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What Does the ABLE Act Mean for You?

If you or a loved one receives supplemental security income (SSI) and Medicaid, you are most likely aware that an individual on these benefits can have no more than $2,000 of countable assets[1] in their name. These benefits are important and most people cannot afford to lose them, even for a short time. If an individual on benefits earns or receives funds that might jeopardize those benefits, they must either refuse the funds or quickly spend them down. Saving for the future is certainly not encouraged.

As an example, let's say an individual is on SSI and Medicaid. Without Medicaid his medications would cost him about $10,000 a month. His government benefits are therefore vital for his financial and medical well-being. One day this same individual receives an award of $5,000. What should be a blessing for him becomes a source of fear and anxiety, as this award could result in the elimination of much needed benefits. In the past this individual would need to spend that money quickly or simply refuse the award in order to maintain benefit eligibility.

Beginning on **February 26, 2017** there will be an easy solution for Alabama residents in this situation: establishing an ABLE account!

Congress passed the Achieving a Better Life Experience (ABLE) Act in December 2014. The ABLE Act allows disabled individuals to establish tax advantaged savings accounts, which are quite similar to Section 529 education savings accounts. Any income earned in these accounts is not taxable. More importantly, these accounts are not a countable resource for government benefit purposes (subject to certain restrictions discussed below). The assets in the account can be spent on "qualified disability expenses" (which are broadly interpreted to mean almost anything a disabled individual may need).

Anyone can establish and contribute to an ABLE account, but the account must be established for a designated beneficiary. Even the designated beneficiary can establish and contribute to an account. There are several important requirements and restrictions regarding an ABLE account:

1. A beneficiary may have only one ABLE account.

[1] Some assets are exempt from this rule, such as a personal residence, a vehicle, personal possessions and certain burial and life insurance policies.

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2. The beneficiary's qualifying disability must have occurred prior to age 26 (however, the account can be established at any age).

3. The beneficiary must be "disabled." There are two ways to qualify as disabled. First, the beneficiary is disabled if he or she is receiving either SSI or SSDI. In the event a beneficiary is not receiving either of these benefits, there is a procedure for certifying one's disability status in writing.

4. There are certain financial limits for these accounts. First, the total amount that may be contributed on a yearly basis is **$14,000**. This limit will increase in the future as there are adjustments for inflation. Second, the total amount that an individual may have in the account will be the same as a state's limits on Section 529 plans. However, the practical limit is going to be **$100,000**, as that will be the limit for SSI purposes. Social Security will consider any funds over $100,000 to be a countable resource.

5. Once the account is established it can only be spent on "qualified disability expenses." The law provides some examples, which include: education, housing, transportation, employment training, financial management and administrative services, legal fees, and funeral and burial expenses.

6. An individual may establish his or her own ABLE account on-line or a guardian, conservator or agent under a Power of Attorney can establish one for an individual by submitting a paper application.

One important limitation in the Act is that **any amounts remaining in the account upon the death of the beneficiary must be repaid to the State for prior Medicaid benefits**. An ABLE account may be re-designated for another individual, but not after the death of the designated beneficiary.

The Alabama Treasury Secretary announced that the Alabama ABLE plan will be open as of February 26, 2017, and the website is now live. In order to establish an account, you should visit www.enableAL.com. An individual can establish his or her own account by visiting this site and does not need to have the assistance of a financial or legal adviser.

How would an ABLE account work in real life? In the example above, the individual in question could establish an ABLE account prior to receiving the $5,000 award. As soon as he received his funds, he would deposit that amount into the ABLE account. The funds would not be counted for benefit eligibility (he keeps his benefits) AND he would have access to the funds at any time in the future for needs that might arise. This same individual (or friends and family)

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could contribute up to $9,000 more to his account in the same calendar year. He would maintain his benefits so long as the account does not exceed $100,000 in total value.

In some cases, an ABLE account can be a better alternative to a special needs trust, as the beneficiary has more control and it is less expensive to establish and administer. The downside is that unlike a special needs trust, the amount is effectively capped at $100,000. In addition, the ABLE accounts require a Medicaid payback upon death, whereas there is no such payback requirement for special needs trusts established with a third party's funds.[2]

These accounts are another useful tool available in special needs planning. Individuals should consult with their legal and financial advisors regarding the appropriateness of these accounts for their own plan. Everyone's situation will be different. When the earnings of a disabled individual may jeopardize benefits, an ABLE account is most likely the best option. In some cases an ABLE account will provide a tremendous benefit for a disabled individual, but in others that individual may be better suited with a special needs trust.

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[2] If a special needs trust is funded with the assets of a disabled individual it is called a first party trust and it would need to include a payback provision. First party trusts are commonly used in situations where an inheritance or litigation settlement would otherwise disqualify an individual from needs-based government assistance.

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