

Fairhaven Whitepaper

Patient, enduring growth. | March 2015

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ABLE Act: A New Planning Option for the Special Needs Community

In late 2014, the Achieving a Better Life Experience Act (“ABLE Act”) was signed into law. The ABLE Act allows people with disabilities and their families to set up a special tax-favored savings account for disability-related expenses. Eligible individuals and families are now able to establish private savings accounts that will not affect their eligibility to receive needs-based public benefits such as Supplemental Social Security Income (SSI) or Medicaid. This is a significant piece of legislation as it brings attention to the Special Needs community and addresses one of the many struggles that they face. The following is a brief summary of the ABLE Act, followed by a comparison to traditional Special Needs Trusts.

What does the ABLE Act accomplish?

The ABLE Act is modeled after 529 college savings accounts and it allows states to establish a savings program specifically for persons with disabilities. The account can be used to supplement government benefits for “qualified disability expenses” while not disqualifying a disabled individual from government benefits. Qualified expenses include medical and dental care, education, employment training, legal fees, housing, transportation, and others.

Eligibility Requirements

An ABLE account may be established by any contributor (parent, friend, family member, or the person with the disability) for the benefit of an eligible beneficiary of any age. An eligible beneficiary is an individual who meets the standard for disability prior to the age of 26. If an individual meets this criteria and is already receiving benefits under SSI or SSDI, they are automati-

cally eligible. If the individual is not receiving either of those benefits, they can still be eligible under a certification process established under the Act.

Tax Benefits

Similar to 529 plans, qualified distributions for eligible expenses are not counted as taxable to either the contributor or the beneficiary. Eligible expenses are broadly defined and include those mentioned above, as well as several others that the Act lists. While contributions are made after-tax, any earnings in the accounts are not taxable to the contributor or beneficiary.

Limitations

Beneficiaries can only have one ABLE account and must use the plan offered by their state. Contributions must be made in cash only. Unlike 529 college savings plans, total contributions in a single year (from all sources combined) are limited to the annual gift tax exclusion amount (\$14,000 in 2015). ABLE accounts may only accumulate aggregate contributions up to the state’s limit on 529 qualified tuition programs (usually between \$300,000 and \$400,000).

Impact on Federal and State Aid

The value of an ABLE account is generally not relevant when determining eligibility for means-tested Federal and state aid. However, there are some limitations on the value of the accounts for beneficiaries receiving SSI. More specifically, SSI exempts only the first \$100,000 of an ABLE account. So if an individual receives SSI, her ABLE account may not exceed \$100,000 and she may only have other assets up to \$2,000. Otherwise the individual will become ineligible to continue to receive SSI, but can remain eligible for Medicaid. SSI benefits can be restored if and when the account balance falls back to the eligible amount.

It is also important to note that the ABLÉ account is subject to a Medicaid payback provision. So while it does not affect Medicaid eligibility, any remaining funds in the account at the death of the beneficiary must be used to repay the state for any Medicaid assistance received by the beneficiary after the account was created. So when a beneficiary is receiving Medicaid, it is important to consider how much should be placed in an ABLÉ account to limit what may be recovered by Medicaid at the end of the beneficiary's life.

Comparison to Third Party Special Needs Trusts

While an ABLÉ account is another new option to consider for planning purposes, we do not believe it is designed to replace Special Needs Trusts. A Special Needs Trust funded by a third party is generally not subject to a Medicaid payback provision. Instead, the assets can be used for supplemental needs of the beneficiary, avoid disqualifying the beneficiary from government aid, and any remaining assets can be fully passed on to other surviving family members or beneficiaries without any requirement to repay the state for aid given. A Third Party Special Needs Trust is also not limited in annual contributions, doesn't have maximum account limits, and doesn't disqualify a beneficiary from SSI if the balance exceeds \$100,000.

Despite this, there are benefits to establishing an ABLÉ account. The first is simply the tax-free growth and use of the account. Special Needs trusts are subject to income taxation at compressed tax rates. Second, there are no attorney drafting costs and ongoing costs to file annual tax returns, like there is for the trust. Finally, in situations where the dollar amount in a trust wouldn't exceed \$100,000, or where the funds are expected to be fully used by the beneficiary anyway, the issues of SSI disqualification and Medicaid payback may be irrelevant.

Conclusion

The ABLÉ Act is now the law of the land and we expect states to start rolling out their plans in the near future. Families that are planning for special needs children will have to consider whether to use an ABLÉ account, a Special Needs Trust, or both. While there are some potential drawbacks to an ABLÉ account, they make sense in certain cases and can be appealing as a supplement to a Special needs Trust. For example, they can allow a portion of the funds to grow tax-free and be used for the needs of the disabled beneficiary first. The rest of the money can be set aside in a Special Needs Trust for larger future needs, and still be available to other family members if not otherwise used.

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