MAINE ELDER LAW FIRM

ABLE Accounts: The Basics

1 of 3 Articles

The Achieving a Better Life Experience Act (ABLE Act) was passed by Congress in December of 2014, authorizing the states to establish programs with special financial accounts for individuals with disabilities. The ABLE law refers to these individuals as "designated beneficiaries," and they are able to save, administer, and spend funds from ABLE accounts in their own names without being disqualified from their means-tested public benefits like Supplemental Security Income (SSI) and Medicaid (called MaineCare in Maine). The accounts provide independence, dignity, and financial security.

The beneficiary is able to save up to $100,000 in an ABLE account and not risk eligibility for SSI. If the ABLE balance exceeds $100,000, SSI eligibility will be placed in suspension but will not be forfeited. If the ABLE balance drops back below $100,000, benefits will resume with no need to re-apply for SSI.

Even more can be set aside and not affect eligibility for Medicaid. The limit varies according to which state the ABLE is located, and the current range is from $235,000 to over $500,000.

The first ABLE program was launched in Ohio in the summer of 2016, and most states have now developed their own ABLE programs which are administered or overseen by the state's treasurer's office. Maine does not have a program yet, but most ABLE programs allow residents of other states to create accounts. Generally, ABLE accounts are run by state treasurers' offices, not by financial institutions. Our firm has worked with the Ohio STABLE account, and it is easy to open an account online at https://www.stableaccount.com/. When Maine develops its own program, Maine beneficiaries will be able to move their accounts to the new program.

Although there are some differences between the ABLE programs in the various states (for example, some offer debit cards and the programs charge different fees), these are the key features and restrictions for all ABLE accounts:

- In order to meet the criteria for an ABLE account, the beneficiary must be determined to have met the disability criteria before age 26 or have a physician's certificate that includes a physician's diagnosis and meets the disability criteria.
- The ABLE account may be established and administered by the individual or by his or her agent under power of attorney, parent, or legal guardian.

- A beneficiary can have only one ABLE account, but contributions can be from any source including that individual, family members, friends, or a trust.

- There is a maximum contribution amount per year which is equivalent to the federal gift tax exclusion, currently $15,000 (in 2019 and the same in 2020) in a single year. This is not per donee, but per account. As will be discussed in the third article in this series, ABLE beneficiaries who work and earn income may contribute even more per year to their ABLE accounts.

- An ABLE account may accept cash but not appreciated stock. The range of investments will be decided by the state which established the account, and the beneficiary may direct the investment of contributions to the program or earnings no more than two times per year.

Note: Federal law provides that, after outstanding qualified disability expenses have been paid, a state's Medicaid program may claim reimbursement for medical assistance provided since the ABLE account was opened. This is similar to the Medicaid payback required for first party special needs trusts (SNTs). But see the third article in this series about a recent Maine law which protects the ABLE accounts of Mainers.

ABLE accounts are tax-advantaged savings accounts, and come from tax law. They are similar to 529 education accounts (an example is Maine's NextGen plan), and are sometimes referred to as 529A ABLE accounts which is a reference to its location in the Internal Revenue Code. Contributions to an ABLE account are not tax deductible, but income earned in the account will not be taxed (similar to a Roth IRA).

Withdrawals from an ABLE account for "qualified disability expenses" will not be subject to income tax. The list of qualified expenses is very broad and essentially includes most purchases made to improve the health, independence, and quality of life of the beneficiary. Examples of non-taxable expenses include education, transportation, health, legal fees, and basic living expenses. Distributions may even be made for food and housing as explained in the second article in this series.

When an individual has excess income or assets and is at risk of losing SSI or MaineCare, an ABLE account may be the solution. Often, though, there will be too many assets for an ABLE account to be the only solution. In those cases, it may be necessary to establish a special needs trust, too. The two solutions can operate together. In other cases, the individual will be ineligible for an ABLE account due to the date of onset of the disability, and a special needs trust may be the only solution.

An attorney who focuses on special needs planning will have answers and tools to guide an individual with disabilities in maximizing all resources. For more details about ABLE accounts for individuals with disabilities, see the second and third articles in this series.