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The ABLE Act

On December 16, 2014 Congress passed the ABLE Act of 2014 (Achieving a Better Life Experience); it was signed into law on December 19th. Under this Act qualified individuals who have disabilities can have a tax-free savings account that supports their health and independence while maintaining their means-tested public benefits. An ABLE account may be useful in addition to, and generally not in lieu of, other traditional special needs planning. Regulations have not yet been written.

Under the ABLE Act states may (but are not required to) develop programs that enable people with disabilities to establish accounts modeled on the 529 college savings plans. States will likely partner with a designated financial service provider to offer investment options for ABLE accounts. States that don't elect to participate can contract with states that do create ABLE plans.

Funds can be used for approved “disability-related” purposes, including healthcare, education, housing, transportation, employment training and support, assistive technology, personal support and other care expenses, legal fees, expenses for oversight and monitoring, and funeral expenses. The first \$100,000 in an ABLE account will not adversely affect the individual's eligibility for SSI benefits.

To qualify, the onset of the individual's disability must have occurred prior to age 26. Only one ABLE account may be established for each qualified person with special needs. Total annual contributions cannot exceed the federal gift tax limit (\$14,000 as of 2015), while total contributions from all contributors to the one account are capped at the limit established by each state for its 529 accounts (\$235,000 in Georgia). Contributions are not tax-deductible, but income earned by the accounts will not be taxed. *Funds remaining in the account at the beneficiary's death (even funds contributed by parents, grandparents and others) must first be used to reimburse Medicaid for expenses incurred.*

If an individual is not capable of managing his own ABLE Account then it may be necessary to have a Conservator appointed for him, for purposes of establishing and managing the account. This adds some expense (in court filing fees and bonding fees) and ongoing reporting requirements to the establishment and ongoing maintenance of such an account.

So will an ABLE Act account be of benefit to you or your family member with

special needs? Maybe, but carefully weigh the pros and cons of each.

An ABLE account may make sense for: (a) an individual who receives an inheritance of less than \$14,000 that is not properly left to a third party special needs trust by the deceased relative; (b) an individual who receives a litigation settlement of less than \$14,000; or (c) an individual who has accumulated unspent SSI/SSDI/earnings that will push the individual’s resources over the allowable amount. However, keep in mind that only \$14,000 may be contributed by all contributors into one account in one calendar year.

Following is a chart comparing the criteria for the individual “d4A” Special Needs Trust, the ABLE Act account, and the Third Party Special Needs Trust.

	Individual SNT	ABLE Act Account	Third Party SNT
Who May Establish	Parent, Grandparent, Court, or Legal Guardian	Anyone	Anyone other than the Beneficiary
Source of Funds	Personal Injury Lawsuit, Inheritance, Lottery Winnings, Etc.	Personal Injury Lawsuit, Gifts, Inheritance, Lottery Winnings, Etc.	Assets of anyone other than the Beneficiary
Funding Limit	No limit	Limited to \$14,000 per year	No limit
Balance limit to maintain benefits	No limit	If balance more than \$100,000 lose SSI; if balance more than \$235,000 lose Medicaid	No limit
Age Requirement	Beneficiary must be less than 65	No upper limit. However, beneficiary must have been disabled before age 26	No Age Limit

Accounts allowed per Beneficiary	No limit	One	No limit
Use of Funds	Payments to vendors to provide quality of life for beneficiary, in the Trustee's discretion	Approved "disability-related" purposes	Payments to vendors to provide quality of life for beneficiary, in the Trustee's discretion
Court Involvement after Established	Usually none	If beneficiary is a minor or incompetent, ongoing reporting and bonding	None
Medicaid Payback	Yes	Yes	No
Who may serve as Trustee	Any responsible individual at least 18 years old, but not the Beneficiary or his spouse	Beneficiary or his designee; funds managed by "529" administrator	Any responsible individual at least 18 years old, but not the Beneficiary or his spouse
Beneficiaries	For the sole benefit of an individual with a disability as defined by the SSA	For the sole benefit of an individual with a disability as defined by the SSA	May have multiple Beneficiaries; not all beneficiaries must have a disability

