



## Elder Law: The ABLE Act is a useful alternative for people with disabilities

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Developing a plan for a person with disabilities involves a number of issues. Typically, this involves relying on various government benefits that are crucial to the enhancement, if not survival, of a person who is unable to secure consistent gainful employment.

We have discussed in prior columns the use of Special Needs Trusts as an important option to hold assets in trust that are not counted for the strict financial tests related to eligibility for benefits through the Medicaid and Social Security programs.

Now, after many years of debate and political negotiations, people with disabilities have another tool to assist them in leading a better life.

On December 19, the federal Achieving a Better Life Experience (ABLE) Act was signed into law. This law allows eligible individuals with disabilities to establish qualified ABLE Accounts that resemble qualified tuition programs (known as 529 Plans) that give individuals more control and choices about how their funds are spent on “qualified” disability expenses while still maintaining eligibility for important government programs.

The ABLE Act creates a new section 529A in the Internal Revenue Code. At first glance, it may appear that an ABLE Account can eliminate the use of a Special Needs Trust. However, the ABLE Account has numerous limitations that cannot suffice as a full substitute for a well-designed estate plan that involves a Special Needs Trust. That said, once ABLE is established in Pennsylvania, there appear to be several uses that will assist people with disabilities in handling their own funds.

Here are some key features of the new ABLE Accounts under federal law, which may be slightly adjusted when Pennsylvania adopts its own version.

1. An individual may have only one ABLE Account established in the state in which he/she resides.
2. Any person may contribute to the ABLE Account for the benefit of a disabled person.
3. An ABLE Account may not receive annual contributions that exceed the annual federal gift tax exemption amount (\$14,000 in 2015). A state must also ensure that aggregate contributions to an ABLE account do not exceed the state-based limits (once established) for 529 accounts.
4. An eligible individual is a person: 1. who is entitled to benefits on the basis of disability or blindness under the Supplemental Security Income program or under the Social Security disability, retirement, and survivors program OR 2. who submits certification that meets the criteria for a disability certification (to be further defined in regulations). An eligible individual's disability must have occurred before age 26.
5. The eligible individual who established the ABLE account and who is the owner of the account is the "designated beneficiary".
6. Qualified disability expenses are any expenses made for the benefit of the designated beneficiary and related to her/his disability, including: 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 Secretary of the Treasury under regulations.
7. Earnings on an ABLE Account and distributions from the account for qualified disability expenses do not count as taxable income of the contributor or the eligible beneficiary. Contributions to an ABLE Account must be made in cash from the contributor's after-tax income.
8. Assets in an ABLE Account may be rolled over without penalty into another ABLE Account for either the designated beneficiary (for instance, when moving to another state) or any of the beneficiary's qualifying family members.
9. The maximum value of an ABLE Account cannot exceed \$100,000 or government benefits may be lost. This is an important distinction between an ABLE Account and a Special Needs Trust, the latter of which has no asset limit to maintain government benefits.

10. Any funds remaining in the ABLE Account upon the death of the designated beneficiary will be subject to a Medicaid pay back to reimburse the state that provided Medicaid benefits to the beneficiary during her/his lifetime.

The ABLE Act will undoubtedly provide some relief for people with disabilities, especially those who have assets or receive assets slightly above the low eligibility thresholds established by government programs. However, given the limitations on annual contributions and maximum account value, an ABLE Account will not serve as a comprehensive estate planning solution.

Currently, Pennsylvania has not adopted the ABLE Act, so these accounts are not yet available here. However, House Bill 444 in the House Finance committee is working its way through the General Assembly and you can expect our state to adopt some form of the ABLE Act relatively soon.

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