

Achieving a Better Life Experience

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In late 2014, Congress passed the Achieving a Better Life Experience (ABLE) Act—think of it as creating 529 accounts for those with permanent disabilities. ABLE accounts can potentially make a huge difference in the lives of those struggling with disabilities and will be available in New Jersey starting next year. To whet your appetite, here is an overview of what to expect and a few fearless predictions as to how it may play out.

Until now, persons with disabilities could hold only minimal assets (typically, \$2,000) and still retain government benefits. This has made it challenging—if not impossible—to finance an education or buy just about anything not covered by those benefits.

The ABLE Act creates a version of the college funding 529 account to address some of this. Like 529 accounts, ABLEs are state-authorized and regulated. As is the case with 529 accounts, contributions to ABLEs are not tax-deductible, but assets grow tax free and can be withdrawn tax free to pay for Qualified Disability Expenses.

Qualified Disability Expenses is a key concept, and it's broadly defined. The rules are not yet final, but the federal government is clear that it includes expenses that improve quality of life, not just medically required costs. Those include expenses for housing, transportation, education, employment training and support, wellness, financial management and administrative services, legal fees, expenses for oversight and monitoring, and funeral and burial expenses. For instance, an individual with impaired communication or navigation ability could purchase a smart phone with ABLE funds. This is clearly the area where more guidance will develop over time.

Beyond this expansive definition, ABLEs come with many restrictions. They are only available to persons diagnosed with a qualifying disability before the age of 26. Persons over 26 can establish an ABLE so long as they were diagnosed before that age. With very narrow exceptions, a person can have only one ABLE account, in the state where he lives. Anyone can contribute to the ABLE, including the disabled person, but total contributions in any one year cannot exceed \$14,000. If the balance in the ABLE exceeds \$100,000, the individual for whose benefit it was created is suspended from federal benefit programs other than Medicaid until the balance drops. At the person's death, Medicaid would be able to recoup some expenses paid out after the account exceeded \$100,000. State-funded benefits can potentially be affected as well. Finally, it appears that the onus will be on the financial institution to determine that ABLE funds are used for Qualified Disability Expenses, and it's not clear what happens if the institution gets it wrong.

If funds are used for a nonqualified purpose, a pro rata share of gains are taxed as ordinary income and subject to a ten percent penalty. If the individual moves from one state to another, she can move the ABLE. If an individual dies leaving the ABLE unspent (and unclaimed by Medicaid), it can be used only for a sibling with a qualified disability.

What does all this mean in practical terms? The plusses are obvious to those affected, but there are some concerns as to how this plays out. Not being able to shop for an ABLÉ means the provider(s) available in any given state will have enormous control over investment choices and outcomes. Financial institutions may not flock to ABLÉs the way they did to 529 plans—potential balances are much lower, and for disabled adults, the ABLÉ is likely to function more like a checking account than a savings or investment vehicle. That can result in high fees and few choices. Further, financial institutions have also expressed concern about being the Qualified Disability Expense police, having to verify that withdrawals qualify under the rules. Still, an ABLÉ allows disabled individuals far more financial freedom than they currently experience. The ABLÉ also allows families to improve their loved one's quality of life without jeopardizing government benefits or necessarily setting up a special-purpose trust.

Because ABLÉs are to be state-enacted, they will roll out at different times. New Jersey will offer them beginning in 2017. States that choose not to enact their own law can enter into an agreement piggybacking on another state's ABLÉ.