

## Tax-Advantaged Savings Accounts for Individuals with Special Needs Finally Available in Rhode Island

In 2014, new federal legislation was enacted to help relieve the financial strain often faced by so many individuals with disabilities or special needs. The Achieving a Better Life Experience Act ("ABLE Act") was signed into law on December 19, 2014 to provide those with disabilities an equivalent means of tax incentive-based savings already available to those without disabilities.

ABLE Accounts, or 529A Plans, are trust accounts modeled after a state's 529 Education Savings Plan. Participants contribute to the ABLE Account set up for a disabled beneficiary using after-tax dollars, which thereafter enjoy tax-free growth. ABLE Accounts are intended to supplement, and not supplant, governmental benefits to which the disabled beneficiary may be entitled and can be used to cover "qualified expenses" as defined by the federal government. "Qualified expenses" include: education, housing and other basic living expenses, transportation, employment training and support, assistive technology and personal support services, health prevention and wellness, financial management and administrative services, legal fees, funeral and burial expenses.

ABLE Accounts are available to individuals who become disabled before age 26. An individual's disability status is established through (1) receipt of benefits under the Social Security Act (based on blindness or disability under Title II or XVI of the Act) or (2) the filing of a disability certification statement signed by a licensed physician. The disabled person is treated as the ABLE Account owner and beneficiary, and may contribute his or her own earnings to the ABLE Account and may also receive gifts to the ABLE Account from others. However, annual aggregate ABLE Account contributions from all sources (including the disabled individual) cannot exceed the annual federal exclusion gift amount, currently \$14,000.00. A disabled person is limited to only one ABLE Account.

A disabled individual receiving Supplemental Security Income ("SSI") can have up to \$100,000.00 in his or her ABLE Account without jeopardizing disability-related benefits, such as SSI. This is a significant difference from the \$2,000 resource limit currently available to SSI recipients. However, if an individual's ABLE Account balance exceeds \$100,000.00, SSI benefits are suspended until the Account balance once again falls below the \$100,000.00 eligibility threshold. As noteworthy: a disabled individual may own an ABLE Account totaling his or her respective state's Section 529 threshold (currently \$395,000 in Rhode Island and \$375,000 in Massachusetts) without losing Medicaid benefits. This means that even if SSI benefits are suspended due to an ABLE Account balance exceeding \$100,000, Medical Assistance benefits will remain in place.

Currently, 48 states including Rhode Island and Massachusetts, as well as the District of Columbia, have enacted some form of ABLE legislation; however, despite passing ABLE legislation, many states are still developing a plan for establishing ABLE Accounts. In December 2015, a provision in the Federal Protecting Americans from Tax Hikes (PATH) Act amended the ABLE Act to allow individuals to open ABLE Accounts in any state with an ABLE program that accepts out-of-state residents. Between June 1, 2016 and December 16, 2016, Ohio, Tennessee, Nebraska, Florida, Michigan, Virginia, Kentucky, Oregon and Rhode Island launched ABLE programs. Of these states with active programs, only Florida and Kentucky do not allow out-of-state residents to open Accounts. Fees vary from state to state with some states offering reduced fees or additional tax advantages to in-state residents.

Although Rhode Island enacted ABLE legislation in July 2015, Rhode Island quickly faced the predicament of introducing a program that would provide high quality investment options at a reasonable cost to a much smaller population than many other states' programs would serve. As a solution to this problem, Rhode Island joined a consortium of states including Alaska, Illinois, Iowa, Kansas, Minnesota, Missouri, Nevada, Pennsylvania and Wisconsin to bring ABLE Accounts to its residents. The consortium is still open to other

states that may wish to join. Rhode Island's ABLE Account Program became active on December 15, 2016. Although Massachusetts' ABLE Account Program is still in the development stage, it is expected to be implemented in early 2017. However, Massachusetts residents anxious to open an ABLE Account can do so today in Rhode Island, Ohio, Tennessee, Nebraska, Michigan, Virginia, Oregon and Alaska.

Because every family situation is unique, the determination as to whether an ABLE Account or a Special Needs Trust, or perhaps a combination of the two, is the right fit for you or a loved one must be made on a case-by-case basis. When deciding whether to open an ABLE Account or create a Special Needs Trust, there are many factors to consider. The ABLE Account is significantly easier and less costly to establish. Depending on the type of disability, some beneficiaries will be able to manage the ABLE Account on their own without assistance from others. But ABLE Accounts are limited to those individuals disabled before age 26, thereby excluding anyone who became disabled after that age. In addition, Special Needs Trusts do not have asset limits, while ABLE Accounts that exceed \$100,000 result in a suspension of SSI benefits. All ABLE Accounts have a Medicaid payback provision, meaning that when the account beneficiary dies the remaining funds in the ABLE Account must first be used to reimburse the state for any Medicaid services rendered to the beneficiary. While Special Needs Trusts established with the disabled individual's own funds (sometimes called "First-Party" Special Needs Trusts) have a similar provision, this is not the case for Special Needs Trusts that are established with funds from relatives and other third parties (so-called "Third-Party" Special Needs Trusts).

Federal legislation has already been introduced to amend the ABLE Act. Increasing contribution limits for working disabled individuals and raising the age of disability onset are just two of the proposed revisions already before Congress. Stay tuned for future developments that may make the difference for you and your family.

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