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New act gives families way to provide health care for disabled loved ones

The creation of traditional 529 plans has made planning for the cost of college significantly easier for many American families. However, until recently, no 529 plan existed to help families of individuals with disabilities.

For many of these families, the prospect of college was not on the horizon, so a typical 529 plan was not an appropriate planning tool. Instead of worrying about the cost of college, these families are concerned with providing for the long-term health and care of their disabled loved ones.

On Dec. 19, 2014, President Barack Obama remedied this situation by signing into law the Achieving a Better Life Experience Act of 2014, or the ABLE Act. The legislation's purpose was to help maintain the health, independence and quality of life of disabled individuals by giving their families a way to save for their futures.

ABLE vs. 529 plans

Traditional 529 plans can be opened for anyone who plans to attend college with very few eligibility requirements. In contrast, to qualify for an ABLE plan, the plan's designated beneficiary must either:

- Be entitled to benefits based on blindness or a disability under Title II or XVI of the Social Security Act.
- File a disability certification with their state's secretary of state for that taxable year.

The ABLE plan defines an eligible disability as "marked and severe functional limitations," or the same standards utilized in the Social Security Act for children claiming benefits under Supplemental Security Income. Additionally, the blindness or disability must have occurred before the individual turned 26.

ABLE plans create a new type of savings plan designed specifically for disabled individuals. Just as the funds from traditional 529 plans can be used tax free on qualified college expenses, ABLE plans operate in a similar way.

Distributions from an ABLE account can be spent tax free on qualified disability expenses. The IRS defines this type of expense broadly as including expenses related to education, employment training, housing, health, personal support services and funeral costs.

ABLE plans are designed to take into account the special resources that disabled individuals rely on. Unfortunately, most essential services for disabled individuals are provided through federal and state programs designed for low-income individuals. This can make saving for the future of a disabled family member difficult because it could potentially disqualify them from receiving much-needed services.

$100,000 threshold as 'countable asset'

ABLE plans, however, can help make saving for a disabled individual's future easier. As long as a beneficiary's ABLE plan account balance is less than $100,000, the money in the account is not counted in determining the individual's eligibility for governmental assistance.

This makes it possible to safely keep up to $100,000 that can be used to cover various expenses without disqualifying the beneficiary from federal and state assistance programs. Contributions to an ABLE plan in a taxable year are limited by the annual gift tax exclusion (currently $14,000 per person or $28,000 for a married couple).

State nuances and IRS guidance

The initial ABLE Act provided that an ABLE account could be created only in the account owner's state of residence. However, the Consolidated Appropriations Act of 2016 modified this requirement, allowing an ABLE account for a qualified individual to be established in any state of his or her choosing.

THE BUZZ

Lindsey Paige Markus

Lindsey Paige Markus, a principal at Chuhak & Tecson P.C., draws on her early career in business, finance and clinically applied neuroscience to communicate with clients and develop creative solutions to fit their estate planning, wealth protection and corporate needs. She has been recognized as one of the 40 Illinois Attorneys Under Forty, a Woman Making an Impact in the Law and an Illinois Super Lawyer Rising Star. She is a collaborative law fellow and is licensed in Illinois and Florida.

Although the ABLE Act became law at the end of 2014, the IRS is still working out a set of final regulations, which it expects to publish by the end of this year. As of the date of publication of this article, the IRS has not yet released details on opportunities to convert a traditional 529 Plan into an ABLE plan, but observers are hopeful that as more states adopt ABLE Acts, additional guidelines will follow.

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Even though the finalized regulations are not published yet, states have started rolling out their individual ABLE programs. As of October 2016, ABLE programs are accepting enrollment in Florida, Nebraska, Ohio and Tennessee.

While they have not yet opened their ABLE plans for enrollment, 11 states have created web pages to provide updates on the progress of their ABLE plans. Illinois is in this group. Other states are: California, Colorado, Michigan, Missouri, Oregon, Pennsylvania, South Carolina, Texas, Utah and Virginia.

ABLE plans in Illinois are administered by the state Treasurer Michael Frerichs. After an inquiry, the treasurer's office said an estimated date for the implementation of Illinois' ABLE plan and was advised that Illinois' ABLE plans are expected to be open for enrollment in late 2017.

Special needs trusts — still a critical planning tool

However, because funds in excess of $100,000 in an ABLE account will be counted in determining eligibility, many families should consider special needs trusts as an additional savings vehicle.

Furthermore, any assets bequeathed to an individual with disabilities should be held in a special needs trust to ensure that a beneficiary's inheritance will not inadvertently disqualify him or her for the federal or state benefits he or she is receiving.

While the legislation continues to evolve to provide greater flexibility, families should be proactive in planning for the continued care of their loved ones with special needs.

— Markus sits on the Advocate Charitable Foundation's gift planning advisory committee. Advocate and Northern Trust are hosting a complimentary adviser breakfast on special needs planning on Oct. 28. Free Continuing Legal Education and Continuing Professional Education credit is available. To register for the event, call John Holmberg at (630) 929-6945.

Special thanks to Chuhak & Tecson P.C. law clerk Hannah Aztlan for her contribution to this month's column.