New Savings Accounts May Fund Care for Individuals with Disabilities

By [Morris Klein, CELA]

In December, amidst much euphoria, Congress passed and President Obama signed into law the ABLE Act of 2014 (Achieving a Better Life Experience). ABLE empowers states to create programs enabling individuals with certain disabilities to establish tax-free savings accounts modeled after the popular 529 college savings plans that, if used for qualified expenses, won't affect eligibility for means-tested public programs such as Medicaid and SSI (Supplemental Security Income). Before states can move forward, the IRS must publish more detailed guidelines, but it's hoped that some ABLE programs will begin operating later in 2015.

The ABLE Act specifies the following:

- **Qualifying Disability:** The individual must be eligible for SSI or SSDI (Social Security Disability Insurance) benefits or be certified by a doctor as having a severe physical or intellectual disability or blindness.
- **Age Restrictions:** The onset of a qualifying disability must occur before the beneficiary turns 26.
- **Expenditures:** Funds must be used for "disability-related" purposes, including "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."
- **Contribution limits:** Individuals are restricted to a single ABLE account. Total annual contributions may not exceed the federal gift tax limit ($14,000 in 2015). SSI payments are suspended for those with an account balance exceeding $100,000. Total contributions are capped at the limit each state established for its 529 accounts.
- **Income tax advantages:** While contributions are not tax-deductible, earned interest and qualified distributions are tax-free.
- **Investments:** States will probably partner with a designated financial service provider to offer investment options for ABLE accounts. Investment strategies may be changed no more than twice annually.

- **Medicaid payback:** Funds remaining in an ABLE account when the beneficiary dies must first reimburse Medicaid for services performed since the account was established.

Special Needs Trusts

Special Needs Trusts (SNTs) and pooled special needs trusts (PSNTs), established by Congress in 1993, are other means of saving without endangering eligibility for public programs. SNTs must be established and managed by someone other than the beneficiary, but a capable beneficiary may set up their own PSNT. These trusts all involve startup costs, and, if administered by someone other than a family member, trustee fees. Depending upon individual circumstances, these trusts offer flexibility that may make them an attractive choice:

- **Age restrictions:** There are no age restrictions for "third party" SNTs, created with funds contributed by the beneficiary's family and friends. A "first party" SNT, established with assets belonging to the beneficiary, must be formed and funded before the individual turns 65. While there are no age limitations for PSNTs, self-funding after age 65 may affect eligibility for SSI and Medicaid.
- **Expenditures:** Any expense for the "sole benefit" of the beneficiary is valid, whether or not it is specifically "disability-related." For instance, a vacation or concert ticket may be a valid use of funds.
- **Contribution limitations:** There are no limits on contributions or number of accounts and no constraints concerning financial service providers or investment strategy. All balances are excluded when evaluating SSI or Medicaid eligibility.
- **Taxation:** Income generated by first party SNTs or PSNTs is taxable at the beneficiary's personal tax rate, which is generally low. With third party SNTs, all income distributed to the beneficiary is similarly taxed. Income remaining in a third party trust is taxable at a higher rate, but a properly drawn document can minimize tax exposure.
- **Medicaid payback:** There is no payback requirement for third party SNTs. Funds remaining in a first party SNT at the beneficiary's death are first used to reimburse Medicaid; PSNTs require the payback or retention of funds.

Sorting the Options

Establishing an ABLE account is likely to be a practical choice if:

- Beneficiary's disability occurred prior to age 26.

- Contributions are relatively small.
- The Medicaid payback is not a concern.

On the other hand, families may be better served by an SNT if:

- The beneficiary fails the “age test.”
- ABLE contribution rules are too restrictive.
- Non-disability expenses are important to their planning.
- A contributor other than the beneficiary may need Medicaid or SSI in the near future, since such gifts may incur a transfer penalty, affecting that person’s eligibility for benefits.
- The family wishes to avoid Medicaid payback in order to dispense remaining funds to others.

There may also be situations in which beneficiaries would benefit from the flexibility of having both an ABLE account and an SNT. For instance, an ABLE account might be established with $14,000 from a large inheritance with the rest initially earmarked for an SNT.

As the states announce their programs, many questions are likely to surface. During the coming months, families and advocacy organizations will be watching government regulators to learn more.

Morris Klein, a Bethesda, Maryland, attorney, is co-chair of SNA’s Public Policy Committee. SNA will provide information and resources to individuals and groups to help them understand how ABLE accounts, as well as SNTs and other techniques, can be used for financial planning.

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