"Please stand by for real-time captions." >>

Hello. >> [Captioned standing by] >> [no audio] >> [Captioner standing by] >>

[Audio open] >> Sorry folks, it looks like we had a technical issue. I will repeat that. we have a lot of people still coming on and joining us today, we will go ahead and get started. We are all right at the top of the hour. I want to welcome everyone, my name is Miranda Kennedy and I am the director of the able national resource center. So pleased to have you joining us from all across the country today. For our webinar on ABLE Account and Special Needs Trusts.

For those that are new to the national resource Center I want to give you a little bit of background before we get started, about who we are and what we do. We are a collaborative who share the goal of accelerating the design and availability of ABLE Account's for the benefit of individuals with disabilities and their families. We bring together the investment, support and resources of the country’s largest and most influential national disability organizations. It was established immediately after the passage of the ABLE legislation. I want to note

if you have ABLE questions not specific to today's topic I encourage you to check from the basic to advanced level resources and tools on the website at www.ablenrc.org.

We will provide a list of resources on the website and the special needs alliance partners website, including links to the ABLE roadmap and email, and hotlines, and how to get set up with our listserv. Which is how you got here.

With that I am going to hand it over for a few slides to my colleague Maggie Redden who will go over some housekeeping.

Hi everyone and welcome to today's webinar. I am the NDI admin and I want to go through a few items in the technical aspects of this webinar. Listening to the webinar, the audio for today’s webinar is broadcast through your computer. Make sure your speakers are turned on. You can control the audio Brad cast via the audio panel. You can go to the communicate menu at the top of the screen. And listening to the webinar, if you do not have sound capabilities on your computer or prefer to listen by phone, please dial 650 479 3207 and into the meeting code 664 393 091. >> Captioning. Real-time captioning is being provided during this webinar. The captions can be found in the media viewer panel which appears in the lower right corner of the webinar platform. If you want to make the media viewer panel larger, you can minimize other panels like chat, Q&A, and/or participants.

Submitting questions. For Q&A please use the Q&A box to submit any questions you have during the webinar and we will direct the questions accordingly. If your question is not answered during the webinar, or you are listening by phone and not logged in, you may also email questions to inferable and RC .org.

Technical assistance, if you experience any technical difficulty during the webinar use the chat box to send a message. To myself or you can email M Redden at NDI Dash INC.org.

These are posted on the national resource center website along with all our other ABLE webinars.

With that I will turn it back over to Miranda. >> Thank you Maddie. Now I would like [indiscernible- static].

Is that better?

Yes.

Great. I just won’t move, thank you Maddie.

Again my name is Maranda Kennedy, the director of that able national resource Center and I am the facilitator for today’s presentation. I would like to take a moment to introduce the presenters for today. Our representative for the special needs alliance we have Stephen Dale, principal attorney at the Dale law firm. Which provides quality estate planning to clients by working cooperatively with client’s tax, and insurance professionals. Also the trustee of the Golden State pooled trust in California. He is accredited by the California State Bar in a wide variety of disability subjects. He spends time attending disability rights activities including legislative hearings and serving on boards and committees for disability rights organizations. He speaks on a variety of disability related topics across the country, including speaking annually at the center for excellence special-needs conference as well as the University of Texas annual special-needs conference. He is the recipient of the 2010 Teresa foundational award. The 20 07 Mailer award. A long-standing member of the able alliance. Attorneys dedicated to practices for disability and public benefit as well. Thank you for joining us today Stephen. Also one of our brand-new 2018 able national resource center investors, Amy Tessier. She lives in Oakland California and is the parent of Scott a son with autism. Her son has an internship at the Doubletree Hotel in California through project search. Scott is unable owner in Ohio but wants to transfer his account to California able that launched in December. Ms. Tessier is the outreach coordinator for the Dale law firm. Our subject matter expert for the able national resource Center team on today's webinar is Marlene Ulisky. Retiring after a 35+ year career. Developing relationships with partners across Florida to educate them on the disability programs, administered by Social Security administration. After leaving SSA she worked with the Florida office of vocational rehabilitation as a consultant to establish and rollout the partnership plus program under the ticket to work legislation. And was certified as a community partner, work incentive counselor through Virginia Commonwealth University. She was then asked to return to social to security to conduct training and assist him with managing critical intensity workloads including OIG investigations and medical and work continuing disability reviews. At the national disability Institute

and with the ABLE national resource Center team, she is the training and assistance team working on various projects across the country. At the national resource Center, she is the disability benefits expert and provide support to her colleagues, providers and beneficiaries. With complex SSA or other disability related issues arise. She is also a disability consultant coordinator for Florida and for private individuals. She is a graduate of Robert Morris University in Pittsburgh Pennsylvania. >> So with that, we are going to be covering the following topics in our webinar today. As you can see, Mr. Dale and Ms. Tessier and Mr. Linsey will be well able to cover this information for us. We will be covering with the rest of our time, here is our agenda. Talking about the special needs alliance in the partnership, working together in this space. And I will be handing it off to Marlene to go through what are able accounts, and Stephen will be sharing what are special needs trusts. We will be talking about making decisions. You go with one, the other or both. Talking about that. As part of that, sharing things to consider when using an able account and a special needs trust. Finally, at the end we hope to have time for questions. >> As mentioned before, this webinar is part of the ANRC ongoing collaborative efforts with the special needs alliance. The special needs alliance is a national organization comprised of attorneys helping people with disabilities and serving with special needs planning. At the end of the PowerPoint today we will give you information on how to contact a special-needs attorney if you should need to do so. >> The goal of this collaboration between the able national resource Center and the special needs alliance is to educate individuals with disabilities, their families and other stakeholders on how able accounts and special needs trust, absentees, can contribute to improved quality of life. And when used properly, not considered a countable resource by means tested government programs, which forms the foundation of special-needs planning.

ABLE accounts is of vital importance we should note, and SNT’s can supplement means tested government benefits without affecting an individual’s eligibility for them. And ABLE accounts and SNT's are governed by very different rules which we will hear during the presentation.

So just before we get into that, let's talk about ABLE Account's. There are only two more slides of my time with you today. I want to cover these two slides before I handed over to the presenters, just to share some quick background on ABLE for those that might be new to the space. ABLE’s true name is the Stephen back Junior achieving a better life experience, which came law on December 19, 2014. One of the most bipartisan bills in history, second only to the ADA and disabilities act in terms of impact an opportunity for people with disabilities in this country. It received 85 percent of the entire U.S. Congress support. 381 out of 435 in the US House of Representatives voted for this, and 78 out of 100 in the U.S. Senate. ABLE legislation authorized but did not require states to establish ABLE programs. >> States acted very quickly to pass state ABLE laws and set up ABLE programs. In June 2016 we have the first ABLE account available. To date there are 41 states, plus DC, that have lunch ABLE programs and most of these but not all accept out-of-state enrollees. There are approximately 33 thousand accounts over nationwide, over $150 million invested in these ABLE accounts. ABLE creates a new option for some people with disabilities and their families to say for the future while protecting eligibility for public benefits. With that I will hand it over to my colleague Marlene to tell us about why is there a need for ABLE prick

Thank you Miranda. As I sit here listening to Miranda speak I was pleased I could see so much interest in the ABLE Account and, Special Needs Trust. That makes me very happy that everyone wants to learn about ABLE and Special Needs Trust and how they can work together. We note the is no individual with disability across the country and their families, that depend upon and rely on a variety of public benefits to meet their needs. For income for healthcare, for food and health benefits. Some of the programs which may be unfamiliar to you include supplemental and Social Security disability benefit, low income, Medicare savings programs, supplemental nutrition assistance programs, low income housing and energy assistance programs. We know that eligibility for many of the programs require an individual to be of limited gain. With all the restrictions there is no individual kept in the poverty cycle because of increased income of resources can cause them to lose vital support. For the first time in public policy the ABLE act recognized the significant cost of what they were with disabilities. Some of the examples of the cost could include things like accessible housing or transportation, assistive technology, special healthcare and Medicare or Medicaid, or perhaps a personal attendant. The able act allowed eligible individuals and their families to establish ABLE savings account that were largely not affect the eligibility for federally funded means tested benefit. We will talk about more about that throughout the presentation. Now the ABLE spelled out the first act, to save money, maintain their health, their independence and quality of life. Importantly it goes on to say that the funds in the ABLE account will supplement and won’t replace the benefits provided through whatever means. That is of vital importance. >>

Okay. So what is a ABLE account? It is a section 529 A account in the IRS tax code, a tax-free savings account and similar to the 529 college savings account. The ABLE account is owned by a person with disability and a disability that began before the age of 26. Now that individual must meet a severity of disability requirement. When we talk about disability, which began before the age of 26, that doesn’t mean that someone who is older cannot qualify for a ABLE account, it just means the disability must have begun prior to the age of 26. Now the disability requirement, meeting a disability requirement means that they meet the disability requirement if they received supplemental security benefits or if, SSDI benefit. That includes disabled adult child benefits, or they have a disability certification from a licensed physician that indicates that they have a physical or mental impairment, or combination of impairment, or they are blind, for Social Security language they make the distinguished between impairments in blindness. And impairment must result in marked and severe functional limitation, and it must have lasted or be expected to last for a continuous period of not less than 12 months or resulting in death. For those of you familiar with Social Security language like I am, you could see the ABLE act mirrors the language in childhood definition of Social Security in the Social Security act. I think you can also see that it does not include any reference to substantial gain activity SGA. That is significant because

it means an individual with a disability who is working above the SGA level, despite their disability and who does not qualify for a benefit under SSI or SSDI, they are still ABLE eligible if your disability began between the age of 26 and they have marked severe functional limitation and so on.

Here at the able national resource Center a lot of questions come in whether or not someone has a specific diagnosis to qualify, but not receiving benefits, if they are ABLE eligible based on that diagnosis. The answer to that is they actually need to talk to a physician and ask him that question. It is more than just a diagnosis, it refers to a level of severity that meets or medically equals or function lately equals, functionally equals a listed impairment in the Code of Federal Regulations and part 404. The listings categorized by body systems and indicates the criteria needed to confirm the existence of that impairment to satisfy the criteria of the specified listing. It is really important that you talk to your physician.

Last of all on this slide, I wanted to say that importantly I want to caution you, once an individual does obtain that disability certification, made with regard to establishment of eligibility for benefits, under title two, title 16, title 19 of the Social Security act. >> So who may open a ABLE account? Who may establish it? And eligible individual with capacity can open the account. The law does recognize some individuals may not be able to establish the account by them self. In those cases, the individual’s agent who has power of attorney, or a parent or legal a garden, legal guardian, may establish an account for that individual. Before I turn it over to Steve, he may elaborate on further, that many state ABLE programs have some downloads to establish power of attorney on the website. In my family we use that feature for a family member who was establishing a ABLE account. So myself and my brother, could assist my family member that does has capacity managing his account. Even when that individual does have capacity, it is beneficial to establish. With that Steve I will turn it over to you for the next two slides which are case studies. >> Are you able to hear me?

Yes.

Okay. Let me know if there’s an issue. Getting back to this I want to thank you so much. The first thing I do when I cover here, is the issue of who can establish the account. I think you might want to think about, depending on the capacity of the ABLE beneficiary, I want to preface with this. The disability community is a broad community and it is broad from group to group an individual from individual. My friend Brian Ruben says all the time, if you met one person with autism, you have met one person with autism. This is something really important you should take a look at. Depending on the individual. We go back to what was covered, the folks that can establish and manage the account, are either the potential ABLE beneficiary them self, I parent, an agent or power of attorney, or a guardian or conservator, whatever they call that in your state, one of the things you want to plan for when you are doing this to really keep that in mind. The other thing that will be important to go through to dig deeper into ABLE is a key feature of ABLE is the funds in the account belong to the ABLE beneficiary, this is really key. So just to reemphasize, if you are dealing with somebody who definitely has capacity, which I am sure is the majority of folks being served, you should do a power of attorney. I just had somebody the other day I helped get into a program. They wanted to have their brother manage the account. So they give them power of attorney and they said well, can you do one for me. I said I can sell you a power of attorney but on the other hand almost all programs have them online. So it’s a really easy thing to do. I would say for folks in that situation, the first thing you do is do a power of attorney and select who you would want to be in charge. If you cannot manage it yourself currently, or in the event you lost capacity. I want to illustrate something. A lot of mad, [indiscernible] where capacity is an issue. I want to illustrate this with the story that goes through cup for you that her parents, you want to think about. My apologies here to references to the Flintstones. Fred and Wilma have a daughter named pebbles, pebbles were born with a severe developmental disability. Fred and Wilma establish a ABLE account under their authority as pebbles parents. Is clearly something allowed. Pebbles is the account owner. That is a really important concept. One thing that makes this such a great tool. Pebbles lacks capacity to manage her account or execute a power of attorney. So the authority to manage this, even if she becomes an adult, will continue with parents. Fred and Wilma maintain signature authority over the account as parents. Okay. Fred and Norma pass away in a tragic accident

in their neighbors and best friends, Barney and Betty, step up to take care of pebbles. Now the problem here, the neighbors are not listed as somebody who could take signature authority. In order for Barney and Betty to assume signature authority over pebbles ABLE account, they need to become pebbles guardian or conservator. I want to emphasize before we go further on this, this doesn’t mean the situation that a ABLE account wouldn’t have tremendous value, to pebbles. The thing you want to do when you're setting this up or working with your advisor is to think about how you are going to use the account, and really plan ahead for what might happen in a situation like this, if the parents here were unable to act as the person was signature authority. To plan ahead and then you can come to the right answer.

Turning this back to you Marlene.

Thank you Steve. On the next several slides I wanted to introduce you to some of the key features of ABLE Account’s. and then Steve will talk more about special needs trust and why someone might want some type of account or both pipes, types of accounts. The first feature, of ABLE, it's easy and online.

In some state programs you can download a hard copy. Although there is no physical location at the current time that you can walk into, like a business or bank. In at least one state that may happen in the future. If or when it does, you will see it first on our website at the able national resource Center. So be able to check out the ANRC website. And sign up for the newsletter so you don’t miss that. Another key feature of ABLE accounts, is the individual is not limited to enrolling in their state of residence. They can enroll in any program. However, there are about 17 or so state programs that do have a residency requirement. Another feature, as Steve was saying the designated beneficiary is the account owner, as identified on this slide. They have signature authority on the account. That feature actually allows the account owner greater control over distribution from the account. The feature also lends itself to becoming the teaching tool so that someone with a high level of access to the account can dispose small amounts of money to the individual who may be learning money management skills. A contrast a little with special needs trust that has a trustee and maybe more restrictive or limited disbursement to specific items or services. I will leave that to Steve because he’s an expert in that area. The next two bullets feature tax issues. The able account earnings grow tax-free in our tax-exempt. In about 13 states they do have deductions for contributions to a ABLE account by an in-state resident. It is important to remember contributions to ABLE Accounts are made after-tax dollars and are not tax-deductible. It is important to also note those earnings to grow tax-free, and the federal tax on them is for qualified disability expenses. We address that on the last webinar last month. Jim and Sheldon, an attorney in New York State spoke about them. We did a deep dive into what are and what are not disability expenses. I encourage you to go to the website and dive in and listen to that if you are interested in this area. Qualified disability expenses in a nutshell, broad categories of expenses. Some examples of that maybe medical treatment, education, job training, transportation, assistive technology, legal fees and so on. I would like to draw your attention to housing in particular because we will talk about that a little more throughout the presentation.

The last bullet on this slide, another feature, it was effective January 2018 under the ABLE financial planning act of 2017 I believe. A 529 account may be rolled over into a ABLE account. A 529 account is the education savings plan. What is significant about this is that some families may have begun saving for the child's education, even before the child was born, only to find the child had a severe disability. Are perhaps that child gained the disability prior to the age of 26 in college was not in their future. With this particular feature, families may now rollover funds in a 529 plan to another family members ABLE account. The ABLE account must be the same beneficiary as the 529 account or a member of the same family. And rollovers will count towards the annual contribution limit that we will talk about. >> Other key features of ABLE accounts is any person may contribute to a ABLE account. You may ask who is a person, what is a person? In the IRS code the person is defined as an individual, a trust such as a special needs trust, and estate, a partnership, an association, company or corporation. There are two types of contributors. That can be first party contributors or third-party contributors. When contributions are made by a first party contributors, the able account holder, there is no changes related to how that affects the benefit. Earned income, unearned income and resources. Here at the ANRC we received thousands of questions. One question that repeatedly comes up involves income, and understanding and thinking ABLE is a tool to show the beneficiaries income. It is not. The income such as SSDI after certain occlusions, reduced far every two earned. Whether deposited into a ABLE account or not. Unearned income is still counted the same. When it is due to the beneficiary. Examples are shown on your screen. It can include Veterans Administration payments, alimony, child support etc. And finally contributions by a third party, with some individuals believing earnings are other first party income, directly deposited into an able account avoid income accounting rules. A good try but not true. The beauty of ABLE, contributions by third parties [indiscernible]. A family member, employer, friend, or a special needs trust, can all contribute money into ABLE that is not counted as income. A step further, the special needs trust, contributing money to and ABLE, not a person by IRS definition, it gets you thinking about Special Needs Trust and what they can and cannot be used for. I think Steve will talk to you a little more about this in greater detail later on. Until then I wanted to [indiscernible] a qualified disability expense such as housing. A ABLE account can be used to pay for housing expenses. A Special Needs Trust pays for housing, and public benefit can be affected. SSI, Medicaid, SSA is counted as unearned income. They would reduce the SSI payment. Many of the participants today [indiscernible] housing expenses when they are paid by others or when an SSI recipient doesn’t pay their fair share of household expenses, the SSI payment would reduce. This in particular is one of outstanding example of how a Special Needs Trust and a ABLE Account can and do work well together.

Finally, up to $100,000 in a ABLE account is not counted as a resource. That in and of itself is transformational, as compared to the resource limit that we will talk about in a minute.

Another transformational change, the fact that contributions up to $15,000 can be made per year into the ABLE account, when the account holder actually, is employed under the ABLE 10 work provision under the Jones act, he can contribute additional funds into that ABLE account if they do not have an employer-sponsored retirement plan. This year they can contribute an additional $12,130, or the individual’s earnings, whichever is less. And that figure is based on the federal poverty level for one-person household, family of one, and 48 contiguous states for the year prior to when the contribution was made. You're saying now how the ABLE act has the ability to transform lives, particularly those who were limited it in their ability to pay more than $2000 due to resource limitations. Again distributions can be made for qualified disability expenses which are again items or services needed to maintain or for independence and quality of life. They purposely fall into categories that are broadly construed and not limited to expenses for medical necessity or expenses which provide no benefit to others outside of the benefit to the account holder.

Some of the other features of ABLE accounts, they vary from plan to plan, they can include things like prepaid debit cards, checking account options, so the account can be used more or less like a transactional account, savings account option, or the ability to track purchases. Again the ease of using ABLE funds. The last feature I wanted to highlight is the ABLE account has no effect on most means tested benefits. When I say most I want you to know we have gotten policy interpretation from a variety of agencies. The policy interpretation, these are posted on the website, from the Center for Medicare and Medicaid services, from the US Department of Agriculture, with regard top’s food stamps, but we haven't received any policy clarification from the HUD. We are waiting for that. All federal housing programs or income based programs and they don’t have that limit. We anticipate able funds would be excluded from HUD determinations but we are still waiting. When that information does become available it will be posted to the website, most likely in the ABLE toolkit and also included in a future achievable newsletter. Stay tuned and visit the website periodically to find this information.

Finally, we have gotten policy interpretation from Social Security and their homes, policy guidance, is posted on the website. You can find that material there. With that I think we will talk just a little bit about supplemental security

benefits. Before I talk about that I wanted to say a few words about the Social Security Administration. The SSA is a huge organization. They have over 1300 offices across the nation. They employ over 60,000 people. And they have taken steps to ensure that their staff all have a good grasp of ABLE policy. Social Security handles a lot of technical, complex work. ABLE is new ground. I expect issues to arise periodically

not only in this agency but other large agencies, administering a complex benefit program. If there ever is an issue with Social Security or another agency, I encourage you to visit the website and to pull that resource material for that agency from the website and share it with that agency.

Just the other day one of my teammates, Lori Shale who is on the call today, was answering a question that came in about a Medicaid determination. She pointed the person who was writing in to the center for MM I, CMI. That person downloaded that material, took it to the local Medicaid office, and were reinstated. She sent a thank you to that. I think Lori as well and I encourage you all to check out that material on the website, on the national disability Institute. We are not in advocacy agency and we don’t provide case management on any legal or past issues, but we are happy to point you to the resources. To resolve any issues, you have.

With that I wanted to review some SSI basics before we talk about why ABLE. And I turn it over to Steve

Many individuals right in and ask questions about laws for Medicaid, I want to provide this information. About 34 states across the country, the SSI application is an application for Medicaid. When someone is determined eligible, Medicaid comes right along with SSI. The remaining states, there are other application processes. No matter how Medicaid is obtained, ABLE affects the accounts the same . SSI is meant to provide food and shelter, and income of any kind whether earned or unearned reduces or could cause an SSI benefit or Medicaid to suspend or terminate . Suspension is not the same as a termination. Suspended is a temporary stoppage. When twin, 12 months’ lapse, the benefits will terminate which means they have to reapply to become eligible.

Once someone other than the SC is a, other than the SSI recipient pays for food or shelter, it reduces the SSI payment. And over $2000 in resources for the individual or $3000 for a couple, may also cause the payment to suspend or terminate. When 12 months lapse in the suspended stash this, status, the benefits will terminate. This is so you can appreciate some of the huge monumental changes enabled by ABLE.

So why ABLE? Third-party contributions into a ABLE account are not counted as income. Any federally funded benefits program, the SSI program, Medicaid, food stamps, savings programs, we are waiting guidance. Distributions from the 1010 account, the ABLE account are not counted income to the beneficiary. ABLE accounts interest is not income. Trustee contributions are not income, and without able it could affect the benefit. >> We said earlier that the first $100,000 in a ABLE account is disregarded as an SSI why, resource. When that happens the SSI monthly payment is suspended. If the balance exceeds $100,000 by an amount that causes the SSI resources to be exceeded, either alone or combined with other resources. We learned that suspension and termination are different. With resources is important to note

for housing related, qualified disability expense, is counted by the SSI program or Medicaid as a resource if it's repaid following the month in which the distribution was made. >> When SSI payments are suspended due to the ABLE account balance, that ABLE, SSI recipient retains continued eligibility for Medicaid. If the balance reaches $150,000, although the SSI payment would be suspended, the Medicaid would continue. Eligibility for SSI payments does not terminate after 12 continuous months of suspension. An individual can remain in the SSI suspended status continually, for even years without a termination. Remember if resources, other than ABLE exceed the SSI limit, this particular rule would not apply. If or when the able account balances no longer causes the recipient to exceed the resource limit, and he or she is otherwise eligible, the payments resume. >> Another item I wanted to touch on. The last item I want to touch on, is the fact that I sometimes fear someone doesn't want to open a ABLE account because of the Medicaid playback, payback provision that stops them. A couple of things related to that. When a ABLE account owner passes away, qualified withdrawals may be made from the ABLE account to pay for any outstanding qualified disability expenses. Qualified disability expenses include things like payments for a home purchase, a vehicle, a modification to a home and so on. Those are just some examples. The qualified withdrawal can also be made to pay funeral and burial expenses. That is an important item. Then and only then may Medicaid reclaim up to the amount spent by the Medicaid program from the time the account was opened. The state would have to file a claim for those funds. Any remaining funds after that would be transferred to the individual estate. If this is of concern to you may want to explore opening a ABLE account and maintaining the limited balance in the account, to cover any outstanding qualified disability expenses, along with funeral and burial expenses. If there isn't a funeral or burial trust. Or the ABLE account may be used as a transactional type account. >> There is a lot of advantages and disadvantages shown on the screen. I will not go into them because we have limited time today. I encourage you to download the slides from the website, and take a look at the advantages and some of the disadvantages listed for ABLE accounts.

With that Steve, I am going to turn it over to you for Special Needs Trust.

Fantastic. Once again thank you so much. For having me here today. Let’s dig into this a little bit. First off let’s start off with what a trust is and how it works with benefits. As it says a trust is a legal arrangement regulated by state or tribal law when one party holds property for the benefit of another. They contain cash, liquid assets, all of most anything. Let's take it back to what Marlene was talking about resources. This will be key as we start talking about special needs trust, able accounts, working in all of that.

For most needs-based benefits, like SSI, Medicaid, Medicare for you, we have to be different in California. And related programs. The issues you run into is twofold, you are only allowed to have as an individual $2000 in resources on the first moment of the first day of the calendar month. That is a ridiculous number, set in the 80s. Even the most conservative cost-of-living increase, it should be in the mid $15,000 range or something along that line. Being that as it may we have that problem. And also with that, any cash given to a person of these needs-based programs will reduce their benefits dollar for dollar. So when these trust came in many decades ago, think of a trust is a contract only as a contract. In this contract which always has three players, the beneficiary, the person who sets it up, and it also has the trustee. A form called a spend thrift fund. Where the trustee has sole discretion over every distribution. Virtually the beneficiary has none. We will talk about that. The power of putting these two tools together. Part of a special needs trust by its very nature is it really restricts access from the beneficiary being able to access the funds directly. They are fairly complexed instruments. A trust itself may or may not be counted. But under the SSI administration, the program operation manual system, Social Security and Medicaid recognized if we have a trust, think of it as a contract, where the beneficiary has does not have control of the assets. It will not be counted as a resource. And if the distributions are made directly for the needs of the beneficiary, here, for instance if the trust was used to pay for medical care, beyond what Medicaid covers, then if you pay for the care directly the beneficiary didn't receive income. But got the use of a service here, and that’s basically how a Special Needs Trust works. Until the ABLE act came up, this was the only way to pay for things. The issue always was, as a disability rights advocate our goal is to enable persons with disabilities to be as in control of their life as possible. This is always a problem with Special Needs Trust's because in these cases the trustee has sole and absolute discretion and the beneficiary has been officially none. So we talk about that here.

Part of the thing that excites me so much about ABLE, when you can put these things together, when it makes sense we can give the beneficiary more latitude over their life. That’s what we should be trying to do. >> Now as it says here come money paid directly to a beneficiary from a trust will reduce the SSI benefits dollar for dollar. I know as the trustee of the Golden State trust, often times when people think they are a beneficiary they asked how many, how much money do I get, and you answer zero. And people aren't excited about that. We have to pay things directly.

Money paid directly from a trust is someone who provides the beneficiary food or shelter, reduces the SSI benefit by one third of the federal rate. That is currently 270 $70, $277. We will talk about an example. One of the powerful things that ABLE is able to do, is once again, this will diminish that loss of income. We will do an example on that. Money paid from a trust directly to someone else to provide items other than food and shelter does not reduce SSI benefits. For instance, I had a beneficiary today who wants to come from the Golden State pooled trust, who wants to pay for the veterinarian cost and what's happening is a neighbor is paying for those cost and we are reimbursing the neighbor. Therefore, we have paid for the service without the beneficiary getting cash. In that situation our beneficiary was not disabled before the age of 26. That is the only way we can do it. We will see this really expands how this can happen. And able accounts are not trusts.

Once again we have the link from the POMs that talks about what an able account is. It talks a little bit about how the POMs, how ABLE accounts can help with special needs trust. By the way, especially after you hear Amy talk about her involvement, that link will be ready, really important. As Marlene was talking about Social Security, a huge organization, and yes getting the education through the 50 to 60,000 employees, is going to take some time. Sometimes having these regulations, and being able to show folks here are the regulations that can help you. Money paid from a trust to enable account is excluded as income. That is solidly not only in the POMs, the regulation for Social Security, but the CMS which oversees the Medicaid, is also very clear that money paid from a trust to a ABLE Account is not considered income.

So this is something sometimes hard to get your arms around. These are complex instruments. As we said there are three key players, the grantor or the person that creates the trust of the beneficiary that benefits from the trust, and the trustee that manages the trust. The thing with this, where sometimes you want to have somebody who understands trusts walk you through that. They are basically two types of these trust. The first part is a first party trust. Which is often time referred to as a Medicaid payback trust, a fee for pay trust. What is key with this, it can also be a pooled trust, or the Miller trust. What is key with the first party trust, where money came from the disabled individual themselves. It can be from an inheritance that went directly to the beneficiary and now needs to be sheltered. It could be from a person with injury settlement. If the money initially belongs to the benefits recipient, and goes into the trust, that is a third party trust. As we are going to see there is a lien on that trust for any Medicaid issues used during their lifetime. The other kind of trust is a third party trust, commonly the estate planning trust. This is a trust where a parent might leave funds in the trust, directly to the trust for the benefit of a disability , disabled party . Like I have a niece with a down syndrome that I set up a special needs trust bar. All of the aunts and uncles contribute to that trust. As we talk about later there is an ABLE account tied to this thing. A third party trust. Those funds never belonged to my niece and they will never be a payback when my niece passes away. The most common trust we will talk about today. There is a variety of trust. Non-pooled trust, the first party and third party trust. When you are looking at different options for trustees, it's one of those things you might want to consider a pooled trust. There are many tools out there. What is right for you or your disabled loved one, it depends on the situation.

So going through advantages and disadvantages. One of the advantages of a self-funded trust. When somebody comes into money and they want to shield their needs from benefits. It can be established by any individuals that they have capacity to do it, or it can be established by a parent or grandparent or legal guardian.

There is no age limitation on the onset of the disability. It doesn't have to be before the age of 26. If you're dealing with somebody over 65 there could be some complications here. There are no limitations on deposits. I have set up trust with $20,000 in them, I have a special needs trust with easily $40 million in it. You can put any amount you like in the trust, no limitations. The disadvantages, an attorney is needed or strongly recommended. I would strongly recommend that you work with an experienced attorney when you are doing this. Once again this is where a member of the special leads alliance, they are all vetted. Heart of this when you are hiring the attorney, it’s not that you are going into the right trust but seeing if there’s a better alternative, maybe a ABLE account. It may not be a great option for small amounts of money. Because these tend to come there is no set price on how you set these up, but you are probably talking to cut three or $4000 to set it up. There is no set price, it depends on your community and attorney to all of that. Deposits are limited to the beneficiary fund. In a self-settled trust, you can only put the beneficiary's funds in it. It is not a tool for estate planning. More importantly, there is a lien for any Medicaid the individual used during their entire lifetime. The lien, the clawback, the Medicaid, this is something really important to study. Each of the different tools have different rules. The harshest of the rules will be the Medicaid payback trust. Okay.

Now a third party trust, is an estate planning trust did any third party can contribute. Anybody can put funds in a third party trust, except the individual with a disability. The benefits recipient. They cannot put their own money in a third party trust. They are not required to meet the disability test. It can be for somebody who is receiving benefits. Somebody with a challenge where maybe some oversight of the funds is important. You can deposit large sums of money here. I will tell you I get this question, how much should you put in somebody special needs trust? The answer is hard to say that more is better. The remainder is not limited to the estate upon the death of the beneficiary. So when you set up your trust, you can make the beneficiary, of the remainder it can go to family, it can go to friends. It can go to disability organizations which I really urge you to consider. The disability organizations really, I know very few that are well-funded. They do a huge amount of advocacy for us. So you can leave it to anybody except the drafting attorney because the state is cranky if you do that here to

The other thing, once again there is a level of complexity, a third party trust when it becomes your, as a qualified disability trust, and it exams this year, $4050 of trust income from federal taxes. Also there is no Medicaid payback. One of the disadvantages, and attorney is needed or strongly recommended. I will say strongly recommended. There are places where you can possibly find them online. These are really complex instruments. I would say not only an attorney but an experienced attorney. They may not be a great option for small amounts of funds. Also, all distributions must be approved by the trustee. Remember this is a trust where the trustee has absolute discretion and the beneficiary has none. Now I will turn it over to Amy Tessier who is living the dream of working with a ABLE account and have her share with us her experience.

Amy.

I am here. When I first heard about ABLE Account's back in 2016, I didn’t really understand why I would want to set one up for our son. Since he had a Special Needs Trust. This was set up when he was 10 years old to have a plan in place for Scott and his sister, just in case we could no longer provide care. Several years later when Scott’s grandparents set up 529 accounts for their college bound children, Scott’s trust was funded instead. It wasn't until early last year I finally understood the monthly SSI check had increased by almost $206 a month by setting up a ABLE account. By having a ABLE account Scott is able to pay his full share of in-kind support maintenance expenses. Even though he works, his SSI check in wages combined are lower than his household expenses. His ABLE account makes up the shortfall. Setting up the ABLE account was easy although I must admit [indiscernible]. My advice, for set up an appointment in advance. Second, go to the SSA office with lots of documentation. I brought a letter that described the household expenses and described how Scott is now paying his full share. I also brought the relevant pages from POMs and statements from the able account showing the transfers in and out. We will not get an answer on the spot, the information is submitted to a team for a higher level of review. Initially the request was denied because the Social Security representative did not fully understand the roles of having a ABLE account. The representative was under the impression that parents could not find Scott's ABLE account. Again I cited the appropriate section of the POMs and asked for another reviewer. This time the second time, it was approved. The process took approximately three months from start to finish. It is my understanding that the national resources centers [indiscernible] representatives are better informed about ABLE accounts. Hopefully the progress is better now but be prepared to provide documentation and continue to ask for another review if denied.

As Marlene pointed out earlier, Scott’s wages are still counted as income. In are taken into consideration in his SSI monthly payment. He still receives more money than he, his full share of I SM. this is true for any SSI recipient. The exact amount depends on your state a living situation. In addition, the ABLE account will offer Scott financial independence, since he can use a debit card for making small purchases. I control the amount which is loaded to his card and it is also a lot easier transferring money to a ABLE card and arranging for a payment from his special needs trust. It would not be prudent to give him large amounts of money to manage, but hopefully he will be able to gain some financial independence. And now I will turn it back to Steve and he will continue with more case studies which illustrate the benefits of having buff a special needs trust and a ABLE account.

Thank you Amy. That really illustrates a lot of the power of the ABLE account as we talk about that. Once again in Scott's situation, it has helped him with his employment because otherwise, once again, it can only have $2000 in resources. It has helped, which I will demonstrate in a minute, increase the amount of SSI he gets to over $3000 a year. And here is the thing, you don’t need an attorney to make that happen. And third, this is important, it teaches financial literacy. In my case, my niece has is using her ABLE account and learning how to manage funds. She had never done that before because of being on SSI, she never had access to funds. It is a great tool to do this. Let me go through an example to illustrate what Amy was talking about regarding ISM. >> Okay. Going into comparisons between ABLE and all of that, a ABLE account grows tax-free. He can receive estate income or tax credit. In general account owners direct their own disbursements. This is important to consider when you’re making this decision. The good thing about a ABLE account, the account holder manages the account. In some cases, you may want to think about that, how you will use that. Funds must be used for qualified disability expenses. The interpretation of qualified disability expenses is not done by Social Security. It's done by the Department of treasury which is traditionally always been disability friendly. They are going to interpret broadly. They may provide for frequent distributions, once again Marlene went into the lifetime aggregates here. The most you can put into it is whatever that states normal 529 plan is. And with ABLE accounts, depending on your state okay, remaining funds after death may end up going to Medicaid. Any Medicaid they used from the time the account was established. By the way we don't have a lot of time to get into this. There are so many ways, it's important to the claw back to plan around that. I'm not sure that should be a huge consideration. With a Special Needs Trust it doesn’t grow task free. Tax-free. It does have a third party benefit, the trustee distributes the funds and has total discretion. It can be used for broad expenses. As far as I’m concerned there's no such thing as a special need. Whatever the need is, that is the need. So I would say the Special Needs Trust is slightly broader, but the restrictions of the ABLE account, we haven't found a whole lot. Generally looking for long-term investment. It doesn't have a maximum amount so once again if you have $40 million, you can put it in your long-term Special Needs Trust . Out here the remaining funds are not limited to the estate. You would have broader, ability for broader discretion about when you pass away. And there is a payback

[indiscernible]

Once again as far as comparison is involved, ABLE accounts are low, incredibly low to set up. And a Special Needs Trust, there is no set amount. I would be afraid of having an attorney do one of these things less than $2000. There will be a price. And then on the ABLE account the onset of disability before the age of 26. In the Special Needs Trust, you can set one up for your grandmother, if she's in her 80s and on Medicaid. Only one account is allowed with a ABLE account. And here you can have multiple Special Needs Trust’s. The amount you can contribute currently is limited to the gift tax exemption, which is $15,000 a year. But then don’t forget, for the ABLE to work program you can add another $12,000

and change with that. Something to keep in mind. I don't think the ABLE story is done. My expectation as time goes on, we may see that contribution limit go up, but it is $15,000 a year. Once again any amount can go annually or totally into a Special Needs Trust. ABLE Account has to hold liquid assets. With that, once again with the special needs trust, there is very few things you cannot put into a Special Needs Trust. And once again the SSI benefits are suspended if the account goes beyond $100,000.

But the Medicaid stays in place. With a Special Needs Trust they don't have the same rules. I wish we had more time here. I did want you to study these things because for many parents using ABLE Account’s, by the time you might reach the hundred thousand dollars, if you have a child for instance with a developmental disability, [indiscernible] this is why having someone help you, you need guidance it’s so important.

Let's go through a case study because we are racing through this. I think, I have had many families set these up, just for this alone. This is what Amy was talking about. Talking about ISM, were talking about in-kind support and maintenance. Marlene was saying SSI technically is for food, clothing we don't count anymore, and shelter. And nothing more could for $771 you're supposed to pay for your food, clothing and shelter, and I don't know how you make that happen. The concept is, if the person, the benefits recipient is unable to pay what is considered their fair share of household expenses, and if it comes from anywhere else, a family member, anyone else. Let me go through this story.

Galindo has been disabled since birth and receives $771 a month in SSI. She is a beneficiary of the self-settled trust. She would like to move to a nicer apartment that would cost $1000 a month. Where she would live alone. Now it will be really hard for Belinda to pay $1000 a month when she only gets $771. She will need some assistance to make the move. So Bob, Belinda’s trustee, in this situation if you gave her $1000 a month directly and said you go ahead and pay the landlord, that will not work because that’s unearned income and will wipe out the SSI completely. If instead she pays the landlord directly, the payments are counted as in-kind support and maintenance and what that means is the assistance Bob is giving her by paying the landlord will reduce her benefit dollar for dollar. Capping at this year $277. If Bob contributes $1000 a month in the able account, instead, in the funds from the ABLE account pay the landlord, there is no reduction in the SSI benefit. A comment I got from my wife who is also a disability advocate, yes we are laundering money and we are doing it out in the open. As Amy said if you take the POMs with you, this is something that is allowed by Social Security. Anyway, let me turn this over at this point to Marlene.

I think.

Yes, thank you Steve. At this point we are going to cover a case study on Eva.

We wanted to allow some time at the end for some questions. As you can see there is so much information we are trying to provide you with. I think it is best if we go on and skip this case study. There are two slides on it. We can go over it next month. The ANRC next month will provide a webinar on strategies used to fund and able account. So I think I will go on.

I'm not sure we even have time for the questions. There is about 15 minutes left. So with that, what I'm going to do, we will talk now about things to consider when deciding which is best. As we talked about earlier, some of the things to consider is your screen. Consider how much money is involved. Whose money is it. Are there assets in addition to cash? What are the cost involved to establish that account? Is that account owner currently receiving Medicaid, or is there Medicaid payback provision? Or does it even matter that what is the effect on housing expenses when paid by a ABLE account versus a Special Needs Trust. Was there an expected windfall or a small litigation settlement that could affect any means tested benefit. Does the individual want to open a ABLE account in addition to or instead of a trust, could they benefit from both? There are even more questions to consider. I encourage you to visit the website, to view some of the material online, there is a lot of information in this webinar. The webinar will be archived so we encourage you if you missed something, if you want to hear a certain segment again, to go back to the website and listen to the material. Also at the end of this webinar, at the end of the slides, we have some resources material. with that I am going to turn it back over to Miranda to type, tie things together and review some of the resources we have available. Miranda.

Thank you so much Marlene and Steve, Amy. For a very informative webinar and discussion. Really basic to intermediate level. So much more, there could be a deeper dive but the intention today was to provide the foundation. To begin the discussion. In conclusion, wrapping things up, it is really important to remember that when trying to decide between ABLE Account and the Special Needs Trust, both savings vehicles are intended to work the same way. To improve the quality of life for individuals with disabilities by allowing savings without disqualifying them from eligibility from means tested an offense. In that individual's financial situation and circumstances that there is a broad range of circumstances for people with disabilities, but those will determine which option, a ABLE account, a Special Needs Trust, or both, in the examples provided in certainly and what Amy shared, where those options together can be, or individually, can be most beneficial. We hope to lay the foundation and bring more awareness to that.

We want you to keep in mind that this presentation really was a general overview of ABLE Account and Special Needs Trust’s. It is not meant to take the place of seeking specific guidance from professionals about benefits and account eligibility, tax issues, or benefits counseling in specific cases. Please do take that to heart.

We want to leave you with, the next couple of slides, to point out some resources for you. Of course there is the ANRC, at ablenrc.org. We also have information on the national resource Center partners in the partnership with the special needs alliance, to help expand ABLE education. We have a youth technical assistance center, SSI used toolkit we point you in the direction of as well as the special needs alliance website. And an employee beneficiary can find a certified benefits counselor, called a community work incentives coordinator, as well. It is not legal advice but a good place to go.

With that I want to share more specifically around how do I find a Steve. A special-needs attorney. Where do I go? Slide 48 gives you the website address, email address. You can go to research a special-needs attorney in your state. If you are listening in, the email address is info@specialneedsalliance.org.

Additionally, we want to point out for those of you who are new in learning about ABLE accounts the first time, we have the roadmap to enrollment in the roadmap to independence. Those are on the website and the links are here. each of the roadmaps has five simple steps, three-minute videos associated. some clear simple guidance on steps to take. letting you know what is ABLE, who is eligible and what can funds be used for, how do I manage my account and how do I enroll. At the end of the first roadmap, when you get to how do I enroll, that sets you up to choose what state program might be best for you, based on what your needs are and what you are looking for. Some helpful tools there. And then to independence, for an account owner how do you make the most of your account. That of course would include things like we talked about today. If you are pairing it with a special needs trust, how effective are those together.

So here we have the contact information. At the bottom is the email inquiries in the call center for the able national resource Center. With that let’s go ahead and see if there, we have about eight minutes left. There are any number of questions that have rolled in. I know we have some folks on answering some of those. I will ask at least one question of each, Amy, Marlene and Steve. That have come in here

The first question for Steve. Do I need an attorney to establish guardianship, power of attorney, and/or special needs trust? If I do how do, I find one familiar with these trust in public benefits. are online resources a good idea. I might need to ask you a different question because I think we answered that. Does that answer that effectively?

I think it does. Just a short answer, most of the things you could conceivably do without an attorney. As far as a power of attorney, unless there’s something special going on, I wouldn’t hire legal counsel for that. Part of it is when you're looking at this, a couple of things to look at did not just having an attorney, it’s having an attorney that is not only familiar with public benefits, but familiar with a lot of the challenges for a person with disability. The fact is every software program, I hate to tell you this, but attorney start with software programs, they have a special-needs button. In a lot of cases, they will find out that there is a potential beneficiary with a disability and they will hit the special needs trust button. A leader of one of the able programs here who talks about that. He is in a wheelchair and his parents have a special needs trust for him. the head of a ABLE program. I don't think he needs a special needs trust. So it's good to have someone who could not only understand, he can help identify like anything else, whether it's a ABLE Account, Special Needs Trust or a power of attorney, these are only tools, not commodities. This is where it can be so important to work with an attorney. Obviously, these are attorneys that are vetted who not only understand the basic rules, but mostly these folks have disabilities themselves. That can be so important

Thank you so much Steve, that is helpful. I have a question; I would love to ask of Amy. It is so helpful and certainly for those who are listening, Steve and Marlene also have family members as well who have ABLE accounts. For Amy, I will ask this question as we wrap up the time today. From a family perspective, what are some of the things you did, or a family member can do to assure their loved one future is secure for when you are no longer able to be there. I'm certain many parents in this webinar today have a child with special needs and may not know where to begin. Do you have suggestions?

Many families are lucky enough to have maybe cousins, similar to the age of their child with a disability, that may be around many years after the parents are no longer around. In our case, Scott has a younger sister. She will be his trust protector. But I don't feel it is fair to make or the trustee, or to be responsible for Scott. She will have her own life did one thing we are working on now is to find an agency or care provider, that can work in conjunction with Scott’s trustee later on in life to be able to be that person that can help to replace the supports that his parents now provide for him. You have to look at capacity of your child, you have to look at the family support, whether you need to set up a trust. Because they will not have enough money later on in life and to provide for their own needs. it is very complicated. Every family I know is struggling with putting it all together. We are all working on it. There is no one answer.

Right. Thank you so much Amy. For responding to that question. And we do have another minute so I will ask a family, final question of Amy. For the group today. You segued nicely into this Amy. Thank you for setting us up for the next question to Marlene. This question asked if the ABLE account owner passes away, does Medicaid reimbursement take priority over other expenses?

Miranda, the answer to that is no. We talked about that on one of the slides, when in an enable, a ABLE account owner passes away, the qualified disability expenses may be paid first along with general funeral expenses before the Medicaid reimbursement. We also said Medicaid makes a claim for reimbursement. If that is an issue for someone listening, a strategy may be that for any given time, they could just maintain enough principle in the ABLE account to cover those types of expenses. But that is a decision they would have to make.

One other quick question Marlene, how does SSI know whether or not I have a special needs trust?

With that, a special needs trust is established in the individual is receiving supplemental security income benefit, it is the responsibility of that individual for the representative payee to provide a copy of that ABLE Account, the Special Needs Trust sorry, to Social Security for review. so they do have a review process in place to determine whether or not if it in fact meets their criteria for exclusion as a resource. And why is that important, it is really important because the individual, to avoid a payment of benefits are getting into a situation where they have to repay benefit, for peace of mind for the individual and importantly, for family members, so they actually know they doubted eyes and crossed teas, particularly for a loved one that was incapable of handling their own benefit.

If I can mention something really quick about that. Where having experience counsel can be useful. The problem with it, if it is not reported, Social Security has access to anything the IRS has access to. A lot of times the trust will produce income and it will show up on the radar screen. what Social Security is looking for are people scanning or hiding accents. The proper thing to do with good cancel is to take any funded trust and report to Social Security, to save a lot of grief. This is where having an experienced attorney can be a benefit to them.

Thank you so much.

Miranda. That is an outstanding point he added. It is so important. Folks across the country need to know computers, they do interact. That income will come up on the SSI mainframe. That is important. Thank you.

I think this really illustrates the importance of the partnership with the ANRC established with the partners with special needs alliance. Thank you Steve for being a representative of the alliance for joining with us today . This is the beginning of our work together. We have a number of other activities we are elaborating on, we need to make sure we are in sync and in alignment and working together, to clarify when you might want to go with that ABLE account, when you might want to go with the Special Needs Trust, and certainly the space where you could have both, making sure people are clear on what these, the ABLE and the Special Needs Trust can do for your quality of life. These are both meant to absolutely increase. I really want to say thank you to all the presenters today, and all of you for joining us. Please stay tuned, and do download the case study that we have available on the ABLE and Special Needs Trust. Take a moment to fill out the post training survey. we appreciate your feedback and any comments you have to share with us, that is helpful to us as well. Thank you everyone for joining us here today, we hope you enjoy the rest of your day. We look forward to having you back here with us at the ANRC, future trainings and presentations as we continue to explore the world of ABLE accounts and ABLE programs. Thank you everyone and have a good day. >> [Event concluded]