



The ABLE Act – A New Tool for Special Needs Planning

If you want to set aside money for the education of a child (or a grandchild, or anyone else), you can choose from a variety of options. One popular choice is to establish a “529 Plan” fund. These education accounts are named after the tax code section authorizing their use, and they make it easy and inexpensive to create education accounts.

Advocates have long championed a similar concept for people with disabilities. Years of legislative work finally resulted in approval of the Achieving a Better Life Experience (ABLE) Act last December. The new law allows states to set up programs that permit people with disabilities – or their family members – to make contributions to similar accounts.

Rather than focusing on educational needs, the new ABLE Act accounts are to help pay for disability-related expenses – and there are a few other differences between ABLE Act and 529 Plan accounts. The new law creates interesting planning possibilities.

Though many people with disabilities will benefit from the ABLE Act, not everyone will. There are a number of limitations on the use of the new accounts, including:

- *Only individuals whose disability was established before age 26 can set up ABLE Act accounts. This may seem unfair to people who acquired their disabilities later in life (or who might have been disabled but undiagnosed at earlier ages), but the age requirement was designed to limit the number of people who could qualify.*
- *Only individuals living in a state that has authorized ABLE Act accounts can participate. If a given state declines to authorize ABLE Act accounts at all, its residents cannot create ABLE Act accounts.*
- *Only one ABLE Act account can be established per individual but there is no limitation on the number of individuals who can contribute to that one account.*
- *Total contributions for the benefit of a given ABLE Act beneficiary cannot exceed \$14,000 in a single year. That figure is expected to increase by \$1,000 every few years, but will always be keyed to the maximum federal gift tax exclusion amount.*
- *Upon the death of an ABLE Act participant, every dollar remaining in the account – including gifts from family members, and earnings in the account itself – must be paid to the state Medicaid agency to repay costs of care received by the participant during life. If the account should grow large enough to fully repay that Medicaid cost, any remaining funds can go to family members or other beneficiaries.*

- *If the ABLE Act account exceeds \$100,000, the participant will lose eligibility for Supplemental Security Income (SSI) – but not for Medicaid. The account can grow to a much higher number (between \$235,000 and \$452,210, depending on the state) before Medicaid eligibility is lost.*
- *While ABLE Act funds can be used to pay for “qualified disability expenses” (a term that is not yet fully defined), any payments for other purposes may mean the account is instantly countable as a resource, disqualifying the participant from SSI and Medicaid eligibility.*

Those are the most important limitations, but they will not be a problem for many ABLE Act participants. Individuals with disabilities (and their family members) might well wonder whether the ABLE Act offers a useful alternative for them. Who will most likely benefit from ABLE Act accounts?

The beneficiary who saves money.

Supplemental Security Income payments are limited to \$733/month (in 2015). Some people who qualify for SSI receive a state supplement to that figure, and a few might qualify for additional benefits that increase that figure slightly. It can be very hard to save money on an income that is so limited.

Some individuals with disabilities do manage to save money, though. For the beneficiary who is regularly trying to figure out how to spend down below the \$2,000 asset limitation level, the ABLE Act might have opened up a very attractive opportunity. Is your personal account getting close to \$2,000? You might be able to move, say, \$1,000 into your ABLE Act account, and not have to buy a new computer, or furniture, or a prepaid burial account. Depending on your finances and the final government regulations, you might actually be able to save money for the later purchase of a vehicle, or possibly even a home.

The beneficiary with a small inheritance or personal injury lawsuit.

If you are an SSI or Medicaid recipient, and your grandmother leaves you \$10,000 in her will, you will lose your SSI (and might, depending on your state, lose Medicaid eligibility as well). Same if you are slightly injured in a car collision and your net settlement is \$12,000.

The ABLE Act opens up a new possibility. You might be able to move your small inheritance or personal injury settlement into a new ABLE Act account, and continue your benefits uninterrupted. That way you can figure out how to spend the money over the next few months or years, rather than having to get it spent down within the next two or three weeks.

Note, though, that this only works for amounts under the \$14,000 annual exclusion amount – at least in most cases. If the money arrives in, say, December, it might be possible to

spread contributions across two calendar years. There might be other opportunities to spread payments out to fully utilize the ABLE Act. It will be very difficult, however, to handle a \$50,000 inheritance or a \$100,000 personal injury settlement this way.

The parent (or grandparent) with a small estate and a fear of lawyers.

Do you intend to leave money to your child (or grandchild, or family friend) with a disability? You almost certainly should be setting up a special needs trust. But if you really are only going to leave, say, \$10,000 to your child, then you could consider making the gift to an ABLE Act account. You will subject your money to the payback requirement upon your child's death, but maybe that is not a very large concern for you.

The family very interested in giving their child more autonomy and control.

Maybe you are less worried about the amount of money and the possibility of having to pay back the state Medicaid agency, and more concerned about the personal dignity and autonomy flowing from your child having control over at least small amounts of money. You can't put \$5,000 into their checking account because it would make them ineligible for SSI (and maybe for Medicaid). But you could put that same \$5,000 into an ABLE Act account and your child could have almost full control over the use of the funds. The value of that self-determination might well be worth more than the limitations in the ABLE Act.

The special needs trustee who wants to give a beneficiary more control.

As with family contributions, it might sometimes be a good idea for a special needs trust to put money into an ABLE Act account. It's not yet completely clear when this might work – but small payments from at least some kinds of special needs trusts might benefit the ABLE Act participant.

There are quite a few unanswered questions. The Internal Revenue Service and the Social Security Administration both need to adopt regulations defining terms and setting final limits. States need to adopt ABLE Act account legislation (though a handful are well on their way to accomplishing that step already). The financial industry needs to actually set up the accounts. Then, and only then, will you be able to open an ABLE Act account.

Will ABLE Act accounts be a huge game-changer for people with disabilities? No – but they are one more tool available to individuals and their families. You should discuss ABLE Act accounts with the lawyer who helped you prepare your special needs trust. Thank Congress for introducing this new option and all of the advocacy organizations who spent years lobbying Congress to pass the ABLE Act. Finally, advocate in your state for the enabling legislation necessary before you can use the ABLE Act.

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