

BASICS OF THE ABLE ACT

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Agenda for today's presentation

- ▶ Background information on federal benefits
- ▶ Eligibility requirements for ABLE accounts
- ▶ Impact on Federal benefits
- ▶ Setting up an account.

Federal Disability Benefits

▶ **Social Security Disability Benefits (SSDI)**

- entitlement program (someone worked and paid in Social Security trust fund)
- There are no limits to how much money you can have in the bank.
- Person receiving SSDI cannot earn more than **\$1,170 per month** by working, a person collecting SSDI can have any amount of income from investments, interest, or a spouse's income.

▶ **Supplemental Security Income (SSI)**

- pays a monthly cash benefit to a child or adults who has a disability and limited means to support themselves.

ABLE Accounts

- ▶ The ABLE Act is a federal law. (December 19, 2014)
- ▶ The Stephen Beck, Jr. Achieving a Better Life Experience (ABLE) Act.
- ▶ The ABLE Act creates a new savings tool for *certain* people with disabilities. To provides an option to **save for the future**, while protecting eligibility for public benefits.

What is an ABLE account?

- ▶ **ABLE Accounts:**

- ▶ Established in the new section 529A Qualified ABLE Programs
- ▶ Are qualified savings accounts that receive preferred federal tax treatment (529A account).
- ▶ Enable eligible individuals to save for disability-related expenses.

- ▶ **There are currently 28 ABLE programs enrolling qualified individuals.**

- ▶ **-The ABLE program in West Virginia is currently a work in progress. (Signed into law - program in development) But in every state that has an ABLE program, except for Florida and Kentucky, you don't have to be a resident to have an account setup.**

The benefits to setting up an ABLÉ account.

- ▶ **The assets in an ABLÉ will not adversely affect your eligibility for most federal means-tested benefits. (such as SSI, SSDI, Medicaid...)**
- ▶
- ▶ The money in the account will be disregarded or given special treatment in determining eligibility for federal programs.
- ▶
- ▶ **When an individual takes a distribution for a “qualified disability expense” that distribution will be disregarded or given special treatment in determining eligibility for most federal means-tested benefits.**

Basic ABLÉ account rules.

- ▶ Each eligible person may have only 1 ABLÉ account.
- ▶ Designated beneficiary is the eligible individual who established the account and is the account owner.
- ▶ The account owner (designated beneficiary) is the person with the disability. This is a significant difference from a college savings plan account.
- ▶ There is no longer a federal residency requirement related to establishing an ABLÉ account unless otherwise established by a given program. (Only Florida and Kentucky have a residency requirement)

Can someone other than an eligible individual setup an ABLE account?

- ▶ Yes another person may be allowed signature authority over the account if the eligible individual is unable to establish the ABLE account on their own behalf.
- ▶ The person MUST be one of these.
- ▶ 1) parent
- ▶ 2) guardian
- ▶ 3) person with power of attorney
- ▶ A person other than the designated beneficiary with signature authority over the account **may not** have or acquire any beneficial interest in the account and must administer the account for the benefit of the designated beneficiary of the account.

ABLE Account Features

- ▶ Rollovers and program-to-program transfers are allowed to a family member (sibling, half-sibling, step-sibling) who is an eligible individual.
- ▶ The ABLE account can retain its protected status if the person is no longer disabled and can be reinstated for use if the individual becomes disabled again.

Important contribution requirements for ABLE accounts

- ▶ Total annual contributions may not exceed the federal gift tax contribution, which is currently \$14,000. **This may be periodically adjusted for inflation.**
- ▶ Total lifetime contributions may not exceed the state limit for a 529A savings accounts, typically set at over \$250,000.

Who can contribute to an ABLE account?

- ▶ **ANYONE, including the beneficiary, their family, friends and others, may make contributions to an ABLE account.**
- ▶ Multiple individuals may make contributions to an ABLE account so long as the annual and lifetime caps are not exceeded.
- ▶ **These caps apply collectively not individually.**

Who is eligible for ABLE accounts?

- ▶ To be eligible, individuals must meet two requirements:
 - ▶ **Age requirement:** must have had an onset of disability prior to their 26th birthday
 - ▶ **Severity of disability:**
- ▶ Have been determined to **meet the disability requirements** for Supplemental Security Income (SSI) or Social Security Disability Insurance (SSDI)
- ▶ OR
- ▶ Submit a **disability certification**, including a physician's diagnosis, that the individual meets certain criteria.

What is a Disability Certificate?

A document that says:

- ▶ 1.The individual:
 - ▶ A. Has a medically determinable physical or mental impairment that results in **marked and severe functional limitations** and that—
 - ▶ 1.Can be expected to result in death; or
 - ▶ 2.Has lasted or can be expected to last for a continuous period of not less than 12 months; or
 - ▶ B. Is blind within the meaning of the SSI program
- ▶ 2.The blindness or disability occurred before the age of 26
- ▶ 3.The individual will be expected to declare that s/he has a signed physician's diagnosis and that s/he will retain that diagnosis and provide it to the IRS upon request.

Disability Certificate

- ▶ **This document is signed under penalties of perjury by the person with the disability, the person establishing the account, or the person with signature authority.**
- ▶ Marked and severe functional limitations” - a level of severity of disability that meets, medically equals, or functionally equals the severity of any listing in SSA’s listing of impairments.
- ▶ Why? Requiring the certificate means that eligible individuals with disabilities will not need to submit extensive medical information when opening an ABLE account, and ABLE programs will not need to receive, retain, or evaluate detailed medical records.

How can funds from an ABLÉ account be used?

- ▶ Distributions from an ABLÉ account may be made for **qualified disability expenses**.
- ▶ **Qualified disability expenses** are expenses that relate to the designated beneficiary's blindness or disability and are for the benefit of that designated beneficiary in maintaining or improving his or her health, independence or quality of life.
- ▶ The term **qualified disability expenses** should be broadly understood to permit the inclusion of basic living expenses and *should not* be limited to:
 - ▶ expenses for items for which there is a medical necessity, or
 - ▶ which provide no benefits to others in addition to the benefit to the eligible individual.
- ▶ The primary purpose of the expense must be to benefit the account holder.

Examples of qualified disability expenses may include 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

Examples of qualified expenses continued

- ▶ Expenses for oversight and monitoring
- ▶ Basic Living Expenses
- ▶ Funeral and burial expenses
- ▶ Any other expenses approved by the Secretary of the Treasury under regulations consistent with the purpose of the program

- ▶ *Distributions for non-qualified expenditures will be subject to tax consequences and may affect eligibility for federal means tested benefits.*

How do ABLÉ account assets impact eligibility for federal benefits?

- ▶ ABLÉ assets will be disregarded or receive favorable treatment when determining eligibility for *most* federal means-tested benefits.
- ▶ ONE EXCEPTION -SSI

Your ABLE Account can affect your SSI eligibility?

- ▶ Supplemental Security Income (SSI):
- ▶ Only the first \$100,000 in ABLE account will be disregarded.
- ▶ SSI payments (monthly cash benefit) will be suspended if the beneficiary's account balance exceeds \$100,000, but SSI benefits (eligibility) will not be terminated. **Funds above \$100,000 will be treated as resources.**
- ▶ Housing expenses receive the same treatment as all housing costs paid by outside sources. However, new Social Security instructions will treat housing expenses as resources only if distributed in one month and held until the following month. If you don't want a distribution for a housing expense to affect SSI you need to use the funds in the same month as they are distributed.

How do ABLE account assets impact eligibility for Medicaid?

- ▶ **Medicaid:**

- ▶ ABLE assets are disregarded in determining Medicaid eligibility.

- ▶ If you receive SSI, Medicaid benefits are not suspended if the ABLE account balance does not exceed \$100,000

- ▶ **Medicaid Payback Provision:**

- ▶ If there are assets in the ABLE account when a beneficiary dies, the assets can be used to **reimburse a state** for Medicaid payments made on behalf of the beneficiary after the creation of the ABLE account.

- ▶ The state has to file a claim for those funds.

- ▶ In this instance, the state is considered a creditor, not a beneficiary, of the ABLE account.

Setting up an ABLÉ account

- ▶ Enrollment is completely online.
- ▶ Visit www.ablenrc.org
- ▶ Use the comparison tool to find the program which meets your needs: http://www.ablenrc.org/state_compare
 - ▶ Compare items such as: program requirements (residency), costs, tax deductions and credits, minimum contribution, fees or restrictions, debit card/purchasing card option.
 - ▶ Find the State Program Administrator to enroll: <http://www.ablenrc.org/state-review>

Areas of Concern for Development of State ABLE Program

- ▶ Reduction of administrative burden on the state agencies/program administrators to ensure affordable ABLE programs and low fees.
- ▶ We need to ensure that state ABLE programs are not required to collect sensitive personal and medical information about designated beneficiaries.
- ▶ Lack of uniformity nationwide. There are currently no common forms or process. This is a particular area of concern regarding the disability certification.

Special Needs Trust v. ABLE Account

- 1) Trusts can be setup as:
 - a) 1st party – beneficiary funds subject to Medicaid Payback provision
 - b) 3rd Party – 3rd party funds not subject to Medicaid Payback provision.
- 2) Trusts CANNOT be controlled by beneficiary.
- 3) SSI and Medicaid rules will apply to funds.

Special Needs Trust v. ABLE Account

- ▶ Special Needs Trusts and ABLE accounts both provide ways for people with disabilities to maintain eligibility for means-tested federal benefits while enjoying certain benefits from additional funds.
- ▶ ABLE accounts provide the person with the disability with control. They get some financial independence.
- ▶ SNT provide no independence as they are managed by a trustee.

Special Needs Trust v. ABLE Account

- ▶ ABLE accounts by their design are very easy to setup and maintain.
- ▶ SNT are very complex and expensive to setup and maintain. You will need professional help most likely.
- ▶ An ABLE account is easy to transfer from one state to another.
- ▶ A person needs in-depth knowledge of ever changing regulations in order to manage a SNT.
- ▶ There are no annual or lifetime limits on the money that can be placed in a SNT. ABLE accounts have strict annual and lifetime caps.
- ▶ An ABLE account can only hold money (investments) while a SNT can hold personal property and real property (house or land) as well as cash.

Resources for this presentation:

- ▶ Social Security administration
- ▶ www.ssa.gov
- ▶ ABLE National Resource Center
- ▶ www.ablenrc.org
- ▶ National Disability Institute
- ▶ <http://www.realeconomicimpact.org>
- ▶ Internal Revenue Service (Earned Income Tax Credit)
- ▶ Contact Volunteer Income Tax Assistance (VITA) at 1-800-906-9887 or visit www.irs.gov/eitc

Questions

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- ▶ **Disability Rights of West Virginia**
- ▶ **800.950.5250** (*toll free*)
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