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THE ABLE ACT: A New Tool for the Special Needs Community

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We help seniors and their families to prevent the devastating financial effects of long term care.

Late in 2014, the ABLE ("Achieving a Better Life Experience") Act was signed into law. The law is aimed at achieving a manner in which those with special needs can save money without losing needs based public benefits such as SSI or Medicaid. This is an important issue and, perhaps the greatest accomplishment of the Act is that it brings attention to this valuable community and addresses a serious struggle that they face. The fact that the ABLE act had strong bi-partisan support is encouraging for the special needs community and those who serve it.

While an ABLE account does not replace other tools, like special needs trusts, it is a tool that adds an option for us in serving our clients with special needs. In this issue of the ElderCounselor, we will discuss the new law, when it applies, its limitations and its uses. We are hopeful this will give you a general understanding of the Act.

The ABLE Act Defined

The ABLE Act is a federal law that allows states to establish a savings program for persons with disabilities. The program is modeled after the 529 savings accounts. ABLE accounts may be used to accumulate savings, with certain restrictions, for use by a beneficiary with a disability.

An ABLE account may be established by any contributor (a parent, friend, family member or the person with a disability) for the benefit of an eligible beneficiary of any age so long as that person can establish they met the criteria prior to age 26. An eligible beneficiary is an individual who meets the standard for disability prior to turning the age of 26. A recipient of SSI or SSDI satisfies this requirement while those who do not receive such benefits must be certified under the act.

Financial Limitations on the ABLE Act

While the ABLE Act has made strides in bringing to light the issue of saving for those with disabilities, there are limits to the Act. For example, the Act imposes a limit as to the amount of savings that can be held in an ABLE account.

The first such limitation deals with the annual contribution amount, which may not exceed the annual gift-tax exclusion amount (currently $14,000). In addition, ABLE accounts may only accumulate aggregate contributions up to the state's limit on qualified tuition programs (i.e. 529 accounts), which ranges between $300,000 and $400,000. And, finally, SSI exempts only the first $100,000 of an able account. Therefore, if an individual receives SSI, his or her ABLE account may not exceed $100,000 *and* he/she may have other assets up to only $2,000. Otherwise, the individual will become ineligible to continue receiving SSI, but can remain eligible for Medicaid.

Medicaid Payback

It is important to note that the ABLE account is a "Medicaid Payback" account. This means that the Act requires a provision in the account that upon the death of the beneficiary of the account, Medicaid payments made on behalf of the beneficiary subsequent to the establishment of the ABLE account must be reimbursed with any remaining funds. As a professional serving those with special needs, attention to the client's priorities should be weighed carefully when determining the amount of savings to place in an ABLE account given this payback provision. When a beneficiary of an ABLE account is receiving Medicaid, it is important to consider how much should be placed in the ABLE account to limit what may be recovered by Medicaid at the end of the beneficiary's life.

Tax Benefits

ABLE accounts have tax benefits similar to 529 accounts. Qualified distributions from the account are not counted as taxable to either the contributor or the beneficiary. Qualified distributions include expenses paid for the benefit of the beneficiary related to: education, housing, transportation, employment training and support, assistive technology and personal support services, health, prevention and wellness, financial management and administrative services, legal fees, expenses for oversight and monitoring, funeral and burial expenses, and any other expenses approved by the Secretary of Treasury.

In addition, earnings on the ABLE account are not taxable to the contributor or to the beneficiary. Contributions, however, are made from post-tax income.

Finally, assets in an ABLE account may be rolled over to another ABLE account for the benefit of another qualified individual who is a brother, sister, stepbrother, or stepsister of the beneficiary.

Uses of the ABLE Act

A person receiving needs-based government benefits often has a dilemma when it comes to saving, whether for education or for unexpected events, all while maintaining public benefits such as SSI. In order to receive SSI, a person with a disability must have assets under $2,000. The ABLE Act makes saving possible… up to a point. Now the individual can remain on SSI and save a modest amount in an

ABLE account (up to $14,000 per year).

Persons with disabilities who are employed may want to utilize an ABLE account to save a portion of their income while remaining qualified for SSI. In addition, families may want to contribute to an ABLE account for their loved ones with disabilities in smaller increments. These same families may also desire to use other tools available such as Special Needs Trusts, which may be more flexible.

On the other hand, the ABLE account will not be useful for people who have become disabled due to an accident and who are receiving a judgment or settlement for a significant amount. And, it doesn't work for a person with special needs in receiving a large inheritance. There are several other instances where an ABLE account is not the answer.

Conclusion

Every tool has its use and the ABLE account is no exception. Knowing when it is appropriate and knowing when another option might be more so is something we can assist with. Please call us if you would like to learn more about this new law and how it might help your clients. We are always happy to hear from you!