



**Jane M. Fearn-Zimmer, Esq., LL.M.**  
**Flaster Greenberg PC**

*Jane Fearn-Zimmer dedicates her practice to serving clients in the areas of elder and disability law, special needs planning, asset protection, tax and estate planning and estate administration. She can be reached at 856.661.2283 or jane.zimmer@flastergreenberg.com. Jane also frequently writes for her Elder and Disability Law blog, which can be found at [www.janefzimmer.com](http://www.janefzimmer.com).*

## Disability Planning Options Comparing ABLE Accounts with Special Needs Trusts

|                    | (d)(4)(A) Payback Trust                                     | (d)(4)(C) Pooled Trust  | 3 <sup>rd</sup> Party Common Law Trust     | ABLE Account  |
|--------------------|---|---|--|---|
| Funding source     | First party funds   | First party funds   | Third party funds                          | Either  |
| Funding limit      | Unlimited, but usually well more than \$150,000             | Unlimited   | Unlimited                                  | \$15,000 in 2018  |
| Cost               | Costly to draft and administer                              | Inexpensive   | Costly to draft and administer             | Inexpensive   |
| Investment options | Limited by cost, Prudent Investor statutes                  | Limited to investment options selected by the plan administrator                            | Limited by cost, Prudent Investor statutes | Limited to ABLE program's funds, two changes annually         |
| Estate recovery    | Medicaid lien on all Medicaid benefits paid during lifetime | Same as (d)(4)(A), to extent amounts in beneficiary's account are not retained by the trust | No, Medicaid lien <sup>1</sup>             | Lien on funds contributed after beneficiary received Medicaid |
| Sole Benefit Rule? | Yes   | Yes   | No   | No  |
| Age limit          | Yes - 65  | No age limit in 3rd Circuit, but elsewhere may depend on case law in that Circuit           | No   | Disabled before age 26  |

<sup>1</sup> But see *Matter of Calley*, 232 So.3d 68 (La.App. 1 Cir., Sept. 21, 2017), which upheld the ruling of a district court in interpreting a third party common law trust established in 1989 to hold the proceeds of a tort recovery to the parents of the disabled minor beneficiary to authorize payment to the Department of Health and Hospitals for Medicaid benefits paid to the disabled beneficiary, where the disabled beneficiary benefitted from the trust because he avoided a Medicaid eligibility issue by sheltering settlement funds in the trust.