

Focus | Probate, Trusts & Estates Law

ABLE Accounts: A Better Life for Individuals with Disabilities?

BY TRESI WEEKS

Individuals with disabilities face a dilemma when they try to save money. If a single person has more than \$2,000, they could lose their valuable Supplemental Security Income (SSI) or Medicaid services, which for some folks means losing housing and medical care. The Achieving a Better Life Experience (ABLE) Act was enacted in December 2014, to enable those with special needs to save money in an ABLE account without jeopardizing their eligibility for needs-based benefits. This new tool adds options for our clients with special needs, but does not replace other tools such as special needs trusts.

The federal ABLE Act allows states to establish a special savings program for persons with disabilities, which operate similar to 529 education accounts. The U.S. Department of the Treasury is currently developing regulations to guide the states in the administration of the program.

The Texas ABLE Program was signed into law in June 2015, and the program will be administered by the Texas Comptroller's office through the Texas Prepaid Higher Education Tuition Board. The Texas ABLE Program is not open for enrollment yet, but individuals may open an account in any state program that accepts out-of-state residents.

An ABLE account may be established for any individual who became disabled or blind prior to the age of 26. If an individual is receiving SSI or Medicaid, they are considered disabled. If the person has not received a disability determination by

the Social Security Administration, they must submit a disability certification with supporting documentation, however, it is currently unclear what proof satisfies this requirement.

An individual is allowed to have only one ABLE account, but anyone may contribute to the account. If the beneficiary is not able to open their own account, an agent, parent, or legal guardian may establish the account. The beneficiary is considered to be the owner of the account, regardless of who has signatory authority.

The individual or contributor may fund the account with an annual contribution not to exceed the annual gift-tax exclusion amount (\$14,000 in 2016). The accounts may accumulate up to the sponsoring state's limit for 529 education plans (currently \$370,000 in Texas).

SSI, however, only exempts the first \$100,000. If someone receiving SSI saves over \$100,000, they would lose eligibility for SSI, but would remain eligible for Medicaid. Further, distributions for certain housing expenses are not disregarded for SSI purposes.

ABLE accounts are funded with after-tax dollars, and interest earned is not taxed if the funds are used for disability related expenses. Allowable expenses generally include education, housing, transportation, employment support, health and wellness, legal fees, assistive technology and personal support, funeral and burial, and other personal expenses. Qualified distributions are not taxable to the contributor or the beneficiary, while distributions for a non-qualified expense subjects the beneficiary to income tax and a 10 percent penalty. The ABLE account

owner should keep records to prove the funds were used for disability related expenses.

The major drawback of ABLE accounts is the Medicaid payback provision. When the beneficiary dies, the remaining funds must first be used to reimburse Medicaid for payments made on behalf of the beneficiary subsequent to the establishment of the account. If the account beneficiary is receiving Medicaid, counsel must carefully consider how much should be placed in the ABLE account.

ABLE accounts may not be the best way for a parent or relative to save for their loved one with special needs. If the relative instead puts their funds in a special needs trust for the individual, the money may be used to care for the individual's expenses, but there is no Medicaid payback provision. When the beneficiary dies, the remaining trust funds go to

the remainder beneficiaries named in the trust, rather than to Medicaid.

However, ABLE accounts may be helpful for individuals who work and would like to save their own money for emergencies or a better quality of life. They can also be used to safeguard a small inheritance or gift.

The ABLE Act brings attention to the special needs community and allows people with disabilities to become more independent. While ABLE accounts provide an additional option for serving clients with special needs, it is not appropriate in every circumstance and may not subvert the need for other tools in planning for those with special needs, such as the Special Needs Trust. **HN**

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