a lot of details, or give you an overview of it for those that may be are just coming to this for the first time, or just new to the program, so you will have some basics when we get back into the purpose of this particular webinar. First of all, some of the basic characteristics of the program are there are eligibility requirements before you can open a ABLE account . They don't particularly with the age at which the person first became disabled, and are some requirements regarding the severity of the disability that I will get into that detail in a minute. And an individual is not obligated to enroll in a program in their state of residence. You can open an account in another state if you choose. And the designated beneficiary is the account owner. In another person however can, such as a parent or guardian, or a person with power of attorney, can be allowed signature authority over the account. But the designated beneficiary is the account owner. That is a bit different from the way the college savings plans work. The funds in the account may be used for qualified disability related expenses only. And the assets in the account and the distributions from the account for those qualified disability related expenses will be disregarded, or given special treatment, when looked at are eligibility for federal means tested benefits, including Social Security and Medicaid. And I should say SSI is included when we, Social Security and anyone, basically multiple individuals can make contributions to an individual's ABLE account.

 Currently, I need this year, until the end of this year is a $14,000 individual contribution limit, and that goes up to 20 in 2018 to $50,000. That is for all contributions combined, coming from all sources.

So you is eligible to be a ABLE account beneficiary ? Getting into the details of those requirements. First of all the age requirement, which many of us are working on to increase right now, you must be disabled before the age of 26. And secondly there is a level of severity of disability you have to meet. There are two ways of meeting that. The first is to actually be eligible for the supplemental security income or SSI program or the Social Security disability benefits program within Social Security must have been determined to be the disability requirement for that program. Or, you can submit a disability certification. That says you have documentation of a physician's diagnosis, and a signature from the physician that confirms that you meet the functional disability criteria of the ABLE act . That is essentially related to the level of severity of disability required to meet the SSI or Social Security disability program. That I mentioned earlier. If you have questions on that we can cover that in detail during the question.. Those are the two ways of doing it. Either your currently receiving benefit or have been determined to be the disability requirements of the program, or you can get a doctor's certification and signature that says yes you need that level of severity of disability. And you have the age limit.

What can funds from a ABLE account be used for ? Again, distributions from the ABLE account may be made for what is known as well disability expenses. Those qualified disability expenses are expenses that have to meet certain criteria. They have to relate to the designated beneficiary, mine is a disability. And have to be for the benefit of that designated beneficiary, or the owner of the account, and maintaining or improving his or her health, independence or quality of life. It sounds limited but actually if you think about that being a federal legislative or regulatory language, it is pretty broad and remarkably progressive. It has to be used for maintaining or improving his or her health and quality of life. The qualified disability expenses are supposed to be broadly construed to permit the inclusion of basic living expenses. And should not be limited to items that, there is a medical necessity for. That's something we have dealt with in the past and have been very problematic in other programs. And also should not be limited to items or services that just benefit the eligible individual where there might be some peripheral benefit to somebody else that particular description, last three points, came from the regulations and also, I believe we consider that a progressive basic living expenses was at regulation and the fact that is not limited just to medical necessity, and that there cannot be any other benefit to someone else. It is a progressive thing. We have had problems with that in other situations. There is recognition that often what an individual uses a service to an individual may have peripheral benefit to other people. It will not exclude that expense. So qualified disability expenses may include the following. I will read the list. Education, housing, transportation, employment training and support, assistive technology, personal support services, health, prevention and wellness, financial management and administrative services, expenses for oversight and monitoring, legal fees, funeral and burial expenses, and then as I said the basic living expenses that were added by, actually by the proposed regulation. In the law also says any other approved expenses approved by the Secretary of the treasury through the rulemaking process. That is very important because that's essentially what the secretary did by adding basic living expenses. So is open for other things to be added in the future. The distributions for things that are not approved on the list will be subject to tax consequences and may affect eligibility for federal means tested benefits that is something people need to realize. Is not on that list, or people can make a reasonable claim that when they spend their money on with it either one of those categories, they have to be procured for the consequences prepared for the consequences.

How ABLE account assess impact eligibility for federal benefits. The critical thing here is that ABLE assets will be disregarded , or receipt verbal treatment when determining eligibility, for most federal means tested benefits. I have to say the advocates here are the ones that do the work most in their. Statutory language is pretty clear as for all federal benefits. We are being careful because we don't have regulatory organs language for all the federal agencies yet that handle all of the programs that people care about it we are trying to be extra careful before we get information. But the purpose of this call is to give you the information about the Medicaid program. Already got incredible information about the SSI program. We just don't want to go beyond what we think we can give you. But essentially, ABLE assets are intended by the law to be disregarded for federal means tested programs. Accept, and ally has a big exception, for the SSI program is only the first $100,000 in the ABLE account will be disregarded for those of you that on the SSI program has a $2000 resource limit for individuals, talking about the first hundred thousand dollars be disregarded is pretty remarkable in itself.

If you have $100,000 in and ABLE account and go over that, then SSI payments, the monthly cash benefit, will be suspended but not terminated. If the account goes over $100,000. But SSI benefits, or eligibility will not be terminated. That is really important. In the funds in the account drop-down below $100,000, your SSI cash payment will be reinstated. The importance of having the daily living expenses added to the list of allowable expenditures is that if you, if your monthly SSI cash benefit stops, you can use the funds in your account to pay for your food in your daily living expenses. And then they may drop, your account may drop below $100,000 in your monthly payments would start again. That is an important thing to remember.

Funds about $100,000 will be treated as resources. And even if there is some room because of that $200 I'm sorry, $2000 resource limit for individuals and $3000 for couples.

To continue on that, looking at Medicaid. Here there is some confusion because people here what happens with SSI and believe it is the same for Medicaid. But actually ABLE assets are completely disregarded in determining Medicaid eligibility. Select $100,000 limit on SSI, be disregarded as being disregarded is not the case for Medicaid. Assets are completely disregarded for Medicaid. Medicaid benefits are not suspended for $100,000 in the ABLE account. However, what is indicated in the payback, if there are funds remaining in the ABLE account when the individual dies . Those funds would be subject to the Medicaid payback. To the extent that was any outstanding qualified disability expenses are settled, if there's anything still owed to anyone or to a vendor, whenever, for qualified disability expenses, once everything is settled out and funeral expenses paid, etc., those funds can be used to reimburse the state Medicaid payments made on behalf of the beneficiary, after the creation of the ABLE account . For any Medicaid expenses before the account was created. The state would have to file a claim for those funds. Some states are actually choosing not to pursue this payback. I think we might hear a little more about that later possibly. And CMS, the letter Chris will talk about, does raise an issue regarding the state recovery for people 65 years old and older. For the vast majority of people right now, this does have some limitations on it. I do make the distinction between SSI and Medicaid here, but for practical purposes for many people, if you are limited by the SSI limitation, that is probably going to meet the individuals [indiscernible] they may be using Medicaid by the SSI is what causes the limitations for them.

Tax treatment on ABLE accounts . Contributions to our ABLE account are made with post tax dollars. After-tax dollars. And ABLE account earnings grow tax-free in our tax-exempt . Know this is all about federal taxes. What happens about the state level. This is federal law and the federal government cannot tell the states if they could tax or not tax. Some states have decided to go ahead and offer tax advantages or deductions for contributions made to ABLE accounts by their in-state residents. Let me tell you which ones, Iowa, Maryland, Michigan, Missouri, Montana, Nebraska, Ohio, Oregon, Pennsylvania, South Carolina, Virginia, and Utah allows a credit as opposed to a deduction, and Wisconsin which apparently does not have an in-state ABLE program . All of its residents who use ABLE would use out-of-state programs that it offers a tax deduction in-state. That's a remarkable approach which is great

And just to let you know ABLE accounts , programs, have been launched in 28 states and growing. There are several that are nationwide, some in-state only. For those that may need me to do so, I will read the list. States offering nationwide programs, Alabama, Alaska, Colorado, Kansas, Indiana, Illinois, Iowa, Massachusetts, Coniston zone of,, rest on a Carolina, Ohio, Oregon and that's a nationwide option for nonresidents, Rhode Island, Pennsylvania, Tennessee, Virginia and Washington DC. Then there are in-state programs limited to in-state residents only. Georgia, Florida, Kentucky, Louisiana, Missouri, New York, Oregon has an option for in-state residents also, and Vermont. I only some of these things are planning to eventually expand to out-of-state but they have not yet. And programs, some of the programs are run in a consortium and therefore their plans are similar. But if people are choosing to go out-of-state, there are lots of differences among the plans. People can go online and look at those different kinds of fees, the different ways of accessing account, all different aspects of the program to look at and compare when choosing and including the total amount you can have in a ABLE account. Now I will turn it over to Chris to talk about the next topic.

Thank you very much Marty. I appreciate giving that perspective in terms of letting everybody know the ABLE basics things that will be consistent across all programs that way we have a little foundation as we go into some of the detailed information, as it relates to this guidance that was recently released from CMS.

So the Center for Medicare and Medicaid services, CMS, recently released what is called the state Medicaid director letter, SMD, number 17 002 on September 7, 2017, title "implications of the ABLE act for state Medicaid programs"

So what is the purpose of a letter like this, well. This letter provides guidance to states on the treatment of funds in contributions to, and distributions from the ABLE account under section 103 of the ABLE act for purposes of Medicaid eligibility. Is important know we talked about all the different way that ABLE funds both again contributed, earning interest in the ABLE account and distributed . And when we speak to eligibility we are just talking about the release for this webinar, regarding the Medicaid program. CMS doesn't have the authority to determine who is eligible and how ABLE funds affect section 8 housing, that would be under the Housing and Urban Development.

Additionally the letter also addresses the treatment of funds in a ABLE account for purposes of the post eligibility treatment income, and the disposition of about 80 any Medicaid beneficiaries ABLE account , upon the death of the beneficiary. Or what Marty described as the Medicaid payback provision. We will go into greater detail about that.

The letter breaks itself down into six areas of focus. The first is background, followed by eligibility to participate in a qualified ABLE program . Treatment of funds in a ABLE account contributions to a ABLE account. Distributions from a ABLE account. Post eligibility treatment of income, and lastly transfers of ABLE funds to states and estate recovery so that again is the section where he talked about which is referred to as the Medicaid payback provision.

Okay. Let's talk about the background section that is in the CMS letter. Is this information that is coming from CMS that they want to make sure is clear to the state directors, state offices. So they let them know and they acknowledge and back of the fact that the purpose of the ABLE act is to permit people with disabilities to save money in and we drove runs that is funds from their accounts to support health, independence and quality of life. As we go through letters of guidance, is what specifically CMS, is that they correspond with the intent of the law and to the greatest extent possible, the language of the actual statute of the ABLE act . That's where they should be siphoning their instructions from. Additionally, CMS acknowledges that the law states that the ABLE accounts should supplement but not supplant benefits available to ABLE account beneficiaries under Medicaid , supplemental security income program, SSI and other programs that this is incredibly important because we want to make sure just because an individual has what could be considered some resources within a ABLE account , just because they have those people from, that other benefits related to other programs are not diminished as a result. That is really where we pull back from in terms of how these funds should supplement but not supplant various benefits that they acknowledge that it include Medicaid and that which is great

They go on to state section 103 of the ABLE act provides that the purpose of determining an individual's eligibility to receive more than the amount of any assistance provided by the space federal programs such as the Medicaid program, a mouse in contributions to and certain discretions from the able account shall be disregarded. So again it is backing of the intent how we as applicants have had for the law and how the law is written. Is very consistent with other guidance we have seen through other federal agencies such as treasury, and such as Social Security we are seeing a lot of continuity and that is a good thing right.

Okay. Going into the next section. The background is laying down for the Medicaid directors an understanding of the direction and the attendant, and how CMS is interpreting what is already established under law. So they go into some more detail. This section talks to the eligibility to participate in a qualified ABLE program. With this section does is reiterate who is qualified to open a ABLE account and invest is eligible for the benefits/treatments that are associated with being a ABLE account owner , including those having to do the treatment of funds program. They are just making sure that people understand who is allowed to have these benefits associated with being a ABLE account owner , with respect to Medicaid eligibility. If you are not eligible to have a ABLE account oriented account owner, you will not have benefits benefits described in this letter whatsoever.

Additionally, CMS wanted to reinforce the fact that there should be no interest in terms of the disability certification towards eligibility for Medicaid. Basically what that is saying is just because an individual has a ABLE account , and maybe legitimately eligible for a ABLE account , that does not necessarily mean that they are automatically eligible for Medicaid benefits or to be a Medicaid beneficiary. That is important to note that and it's important to note not all ABLE account owners will be receiving Medicaid benefits. So that they are not interconnected like that for purposes of eligibility. >> Additionally it states that state Medicaid agencies should presume that a ABLE program established by a state is a qualified program in the absence of evidence to the contrary. They basically want to make sure, because a lot of the provisions within the law are allowed to individuals who are "enrolled in a qualified program" they want to make sure folks understand exactly what quality program is. Again, if a person somehow was enrolled in a nonqualified program, it will not be allowed the benefits associated with this particular. They just want to clarify a few different things.

The next section talks to the treatment of funds in a ABLE account. It should not come as a surprise to anybody because these are things we have talked about it many of our presentations previously. It is important that Medicaid or CMS specifically reinforces what we have already found to be true. It states that state Medicaid agencies must disregard all funds in a ABLE account in determining the resource eligibility of Medicaid applicants and beneficiaries who are subject to a resource test. Again this should not be unusual language to folks these are things that we obviously gleaned from the actual statute. Again is incredibly important that CMS reinforced these and make sure the state Medicaid agencies are aware. Additionally, it went further saying that the earnings on the account should also be excluded from income, when determining eligibility into a Medicaid program. So not only are the daughters that dollars that sit in and ABLE account , which we know they are being invested, the money that is accrued as a result of the investment is not counted as income when determining eligibility for that Medicaid beneficiary. That is important to note. Not only the funds in the ABLE account , but any funds that are resulting as interest of the principal in their, they are not counted as income. We excluded other circumstances affect an individual's eligibility for the Medicaid program.

So the next section talks about contributions to a ABLE account. Basically let's Medicaid state programs understand how they should be treating contributions into somebody's ABLE account. It states that third-party contributions to a ABLE account , that could be assembling, apparent contributing, those are disregarded as income, or a resource in the following month is not spent, when determining Medicaid eligibility including contributions from a special needs trust or a pooled trust. That's interesting. If you do not have the protection of a ABLE account and an individual's a writes a check to American beneficiary, that check could be counted as income to the individual and thus be taken into consideration in maintaining the eligibility for Medicaid. What this says is that is not the case when contributing into an able beneficiary account. And this goes further saying not only is the third-party contributions, the same type of benefit is offered under the circumstance that the funds are being contributed that individual special needs trust or a pooled trust. I get a lot of questions, able to transfer the special needs trust beneficiaries able account. For Medicaid eligibility, yes. I will not interfere with the beneficiaries benefits under Medicaid.

Additionally the designated beneficiary of an able account can contribute their own income or resources to the ABLE account . If a ABLE account beneficiary transfer some of his or her own, countable resources, to the ABLE account, the effect would be a corresponding reduction in total of countable resources. A lot of the people on the phone might be very familiar with the idea of us being down. In many circumstances people who are on SSI, Medicaid or another means, have to get rid of funds in a very short period of time to maintain their eligibility. It is referred to as a spirit down. In these circumstances, they can transfer those resources into their own ABLE account , make a contribution from the beneficiary into the beneficiaries ABLE account , to reduce those resources so they can maintain eligibility. In this circumstance for Medicaid supports and services.

That being said, next part is very important. By contrast is a beneficiary ABLE account transfers some of his or her income in the month received to his or her own ABLE account , the effect would not be a reduction in countable income. We need to get into this a little bit towards the end when we talk to the panel that two things you want to concentrate on what maintaining eligibility or getting eligibility, is income and resources. I'm ABLE does is help protect resources . Gets around the resource limit, it does not protect income made by the beneficiary, even if that beneficiary is earning that income and putting it straight into the ABLE account . It still is counted as earned income and thus is still taken into consideration when determining eligibility for this letter states, there Medicaid eligibility. That is an important differentiation to make.

Lastly, this particular section of contributions to a ABLE account , the next part is actually pretty important and something I don't think has been given a lot of thought or attention and I am glad it is addressed in this kind of, includes a questions I know some folks in the national advocacy group have been talking about. It states that it is possible that third-party who has made a contribution to a ABLE account of someone else may apply for Medicaid and see coverage on long-term supports and services. Section 103 of ABLE act does not provide any special treatment or benefits of contributions made to a ABLE account Benedetti a different person. So what exactly does this mean? Let's use the example provided in the guidance. That states that a contribution from say a grandfather to a ABLE account of his grandchild , whether from the grandfathers income or resources, would constitute a transfer of assets from the grandfather, to the grandchild account, which may need to be evaluated district requirements of the Social Security act. Depending on when the transfer occurred. If the grandfather subsequently seeks Medicaid coverage of health, long-term supports and services. The grandparent for whatever reason has an unfortunate circumstance related to their health and finds themselves needing Medicaid supports and services, specifically long-term supports and services, and has recently transferred funds into say grandchild's ABLE account , there is what they call look back.. So individuals can just give this, get money away so they can be eligible for Medicaid. Does will be looked at when considering contributions. We will talk about that later on with the panel to flesh that out some more and describe what that is. A fairly important thing to understand.

Next, next section of the guidance is titled distributions from ABLE accounts . This states that as long as distributions from a ABLE account use for QBE, qualified disability expenses, as they were described by Marty earlier, of designated beneficiary, they are not included as income for purposes of determining Medicaid eligibility. That means going further, they are saying that not only as we learned in the last section of the letter funds in a ABLE account are not counted when determining eligibility for Medicaid. Even interest earned on the money that is inside ABLE account is not counted as income and will a person's eligibility. This goes so far as a distributions, some of the individual takes out of the ABLE account , provided it is used for qualified disability expenses, that Marty described earlier, it will not be counted as income when determining Medicaid eligibility.

That being said, this goes back and gets into more detail, it was mentioned by Marty. Distributions from a ABLE account that are not for qualified disability expenses, and/or distributions that exceed the cost of those disability expenses, do not fall in the scope of the protections afforded by the ABLE act and may be accountable as income with respect to Medicaid eligibility. This reaffirms what Marty said earlier, specifically from the Medicaid program, if you use these funds inappropriately they will not have the protection of the ABLE act and thus may affect your eligibility for this circumstance, that CMS describes, for Medicaid eligibility . you will want to make sure you're using these funds appropriately or there will be for the consequences outside of just some tax implications. That is something we want to stress that people understand how to use these accounts appropriately so they don't lose very vital supports and services, and is case again provided by the Medicaid program.

Additionally, you should continue to disregard able contributions retained after the month of receipt, unless used for a nonqualified expense. This basically talks to, ensures a this guidance with guidance that we saw at her Social Security, which means that even with the individual taking money out of that ABLE account and places it in a checking account, those funds are still not counted as a resource when determining eligibility for Medicaid, unless those funds again or use for a non-qualified expense.

 Okay. Let's talk about the section titled post eligibility treatment of income. What exactly is post eligibility treatment of income. The requirement that affects individuals applying most of the total available income to the cost of long-term support and services before federal financial participation for medical assistance is available, is referred to as post eligibility treatment income. Basically what this says is there are certain circumstances where before you are provided benefits under Medicaid, they will look at what types of resources you have available and take those resources into consideration when determining the amount of supports and services that they will give you through the Medicaid program. So what this guidance says is that for the purposes of that post eligibility treatment of income, they should disregard from an individual's total income any ABLE account distributions that are used for qualified disability expenses . Also states that the extent that a distribution is counted as income in determining the individual's eligibility for Medicaid benefits discussed previously, distribution also would be counted for purposes of PETI . So goes back to the fact that not only are ABLE funds that are contributed into, and held within a ABLE account, and distributed for the purposes of qualified disability and sixes, are not taken into consideration when determining eligibility and also not taken into consideration when determining the scope of benefit allowed to that, in this case, Medicaid beneficiary. That means if you walk to get an evaluation for various supports and services you are provided through Medicaid, and person tells you you have $75,000 in your ABLE account , therefore we are going to decrease your number such and such supports for services, this CMS guidance it says as long as you use these funds appropriately, which means you are in fact ABLE account and you are spending money on all expenses, they are not allowed to do that. That is something very important. There were questions before a lot of the guidance came out. We understood the eligibility purposes that these funds will be protected, there was a little uncertainty whether or not they could decrease the supports and services to an individual. This is clearly they cannot. That is very important in clarification, that we now have in writing, CMS.

Okay. Lastly is was titled and transfers a ABLE account funds to states and estate recovery this part to me gets most into the weeds and can be a bit confusing. Just go over and make sure everybody is aware what section we are talking about, we did discuss it previously. Marty described it I want to do it one more time. Section 529 A F requires that certain amounts remaining in a ABLE account for the death of the account beneficiary , subject to an outstanding payment due for qualified disability expenses, shall be distributed to a state that provides medical assistance to the beneficiary after the establishment of a ABLE account upon the filing of a claim for payment by such state that it goes on to again help Medicaid directors understand the payback provision. Goes on to say the amount that may be so distributed is limited to the excess of the total medical assistance paid for the account beneficiary after the establishment of the ABLE account . Is important also to know when I say medical assistance, we are talking about medical assistance provided to the state Medicaid program, not just medical assistance in general. That really is describing the Medicaid payback provision.

Now what is important, and again Marty touched on this a little bit. We will talk about it with a couple of the panelist in a little bit. It acknowledges that the guidance that was released last year, by the treasury and IRS, does not propose mandating the state filed a claim so this means while the ABLE act allows the state to file a claim for Medicaid services and supports provided to the ABLE account beneficiary starting at that point they open the ABLE account once they pass away, they are not obligated, at least in this interpretation, they are not obligated to do so. They do not have to do that. Goes on to say, however, even in the absence of the treasury and IRS mandate regarding those claims against a ABLE account , pursuant to section 1917 B of the Social Security act, states are required to seek recovery against the estate of certain deceased Medicaid beneficiaries. There are other laws and again we will go into this later in greater detail. There are other laws in a unrelated to ABLE that call for payback provisions. You could be subject to those laws and be a ABLE account owner . That is important to note that goes on to say, hold on a second. It goes on to say that is consistent with a ABLE act states are required to seek recovery of funds in and ABLE account that had become part of the estate subject to recovery under the statute. This is related to people, specific individuals that the state Medicaid agencies must seek recovery from, and those who received Medicaid at age 55 and older, or who received coverage for certain long-term supports and services and were subject to the PETI rules . What that is basically saying is yes, CMS agrees that states do not have an application under the ABLE act to recover those phones as they choose not to. We will give an example of different states that have that. However the ABLE act does not supersede other laws that require for Medicaid payback, if the ABLE beneficiary is also subject to those in the ABLE beneficiary

 is not, and in particular state has decided through state laws that they will not file a claim, that they are good to go and they don't need to worry about that. It is important to know, even if they are living in estate that has decided not to file a claim, it is not supersede other parts of the Social Security act that require playback under other circumstances.

Furthermore, if the state of a ABLE account beneficiary is not subject to a Medicaid estate recovery, states have the description that discretion whether to file against the ABLE account of the deceased individual who has been enrolled in Medicaid program. We will talk about that a little bit more with some of the panelist. I know that can be confusing. And if anybody is interested, let me see here. In going and reading the specific language within the letter, we want to provide you with that. The following link will take you to a summary of the ABLE national resource center has been and also provide you with a link to this very specific language in the actual letter basically a copy of the letter itself.

So with that, I wanted to turn it over to another one of our guest today, Maurice Klein who practices law in Maryland and the District of Columbia. He concentrates in elder law, special-needs law and estate planning. I want a better comparison because as many of you know, the ABLE accounts are not the only vehicles for helping people with disabilities be able to say while maintaining their eligibility, specifically today we are talking about Medicaid. I wanted Morris to give us an idea of how these regulations or guidance I should say, from CMS, related to ABLE how they compare to other tools specifically special-needs trust, with protecting benefits and the pros and cons of the two. With that, I will hand it over to Morris .

Thank you Chris. Thank you for asking me to suspend this program. So the able law ABLE law is a wonderful addition to the devices in a toolbox that is used to allow persons with disabilities to have use of funds without being considered available for public benefits. And necessitating a standdown. The maximum for SSI has been $2000 almost forever and the ABLE is a mechanism that will allow individuals who qualify to be able to have funds in excess of that and still receive the public benefits they would otherwise be receiving.

Morris , just for the folks, I don't know if I did a good job describing the term spend down.

Spend down means public benefits such as SSI and Medicaid, do not allow you to have more than a certain amount of money to still qualify for the program. SSI is a federal program and the SSI will say you cannot have more than $2000 of countable assets. And if one has more than that, they have to spend down the funds to get below the $2000 number. Medicaid is a federal state program. So the Medicaid spend down rules sometimes are different than the SSI rules. So if one doesn't need SSI and is getting Medicaid, for example in the District of Columbia is $4000. The state of Maryland is $2500 for an individual to that's what I mean I spend down. These wills are complicated because as I mentioned there are different public benefit programs that have different rules, such as Medicaid, SSI, and to a lesser degree the housing rules in the rules will the best for food stamps, etc. It's also complicated because each of the available ways to protect assets have their own little quirks and idiosyncrasies. One way to think about this to try to simplify, is the public benefit programs place a big deal as to the source of the funds. So generally, whether the funds are coming from a person with disabilities, or somebody else such as we call third-party, that is a big deal. The bottom line is that if the funds are coming from someone other than the person with a disability, there are fewer limitations and restrictions on the use of the funds. There is sort of a broad definition of funds that are considered to be owned by the person with disability. If they inherit something is considered their money. The beneficiary of a personal injury, action, where they were hurt, and they get a judgment or settlement, that is their money. As well as money that they make, may have been given before there was a determination of disability, like a parent who put something in a uniform trust for minors account. Buzzer considered the person's own funds. However if mother, father, uncle, aunt, anyone else in the world for that matter, wants to set aside money for the imprisonment of disability is not there funds, is called a third-party funds. Generally the tool of choice, because there are fewer restrictions and limitations, is the funds do not belong to the person with disability, the tool of choice is a third-party special needs trust. This chart here took two slides. You can see for a third-party special needs trust there are no real restrictions other than the fact, this is a critical thing that the trustee has the discretion whether or not to make distributions. Another big distinction in the world of these trusts, is to what extent the government [indiscernible] a distribution. If the trust is obligated to pay funds for some reason, the government can say if you are obligated to make a distribution, you have to make the distribution, and it is available to the person who has the disability and therefore subject to spend down. If the trustee has discretion whether or not to make distributions, the government cannot force the trustee to make a distribution and therefore is not considered available. So the tool of choice, when you're dealing with funds that are not sourced from the individual, third-party special needs trust. The disadvantages of a third-party special needs trust is it has to be a customized document generally you have to pay to get the document created. That is generally the one disadvantage. The other advantage of a third-party special needs trust is and can be set up while the third-party is living, or part of the will. It can be revocable the irrevocable. Lots of flexibility setting it up. If you're dealing with a person's own money, there are other trust that might be useful. The ABLE as I said is a wonderful , new method of protecting funds. There are limitations that we already mentioned. The biggest is that the person with a disability has to be disabled before age 26. So that does remove a significant part of the population. Who may require public benefits in getting a ABLE account. The other limitation [indiscernible] is that you can contribute more than a certain amount each year. That amount is the federal, and rural -- annual federal gift tax which this year is $14,000. It is expected to rise to $50,000 beginning January 2018.

 -- $15,000 beginning January 2018. There are limits into who can create the trust. For ABLE as well as the other trusts. Let me jump over and talk about the alternatives to ABLE , if we are talking about funds only by the beneficiary themselves. The 2R, and he pulled special needs trust. Enacted in 1993, Marty was involved in this formation, we are indebted to Marty for having these laws on the books. They do allow for special needs trust to be set up. Is else battle -- self settled trust. Only establish my parent, grandparent, guardian, or if the person is capable by themselves. In most days there is a process where the states review the trust. Separately there was a Pooled trust . It operates like a mutual fund, like a Vanguard or Fidelity, where different people can put money into the account and all the money is invested in the same way. The trustee is the one that makes the distributions. That is the background let me march through the chart so you can see the differences. If we go back once light to number 39. Thank you. For ABLE, anyone can find the account. Once it is established. For third-party, anyone but the beneficiary can fund it. For the self settled in a Pooled special needs trust, it should be funded by the beneficiary's own funds. There are better ways to fund third-party money. The restrictions for ABLE, you have to be disabled before age 26 and there is a limit to how much money you can contribute. There is no restriction for third-party assuming the money is not the disabled person's money. After the self settled, you cannot find it after the beneficiary reaches age 65. Pooled special needs trust, if you're getting SSI, is the same as self settled, once you turn 65 that is it. Medicaid in some states, you can make contributions or establishing after you are 65. The issue for Medicaid is whether or not the funds that are used to put into this trust are what is called a gifting of assets which can delay Medicaid eligibility for a period of time. Marilyn for example doesn't have that limitation. Virginia does. So it is a state-by-state basis. As far as who establishes these trust, there are limitations that Chris mentioned. For ABLE and I mentioned again the Pooled and special needs trust. They can be established all of them during the beneficiary's lifetime. With a third-party for grandmother for example can put it in her will that she wants a special needs trust set up for the benefit of her grandson with disability.

I big difference contrasting Pooled special needs trust with the other is who is the trustee. The person that is always when the funds come out. The rest that decides when the funds come out. For self settled it can never be that is the the beneficiary. And for a Pooled special needs trust, it is the company itself. Some people think that is a good thing because they don't want family members for example to be bothered by the person who is a beneficiary asking for money, you can be the responsibility of a Pooled trust. Others don't want to give the control to somebody other than the beneficiary.

Moving on to the next slide. For a ABLE account , only the beneficiary, the individual with disabilities can be the beneficiary. For third-party that is wrong. I'm sorry. It is correct. The third-party, the beneficiary and anyone else can be the beneficiary of the trust. What is incorrect is the next one. Only the beneficiary can receive funds from a Pooled special needs trust . The advantage of ABLE is the documents are already available. You just fill out the forms and you're done. The third party special needs trust is a settled trust that needs customized documents. The other advantage of the third-party in contrast to the other trusts is there's no Medicaid payback. For ABLE in the self settled , and Pooled , obvious payback except with the ABLE trust that is Pooled trust , any funds left over after the beneficiary dies. One last point regarding who funds the trust. If the person funding the trust may need Medicaid themselves, for example grandma may need nursing home care. But the grandma still wants to benefit her disabled child or somebody else, there are different special needs trust that could be established, that favor establishing a trust for the benefit of the disabled child or disabled person under the age of 65. Those trusts could allow both the person funding the trust, grandma in my example, as well as the grandchild that has the disability, to both receive Medicaid benefits going forward.

So I will stop there.

Thank you Morris . Is a great comparison amongst the various tools that can be used to help an individual maintain certain types of benefit to help them be independent while still being able to save funds for the future. I appreciate the comparison. Not being an expert in these different tools, a couple of questions. Is there anything that would prohibit an individual from having both a ABLE account in any one of these three different types of special needs trusts you described?

No, you have ABLE account and there are many different reasons for having different accounts, like a ABLE for example , it might be most useful if you want to accumulate earnings of your SSI beneficiary. Beyond 2000. If a person with disability wants to maintain control, which is less available for these other types of trusts, if for example parents has set up a uniform trust for minors. And the money becomes available to the person becoming an adult, they immediately disqualified them for SSI because they had more than $2000. But if they put it into an able account assuming it's under $14,000, to protect those funds. So those are some examples where the ABLE account would be particularly useful .

With respect to the specific things within the CMS guidance that was recently released, we are summarized today, do you see for the most part consistencies without Medicaid treats able funds in comparison to funds in these other vehicles? Are there differences, clearly with respect to Medicaid payback provision you know specific differences. Other other other things that I described related specifically to Medicaid that would differentiate ABLE from these other tools ?

No. Actually I think, ABLE . Let me say, one difference between ABLE and the others is that ABLE is a tax law. A different orientation in the regulations because it is a tax law. Danny Medicaid and Social Security laws, which control the other special needs trusts. In general, whatever can be used for the other trusts can be used through ABLE and vice versa. There is one quirk, paying for housing. SSI is supposed to pay for housing, and if funds are used other than SSI for housing, that could affect the recipient's ability to get the full SSI check, there may be a reduction of one third of the check, because funds other than SSI are being used to pay for housing. However, if the funds that are used to supplement the money from SSI, it used to be for housing, funneled through a ABLE account in the ABLE account pays for housing , there may not be the one third reduction. That is one example where the ABLE account might actually be more useful than some of these other thing in that situation.

Okay. Thank you. I will have some further questions in a little bit when we move on to the panelist section. Before we dive into questions, both that will be proposed to the panelist, and taking questions that you all have submitted, I wanted to briefly say a couple of words about ABLE national resource Center. It is a collaborative with the goal of accelerating the design and ability of the ABLE funds for the benefit of individuals and their families. It's for the country's largest and national disability organizations. We are a collaborative of over 25 disability related organizations working together to make sure that ABLE succeeds. For more information , whether about the ABLE basics morning when over , or if you're interested in other aspects of where programs are with respect to the development, or short videos on aspects about ABLE , or a summary of these we going over today, I would encourage folks to go to the website at www.ablenrc.org .

Okay, now that we have gotten past that. I want to ask a few different questions. I also want to introduce the third panelist, Kathleen mcGrath . The founder of KS McGrath providing legal services with the goal of advancing 529 college savings and the able program. She will be an additional person of expertise to help us answer some of these questions and facilitate our conversation that we are in the panel section. I wanted to set up something pretty basic. I want to pose this question to Marty. We are talking about how important the CMS guidance is to people with ABLE account owners. To make sure they can maintain their eligibility for Medicaid. [indiscernible]. >> And why it is so important that they understand that they use these funds and not put themselves in jeopardy of losing this particular benefit.

Thank you Chris. But the most people think of is the healthcare aspect. Was also important is the Medicaid program pays for the vast majority of long-term supports and services to people with disabilities, particularly adults. In our country. It looks different in every state, it goes by different names in every state. But the TSS -- LTSS , is basically paid for through the Medicaid program. That covers community-based services, also an enormous amount of the employment-based supports to people that and it does cover a lot of supports to children at home sale, as they are growing up. The Medicaid program is vital to people. I know many people as we talk about the ABLE account around the country , have many families interested, they have been nervous about it because they weren't sure that nobody wants to make a mistake with the SSI program and rules. Or do anything that will disturb the SSI or Medicaid eligibility. So having the Social Security Administration help, are very consistent with the Medicaid folks, when they came out with it CMS with the state Medicaid director level letter. They are not written in as clear a narrative form is the S. They are written more for the staff at the Social Security Administration. If you are presented with this, this is how you handle the case, more internal procedures. [indiscernible] so having something readable, that explains how this works. Fax people have been told, and believe they need to be able to do. Saying this is what you are supposed to do is quite helpful. Along with the fact that IRS has said go for it. Believe in the ABLE program and if anything changes in the future we will give you time to change your program beyond that point. I think the stars are lining up to make it possible for people to get comfortable. When you have to do things like SSI and Medicaid. There is the same concern about the assets and resources. In the other Social Security programs you have with the SSI program.

Thank you Marty. You did mention I would agree that there have been other pieces of diets about ABLE other federal agencies and departments. One is the PA OEM that many of us have read. The home. Targeting a different audience as you described. More so than the CMS letter which is much easier in terms of the narrative. PALM There are certain phrases [indiscernible] in the CMS letter I wanted to get clarification on. For those individuals who have, or will end up reading the actual language in the letter, Medicaid beneficiaries are often divided into different types of categories as we see in the letter. Many time described as Magi versus not try. Can you tell us about these so people who are reading the guidance can identify what parts of the is relate to them specifically in their situation, and they are Medicaid beneficiaries.

[no audio]

Morris you might be muted.

There we go.

Can you hear me? Think of these three programs, Magi, not Magi, and SSI are like three silos. They are different types of public benefits, although they are close cousins to each other. And also the different portals like for Medicaid, you can qualify for Medicaid if you are getting SSI. Qualify if you are on your own, you can qualify for K under the affordable care act . the Magi relates to qualify for Medicaid through the affordable care act or Obama care. When the affordable care act was tasked it created a new way for people to qualify for Medicaid to get health benefits. I emphasize health benefits. In the world of Medicaid there is a distinction between what a doctor and hospital provide and long-term services and supports, what people with disabilities need through the Medicaid program. With this letter is saying is if you qualify for Medicaid under the Magi portal, which means the only way you are on Medicaid is because you were getting it through the affordable care act which just looks at income and doesn't look at assets. That doesn't give you a back door to get long-term services and supports, which is what Medicaid also provides. When you talk about nonmatching Medicaid, qualify for Medicaid through the normal application process, and not getting it through the affordable care act. And SSI is qualifying for the supplemental security income program, administered by the Social Security Administration. And in many states but not all you automatically get Medicaid when you qualify for SSI. And the rules are somewhat different depending on which portal you are using to get Medicaid benefit.

Thank you for clarifying that. No of these throughout the letter they are treated the same but they are different paragraphs related to the different portals as you described. I didn't want that tripping individuals a, to make sure they understand what sections pertaining to them as Medicaid beneficiaries.

We spent some time during the conversation talking about the Medicaid payback provision. I know we mentioned there are some states that have elected to get around that. One of which is Pennsylvania. This question goes to Kathleen, who is representative from Pennsylvania. I understand some states including Pennsylvania have tried to get around Medicaid payback provision for the residents. As you tell me a little bit about this and to what extent it has been successful?

Sure, thank you. One of the reasons, when Pennsylvania was looking at passing the law, we talked about family. Families were very concerned about the Medicaid payback. People were saying I am not going to use, or not put money in the ABLE account . Money will go back to the government when the beneficiary passes away. And we thought this was a really negative effects for the ABLE account , [indiscernible]. Pennsylvania's law, we wrote in the provision that prohibited the state Medicaid agency for filing a claim against a ABLE account , or the proceeds of a ABLE account . So the Medicaid agency said I'm not sure you can do this. Because they thought the Medicaid, excuse me the ABLE statute , required the state to file a claim. So we went to CMS essentially and they agreed that the state agency is not required to file a claim against a ABLE account. There is no federal law that requires the state to file for payback from a ABLE account . So Pennsylvania's law that said no state agency, you will not do that, failed. Our state agency is not permitted to file a claim. However a piece of the law that says you can't go against the proceeds, which is protected when it went to the estate, was superseded by the federal law which mandates that the state does go after the estate. Now what did we win, a lot. Because of the state finals against the ABLE account , which they may be due but they are not required to, they can get a payback on medical assistance that was paid during the time the beneficiary had the ABLE account . So if you have a ABLE account for your child when he was age 2 or three and he passes away at age 40, and getting Medicaid all the time, the entire amount would be subject payback. If you go under the ABLE act . However, Pennsylvania cannot do that. That Pennsylvania must go after as all states must, the estate, but only when a deceased is 55 or older, and then only for the benefit provided after age 55. So it does do a lot to protect the ABLE account from being subject payback. But it is not protected completely. So we are looking at whether or not we need to make an amendment to the federal law, to allow states the discretion to protect the ABLE account , even in the 55-year-old situation. And I think the problem is highlighted by what Morris showed us , in that if it's a third-party trust, it is not subject to Medicaid payback. If it is a self-funded trusted is. But what we had here with ABLE is a combination of the two . So mom and dad, grandma and grandpa, if they use a third-party trust it would be subject payback. But the individual with disabilities him or herself could put money back if they put their own money it would. So we have these two different kinds of incomes to these trust merged. So we feel strongly that this prohibition will discourage people from putting significant money in a beneficiaries account. But mom or dad. Pennsylvania did what it could and they were the first, we have Oregon who has a similar law and I believe California and many other states looking at changing the laws to protect the accounts as much as they can from payback.

We have a few minutes, and I will take a few questions from folks that submitted it to the online portal. A couple are asking about transfers from a trend 11 trust that is Pooled trust . From the letter states should disregard income from a special needs trust or Pooled trust that is deposited into a ABLE account of the special needs trust or full trust beneficiary. That confirms that would be allowed. The question says can funds in a 529: savings account be transferred to a ABLE account . Currently not without paying applicable tax consequences. You liquidate that account, pay the tax consequences, as the result of an unqualified disbursement for the program. At that point you can then put the remainder into a ABLE account provided that it does not go over the annual Which right now again for 2017 is $14,000. Which will be increased to $50,000 for 2018. That is $15,000 for 2018.

That is one of the laws you and other advocates are working to change to allow more affordability between 529 at 529 A and ABLE account . So there are three pieces of legislation that have been filed and 100 and Congress that we would allow transfer from fire tonight, and savings account into a ABLE account that was to be subject to the annual contribution limit which can in 2017 is $14,000 and then will be 15,000 dollars.

If you're transferring it from a 529, liquidating a 529, it would be because your child is disabled. While you do have to pay taxes you do not have to pay the tax penalty [indiscernible] with that I think we are out of time. I wanted to quickly let people. The ABLE national resource Center will be hosting a congressional briefing on the able act with the purpose of providing ABLE stakeholders and congressional staff members with a progress report in terms of implementation of the ABLE act . And to a discussion about potential legislative proposals including the one we just talked about that would allow for rollover from a 529 college savings account to enable account including other issues. Information is out there. The breathing is the server for in the morning. If you go to the ABLE national resource Center , for more information on how to RSVP. Without I want to thank everybody for contributing their time and talents to the conversation. And keep a lookout on the ABLE national resource center website and social media, for upcoming webinars on other topics. Thank you very much.

[Event concluded]