



SPECIAL REPORT INTRODUCTION TO THE ACHIEVING A BETTER LIFE EXPERIENCE (ABLE) ACT OF 2014

The federal ABLE Act was signed into law on December 19, 2014. It marked the end of a campaign that began in 2006 to approve the use of tax-free savings accounts for individuals with disabilities to cover expenses not covered by government sponsored programs. It is important because it shines a light on the extra and significant costs of living for a person with disabilities and shows the need to have sustainable options for people with disabilities.

Goal: Allow those with disabilities to have a supplemental source of income beyond those provided by governmental programs, such as Medicaid and Social Security.

What does the Act do?

Allows individuals who have been diagnosed with a disability before age 26 to open an ABLE account (limit 1 per person), which can accept up to the annual gift-tax exemption amount (\$14,000 for 2017) per year, similar to a 529 college savings account. The account funds can then be used for the following: 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 other expenses, which are approved by the U.S. Secretary of the Treasury under regulations and consistent with the purpose of the Act.

Who Qualifies to Get an ABLE Account?

- ♦ Qualify in 2 ways:
 - ♦ 1. Anyone diagnosed as disabled before age 26 and receiving Supplemental Security Income (SSI) or Social Security Disability Insurance (SSDI).
 - ♦ 2. Anyone diagnosed as disabled before the age of 26 and *certified* as meeting the conditions similar to that required by SSDI or SSDI.
 - ♦ Any individual who has been diagnosed with a disability before the age of 26 years old, who has a medically determined physical or mental impairment, which results in marked and severe functional limitations, and which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months or is blind, and provides a copy of their diagnosis by a physician.
 - ♦ Developmental disabilities probably will not be difficult to get certified for before the age of 26. More difficult will be mental health issues – when did they start and how to show? Need to save records of mental health issues to help get certified for an ABLE account when it is available.

**Page 2 - SPECIAL REPORT
INTRODUCTION TO THE
ACHIEVING A BETTER LIFE EXPERIENCE (ABLE) ACT OF 2014**

ABLE Act and SSI

- ◆ If the beneficiary is receiving SSI benefits, when the assets in the account total \$100,000, any monthly SSI benefits will be placed on suspension. (Actually, \$102,000 because you can have \$2,000 in assets and remain on SSI benefits).
- ◆ If the assets drop back below \$100,000, the SSI benefit suspension ceases and any SSI benefits resumes.
- ◆ The beneficiary will not have to reapply for SSI benefits once the account drops back below the \$100,000 threshold.

ABLE Act and Medicaid

- ◆ ABLE account beneficiaries **do not lose** Medicaid eligibility based on assets in their ABLE account or suspension of SSI benefits.

Penalties

- ◆ Withdrawals must be for qualified expenses or else the earning portion would be subject to regular income tax and a 10% penalty (state penalties would also apply).

Medicaid Payback

- ◆ In the event the qualified beneficiary dies with remaining assets in the ABLE account:
 - ◆ The assets in the ABLE account are first distributed to any State Medicaid plan that provided assistance to the designated beneficiary.
 - ◆ The amount of any such Medicaid payback is calculated based on amounts paid by Medicaid **after the creation** of the ABLE account.

Administration of the ABLE Act and when will these accounts be available?

- ◆ To be administered by the states on a voluntary basis similar to 529 college savings plan.
- ◆ Even though the Act has been signed into law, the Secretary of the Treasury is required under the ABLE Act to promulgate regulations and other guidance. On June 19, 2015, the IRS released a Notice of Proposed Rule Making for the ABLE Act. The proposed regulations were open for public comment until September 21, 2015, and a public hearing was held on October 15, 2015.
- ◆ States are already in the process of passing enabling legislation even though the federal regulations are not in place. In Colorado, HB 15-1359 was signed in to law on June 3, 2015, as enabling legislation. However, there are still many questions with how this program will operate and interact with Medicaid and other government programs, therefore, additional legislation and regulations will most likely be necessary before the accounts can be used with any certainty.