

ABLE Accounts

The Arc of New Jersey

December 6, 2017

The ABLE Act is Law

The Stephen Beck, Jr. Achieving a Better Life Experience (ABLE) Act

- Became federal law on December 19, 2014
- Creates a new option for *some* people with disabilities and their families to save for the future, while protecting eligibility for public benefits

What is an ABLE Account?

ABLE accounts are authorized in the tax code:

- Established in the new **Section 529A** Qualified ABLE Programs
- Qualified savings accounts that receive preferred federal tax treatment, similar to Section 529 college savings accounts
- Enable eligible individuals to save for “qualified disability expenses” (QDEs)

In general:

- Account assets and spending (distributions) for qualified disability expenses will be disregarded or given special treatment in determining eligibility for federal means-tested benefits, including Supplemental Security Income (SSI) and Medicaid
- Spending (distributions) from ABLE accounts for qualified disability expenses will not count as income to the beneficiary

ABLE Accounts Basics

- Saving accounts for people with I/DD - modeled after 529 college savings plans
- Designed to be easy to use, have low costs, and promote autonomy
- The beneficiary of the account is the account owner.
- Each beneficiary can have only one account.



For people with intellectual
and developmental disabilities

ABLE Accounts & Public Benefits

- Can save up to \$100,000 without impacting Supplemental Security Income (SSI) benefits
 - Once \$100,000 limit is reached, SSI cash payments will be suspended
- Funds will not impact Medicaid eligibility and coverage
- “Medicaid payback” after beneficiary dies

Achieve with us.®



*For people with intellectual
and developmental disabilities*

Contributions to ABLE Accounts

- Multiple people may make contributions to an individual's ABLE account.
- Cap on all contributions to account is equal to the gift tax exclusion (2017 - \$14,000; 2018 - \$15,000)
- Aggregate (cumulative) contributions over time may not exceed the state limit for Section 529 college savings accounts, but an individual's account may be replenished when expenditures bring it below the state's aggregate limit



For people with intellectual
and developmental disabilities

Establishing an ABLE Account

- A beneficiary can establish an account in any state's qualified ABLE program.
- If an eligible individual is unable to establish an ABLE account on his or her own behalf, the account may be established on behalf of the eligible individual by his/her agent under a power of attorney or, if none, by a parent or legal guardian.

Who is Eligible to be an ABLE Account Beneficiary?

Eligible individuals must meet two requirements:

- 1) Age: Must be disabled before age 26
 - 2) Severity of disability:
 - Must have been determined to meet the disability requirements for Supplemental Security Income (SSI) or Social Security disability benefits (includes “compassionate allowance” designation)
- OR**
- Must submit a “disability certification” that s/he meets statutory criteria (essentially equal to Social Security “listings” level of disability), including a physician’s diagnosis and signature



For people with intellectual
and developmental disabilities

What is a Disability Certification?

A disability certification with respect to an individual is a certification signed under penalties of perjury by the individual, or by the other individual establishing (or with signature authority over) the ABLE account for the individual, that—

(i) 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 section 1614(a)(2) of the Social Security Act);

(ii) Such blindness or disability occurred before the date on which the individual attained age 26 (and, for this purpose, an individual is deemed to attain age 26 on his or her 26th birthday); and

(iii) Includes a copy of the individual's diagnosis relating to the individual's relevant impairment or impairments, signed by a physician.

What is a Disability Certification? (cont'd)

- Conditions listed in the “List of Compassionate Allowances Conditions” maintained by the Social Security Administration (at www.socialsecurity.gov/compassionateallowances/conditions.htm) are deemed to meet the requirements regarding the filing of a disability certification, if the condition was present before the date on which the individual attained age 26.
 - To establish that an individual with such a condition meets the definition of an eligible individual, the individual must identify the condition and certify to the qualified ABLE program both the presence of the condition and its onset prior to age 26, in a manner specified by the qualified ABLE program.
- In most circumstances the disability certification will not need to be filed with the State ABLE Program, the Department of Treasury or the IRS prior to, or during, the establishment of the ABLE account. However, the individual attempting to open the ABLE account, or the person with signature authority, will likely be asked to sign, under penalty of perjury, that they do in fact have the disability certification and should be prepared to submit the document(s) if ever requested.

Qualified Disability Expenses

Distributions (spending) from an ABLE account may be used for “qualified disability expenses” related to the individual’s disability and made for his/her benefit, including:

- Education
- Housing
- Transportation
- Employment training and support
- Assistive technology and related services
- Personal support services
- Health, prevention, and wellness
- Financial management and administrative services
- Legal fees
- Expenses for oversight and monitoring
- Funeral and burial expenses
- Basic living expenses (added by IRS NPRM)
- Other expenses approved by the Secretary of the Treasury under regulations consistent with the purpose of the program and/or published in future guidance published in the Internal Revenue Bulletin

New Jersey's ABLE Legislation

- Anticipated opening of NJ ABLE program: 2018
- Funds in ABLE accounts will not impact eligibility for NJ state means-tested benefits
- Aggregate limit on accounts: \$305,000
- No state tax deduction

Which ABLE program will best meet an individual's needs?

- Some Considerations:
 - Program structure, ease of use, fees
 - For example, “debit card” available for withdrawals which keeps electronic records of expenditures
 - Aggregate limit on contributions
 - Investment choices
 - Are there state tax benefits?
 - Are there state means-tested benefit protections?
 - Where an individual uses an out-of-state account, will the state of residency protect state benefits programs or offer state tax incentives?

Accessibility Considerations

- **Cognitive Access:**
 - Accessible online banking with visual and other tools
 - Tools for tracking expenses, generating tax reports
 - Spending, contribution alerts
 - Direct deposit, auto-pay options
- **Other accessibility concerns:**
 - Accessible online tools
 - Ability to communicate via phone, email, or in person
 - Customer service familiar with disability and with federal benefits
 - Remember compliance is **HIGH STAKES** for people who rely on benefits!

There is another vehicle to consider...

Special Needs Trusts Basics

- A legal arrangement that lets a person with I/DD enjoy the benefit of private funds
- Preserves eligibility for federal and state benefits - money in trust is not owned by person with I/DD
- No limit on contributions
 - Can include cash and other types of assets (e.g., a house)
- Can be complex to establish and administer

Eligibility & Usage

- Beneficiary must have significant disability and in most cases be under the age of 65
- Funds from SNTs can pay some expenses not covered by SSI
- Use of funds for housing or food results in reduction of SSI benefits

Types of Trusts

- **Individual trusts:**
 - First-party: Funded by a person with I/DD's own money
 - Third-party: Funded by family members or other third parties
 - Important not to mix money from these trusts
- **Pooled trusts:**
 - Administered by non-profit organizations
 - Contains individual accounts
 - Less expensive to establish and administer
 - Can hold first and/or third party trust accounts

What's the Difference?

- ABLE accounts are intended to be easy to set up and manage. Creating and managing an individual SNT can be complex and expensive.
 - A pooled special needs trust is less complex than the individual SNT
- ABLE account can only have cash. SNT can have cash and property.
- It is possible to use both for different long and short term needs of the person.
- Talk to your financial planner or chapter of The Arc to determine what's best for your family



*For people with intellectual
and developmental disabilities*



Financial Planning is Only Aspect of Planning for the Future...

Achieve with us.®

What is Future Planning?



Future Planning is creating a guide for a person with an intellectual or developmental disability (I/DD) to lead a good life as independently as possible. A plan is important throughout all stages of life and especially in the future after the parent or caregiver is no longer able to provide support.



Center for Future Planning

*For people with intellectual
and developmental disabilities*

Learn
about future planning

Build
your future plan

Find
a professional

See
how others have planned

Get
help for urgent needs



futureplanning.thearc.org

Achieve with us.®

Resources from The Arc

- Visit <https://futureplanning.thearc.org> for information and resources on future planning
- For tips on selecting an attorney to advise you on the legal aspects of planning:
https://futureplanning.thearc.org/assets/C_FP_FindLawyer-ccb8f20d31eed11ae889507ef20d70463b255c03d2bc0249a845cd18e6222af3.pdf

ABLE Account Resources

- [The Arc's National Policy Matters: ABLE Accounts for People with Disabilities](#) is available to answer questions about the details of ABLE accounts.
- To compare state programs:
http://www.ablenrc.org/state_compare



*For people with intellectual
and developmental disabilities*

Contact Information



Robin Shaffert
shaffert@thearc.org

Center for Future Planning
futureplanning@thearc.org
202-617-3268

Achieve with us.®