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ABLE Accounts-In General and In Florida
"No Nonsense" Transition Workshop- February 4, 2017

Background

The Stephen Beck, Jr. Achieving a Better Life Experience Act (ABLE Act) was passed by Congress and signed into law in December of 2014. The Internal Revenue Service and the Social Security Administration had to implement rules on how the accounts are to be treated for tax and government benefit purposes and Florida had to pass implementing legislation to make ABLE accounts available in our state. These tasks all came together to allow disabled Floridians to open ABLE accounts beginning on July 1, 2016. The name of the program in Florida is ABLE United and is operated by the Florida Prepaid College Board.

What Are ABLE Accounts?

An income tax preferred savings account for disabled individuals, modeled after 529 college savings plans that, if funded and spent correctly, will not count against the disabled individual for purposes of getting government benefits or remaining on government benefits.

What Are The Basic Elements Of An ABLE Account?

1) The account must be for a disabled individual, defined as a person of any age, who is blind OR disabled and whose blindness or disability was present before age 26. So, if a person's disability payments from the Social Security Administration began before they reached age 26 they should be good. If that is not the case, there is a self-certification process to say that the person has a medically determinable impairment meeting certain specified criteria or is blind and that the condition was present before age 26 and will last more than twelve months.

2) The disabled individual may open the account, owns the account and is called the designated beneficiary of the account. This is empowering to disabled individuals who are capable of managing their own money, because it is “their” money, unlike a special needs trust where they are the beneficiary of the trust, but are not allowed to own or control the trust assets. Management of the account and withdrawals from the account can be handled by the disabled individual or by someone who has the legal authority to act for them, if the disabled individual is incapable of managing their money.

3) The money in the account may be withdrawn for qualified disability expenses, which includes, education, housing, transportation, employment training and support, assistive technology and related services, health, prevention and wellness, financial management and administrative services, legal fees, expenses for ABLE account oversight and monitoring, funeral and burial, basic living expenses, and anything else added by the Secretary of the Treasury. Of specific note are “housing” and “basic living expenses (including food)” which represents an expansion, as compared to the restrictions on distributions from special needs trusts.

Also, distributions from a special needs trust must be for “the sole benefit” of the disabled beneficiary of the trust, while the ABLE account may have withdrawals for qualified disability expenses that the IRS did not limit to items of medical necessity or that provide no benefits to others in addition to the benefit to the disabled individual.

4) Distributions from an ABLE account may be made after the beneficiary passes away for qualified disability expenses, including unpaid bills and funeral and burial costs. After that, the remaining balance in the ABLE account is subject to a claim by Medicaid for the value of benefits paid to the disabled individual after the establishment of the ABLE account. Again,

this is a significant difference from first party special needs trusts that require almost all distributions to stop immediately when the beneficiary passes away and requires a payback to Medicaid to all states and for all benefits paid to the disabled beneficiary from birth to death.

5) Money (cash or a cash equivalent only) may be contributed to an ABLE account by an individual (including the disabled individual), a trust, estate, partnership, association, company or corporation. The total contributions from all sources in a single calendar year currently cannot exceed \$14,000. The annual contribution limit will increase over time for cost of living adjustments. There can only be one ABLE account for a disabled individual.

6) Only a disabled individual who resides in Florida can use ABLE United, but a disabled Floridian can explore other states ABLE accounts, as long as that state's rules allow a non-resident to participate (Tennessee and perhaps others as more states come online with their ABLE accounts). In Florida, ABLE United has seven different classes of investments to choose from, ranging from money market through higher risk options.

What Do You Get With An ABLE Account?

1) The tax advantages are that the funds in the account can grow inside the account without income tax consequences to the disabled individual. Distributions from the account for qualified disability expenses are not included in the gross income of the beneficiary for income tax purposes. Contributions to the account from individuals other than the disabled individual are non-taxable gifts by the donor. Contributions are not deductible by the donor on their income tax return.

2) In Florida money put into or paid out of an ABLE Account is exempt from claims of the disabled individual's creditors. Under federal law ABLE Accounts are exempt assets if the disabled individual declares bankruptcy.

3) The account is a statutorily created safe harbor to receive, hold and distribute funds that will not be considered by either the Social Security Administration or Medicaid as countable income, countable resources or countable assets of the disabled individual. This provides an additional option for disabled individuals to have more than \$2,000 in countable assets or resources and remain qualified, or become qualified, for government benefits.

Withdrawals for qualified disability expenses are not considered income to the disabled beneficiary for government benefit purposes. Subject to the limit described herein, contributions by third parties to the ABLE Account will not result in Supplemental Security Income reduction. These income, resource and asset safe harbors work for a variety of government benefit programs including, but not limited to, Supplemental Security Income, Medicaid, food stamps, Section 8 housing, community Medicaid and home and community based Medicaid long term care.

The accumulated balance in the ABLE Account cannot exceed \$100,000 without losing Supplemental Security Income benefits for the disabled individual. The accumulated balance in the ABLE Account cannot exceed \$418,000 without losing Medicaid benefits for the disabled individual.

Summary

ABLE accounts are new at the federal and state levels so we are all learning more about what they are, how they work and the additional planning opportunities they provide for disabled individuals. There are already proposed amendments to the federal law and the IRS regulations and the Social Security Program Operations Manual System can always be revised so stay tuned. What we know for certain is that ABLE Accounts, in combination with special needs trusts and the Affordable Care Act, provide expanded opportunities to improve the quality of life for individuals with disabilities.