

Special Needs Planning/ABLE Act/Special Needs Trusts

Presented by
Elizabeth A. White, CELA*

Marshall, Parker
& Weber, LLC

*Certified Elder Law Attorney by the National Elder Law Foundation under authorization of the Pennsylvania Supreme Court

What is Special Needs Planning?

Planning for a person with a disability

- Financial management
 - Benefit programs – SSI, Medicaid
 - Rep-Payee
- Health care decision making
- Living arrangements and care needs
- Education and employment

Evaluate the Situation

Who is your client?

- Person with special needs
- Parent of person with special needs
- Grandparent of person with special needs
- Agent or Guardian for person with special needs

What are his or her goals?

What is the disability?

What are the funds that you are planning with?

Achieving a Better Life Experience (ABLE) Act

Background

- Introduced in Congress on February 13, 2013 by bipartisan bill (H.R. 647/S. 313)
- Signed into law by President Obama on December 19, 2014
- The ABLE Act amends the IRS Code of 1986 to create tax-free accounts for individuals with disabilities
 - 26 U.S.C. § 529A

Who can Establish an ABLÉ Account?

- Individual with disability him/herself; or
- Parent, Guardian or Agent under POA



Who is an Eligible Beneficiary of an ABLER Account?

- Must have developed disability before turning **26 years of age**
 - Account does not have to be established before age 26
 - Need documentation of onset of disability prior to age 26
 - SSI eligibility based on disability or blindness
 - Entitled to disability insurance, childhood disability benefits, or disabled widow or widower's benefits based on disability that began before age 26
 - Certification by individual with disability or parent or guardian
 - No inference from Social Security regarding disability may be drawn if certification

Who can Manage an ABLER Account?

- Individual beneficiaries themselves can manage the ABLER account, including having signatory authority as to when distributions can be made; or
- A person with signature authority for someone who is unable to manage the account, or for a minor child.

Who can Contribute to an ABLER Account?

- Individual with disability
- Family member
- Friend
- Stranger
- Any person (IRS Code definition of person includes trust, estate, partnership, association, company, or corporation)

Only ONE Account Permitted

BUT, an individual can only
have ONE ABLE account

What are the Tax Benefits of an ABLER Account?

- Income earned by the account is not taxed (tax-free growth)
- Distributions are not taxed when received for qualified disability expenses



What are the Benefits of ABLE in Relation to SSI and Medicaid?

- Accounts do not affect eligibility for public benefits, such as SSI or Medicaid
 - Strict asset limits to receive benefits
 - Typically \$2,000.00
 - \$100,000.00 ABLE account balance for SSI purposes
- Funds can be used for “qualified disability expenses”

What are Qualified Disability Expenses?

Qualified Disability Expenses

- Education
- Housing
- Transportation
- Employment training and support
- Assistive technology and related services
- Health
- Prevention and Wellness
- Financial management and administrative services
- Legal fees
- Expenses for ABLE account oversight and monitoring
- Funeral and Burial
- Basic living expenses

How Much can be Placed in an ABLE Account?

- There are limits to the amount of money that can be contributed to an ABLE account
- The yearly limit is based on the federal gift tax exemption amount
 - This year that amount is \$14,000.00
 - The amount is indexed for inflation

How Much can be Placed in an ABLA Account?

- For 2017, the maximum TOTAL amount that can be contributed by all individuals is \$14,000.00
 - Example: Mom cannot deposit \$14,000.00 into the ABLA account and grandma deposit \$14,000.00 into the account in the same year
 - Example: Husband and wife cannot each deposit \$14,000.00 into the ABLA account in one year
- There are also limits on the total amount that can be held in a plan
 - These limits vary from state to state
 - Based on aggregate 529 contribution limit
 - Pennsylvania is high at \$511,758.00

Where should an ABLE Account be Set Up ?

- An ABLE account can be set up in the beneficiary's state of residence.
- Each state can set up its own ABLE program
- If your state does not have a program, you can set up an account in a state that has contracted for ABLE accounts.

Is there a Payback at the Death of the ABLE Beneficiary to Medicaid?

- Yes, pursuant to Federal law
- **BUT**, no, under current Pennsylvania law
- Subject to different interpretations



When will you be *able* to ABLE in Pennsylvania?

Governor Wolf signed ABLE legislation on April 18, 2016

- Known as Pennsylvania ABLE Act
- PA Department of Treasury is working to implement
- <http://paable.gov/>

Other States that currently have ABLE Programs

- STABLE Account (Ohio)
- AlaksaABLE plan
- Illinois able
- Iable (Iowa)
- KansasABLE
- MinnesotABLE
- ABLE Nevada
- NC ABLE
- RI's ABLE
- <https://savewithable.com/>

Pros of ABLE Accounts

- The cost of setting up and administering an ABLE account will likely be less than a trust
 - If there are minimal funds to contribute, costs will be less compared to other planning methods
- Funds are consolidated into one account
 - No need to worry about multiple trusts set up by different people
- Funds can be controlled by the person with the disability if he or she is able
 - No need for a trustee

Pros of ABLE Accounts, cont.

- Rollover of funds to another ABLE account
 - Designated beneficiary's family

Limits of ABLE Accounts

- \$14,000.00 a year may not be enough to supplement the person's needs
- If disability developed after the age of 26, cannot establish an ABLE account
- Federal: If there are funds in the account upon the death of the beneficiary, the funds must be used to reimburse the State as a creditor to the extent of Medicaid Benefits received by the beneficiary after the establishment of the ABLE account

Proposed Amendments to ABLE

- ABLE to Work Act
- ABLE Financial Planning Act
- ABLE Age Adjustment Act

Special Needs Trusts: Support vs. Supplemental

- Support Trust will disqualify from public benefits
 - A majority of clients do not want a support trust, because seeking to preserve benefits
- Supplemental Trust (if drafted properly) will not cause issues with eligibility for benefit programs

Special Needs Trusts

- Two types of special needs trusts
 - Self-settled
 - Third party
 - Pooled trusts can be either self-settled or third party



Self – Settled Trusts - d(4)(a)

- 42 USC 1396p(d)(4)(a)
- Established with the funds of the person with the disability
 - Example: Vehicle accident litigation proceeds
- Assets are not included as available for SSI or Medicaid
- Individual with a disability must be under the age of 65
- Prior to the Special Needs Fairness Act, had be established by the parent, grandparent, or guardian of the person with the disability, or by a court

Special Needs Fairness Act

- Part of the 21st Century Cures Act (Act H.R. 34 (2015-2016) signed into law by President Obama
- Effective December 13, 2016
- Allows an adult with a disability that has capacity to establish and fund his or her own self-settled special needs trust

Self – Settled Trusts, continued...

- Have to be concerned with any prior Medicaid benefits received prior to the creation of the trust
- On the death of the beneficiary, assets must be used to pay back state Medicaid agency to the extent of the benefits provided
- Must be irrevocable
- Individual with a disability cannot serve as trustee

Third Party Trusts

- Funded with the assets of a third-party (parent, grandparent)
- Established by the third-party
- Assets are not included as available for SSI or Medicaid
- No age limit

Third Party Trusts, continued...

- No payback provision to Department of Human Services for Medicaid benefits received
- Can name contingent beneficiaries
- Can be revocable
- No limits on amount placed into the trust
- Individual with a disability cannot serve as trustee
- Most flexible of trusts

Pooled Trusts

- 42 U.S.C. 1396 p (d)(4)(C)
- Can be funded with the person with the disability's funds or third-party funds
- Can be established by the individual him/herself, parent, grandparent or guardian of the person with the disability, or by a third-party
- Assets are not included as available for SSI or Medicaid
- Disability must have manifested itself before age 65
- Irrevocable Trust
- Typically less expensive to establish than other special needs trusts

Pooled Trusts, continued...

- Trust document is prepared by a non-profit pooled trust company
- Administered by established non-profit pooled trust organizations
 - Separate account is set up for each beneficiary, but for investment and management purposes all of the trusts are pooled
- Requires payback provision either to State to the extent of Medicaid benefits received, or back to the pooled trust to benefit others with disabilities
- Minimum amount of funds required is less than for other types of special needs trusts

Hypothetical I

Max Braverman

He has Asperger Syndrome

Minor – 15 years old



Parents – Adam and Kristina Braverman

Kristina – Just started a school for children with special needs

Adam – Working with his brother in recording studio business, not going so well



- Don't have a lot of funds at this time to set aside for Max
- Max is unable to handle funds now, as he is a minor
- Max may be able to handle funds himself when he is older

Hypothetical II

Walter White, Jr. (also goes by Flynn)

He has Cerebral Palsy

Minor – 17 years old



Parents – Walter and Skyler White

Walter and Skyler White –
Have a significant amount
of money from the “car wash”
business. They are worried
about future creditors.
Walter is in treatment for
cancer.



- Walter Jr. is pretty good with finances already (he even raised money for his father’s cancer treatment)
- Anticipate that he will be able to handle funds himself in the future
- They want to contribute over \$14,000.00 a year towards Walt Jr.’s future needs

Hypothetical III

DiMeo Family

JJ DiMeo has Cerebral Palsy

18 years old



Hypothetical III

DiMeo Family moved to rich suburb so JJ could have a dedicated aide
Middle-Class family

- Presenter created facts:
- Mr. and Mrs. DiMeo are in a car accident and both pass away
- The DiMeos did not have Wills with testamentary special needs trust
- JJ is going to inherit \$200,000.00



Hypothetical IV

Becky Jackson
She has Down Syndrome
19 years old



Parents – Mr. and Mrs. Jackson



- Want to provide for Becky
- Becky is not good with finances
- Their other daughter, Jean, is also a young adult with a diagnosis of Down Syndrome

Questions?

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