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ABLE Updates and Basics

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Changes and Trends Affecting Special Needs Trusts
University of Texas School of Law

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I. Introduction

Thanks to the tireless work of many advocacy organizations, lawmakers have recognized and attempted to address the significant costs and burdens inherent to people living with a disability. The Stephen Beck, Jr., Achieving a Better Life Experience (ABLE) Act (the “Act”) was passed by the 113th United States Congress and signed into law by President Barack Obama on December 19, 2014. There have been significant changes to the Act since its passing, which will also be addressed in this presentation. As the Act itself states, it is meant to “(1) encourage and assist individuals and families in saving private funds for the purpose of supporting individuals with disabilities to maintain health, independence, and quality of life,” and “(2) provide secure funding for disability-related expenses of beneficiaries with disabilities that will supplement, but not supplant, benefits provided through private insurance, title XVI (Supplemental Security Income) and title XIX (Medicaid) of the Social Security Act, the beneficiary’s employment, and other sources” (Achieving a Better Life Experience Act [“ABLE Act”], Pub. L. No. 113-295 § 101). According to the Social Security Administration’s (SSA) Monthly Statistical Snapshot for June 2020, over 5.3 million Americans receive Supplemental Security Income (SSI) benefits, and just under 2.7 million Americans receive SSI coupled with their traditional Social Security benefits. As such, close to 8 million people with disabilities in the United States can potentially benefit from this monumental Act.

This presentation will provide an overview of ABLE accounts and their utility in trust administration and planning for people with disabilities. Coordination with Special Needs Trusts (aka Supplemental Needs Trusts and Disability Trusts) administration will be evaluated. Analysis of ABLE Act changes and facets of beneficiary distribution mechanisms and public benefits eligibility will be provided, along with recent case law.

II. Overview

The ABLE Act is named after the late National Down Syndrome Society's Vice Chairman and quarterback of the legislation, Stephen Beck, Jr. - a father of a daughter with Down syndrome. The Act amends the Internal Revenue Code (IRC) Section 529 by adding Section 529A, creating a tax-free savings account option for people with disabilities. At its core, the ABLE Act provides an avenue for people with disabilities to save funds in excess of the \$2,000 resource cap in order to qualify for SSI and preserve their other vital public benefits such as Medicaid. ABLE accounts have become an incredible option not only as savings vehicles but also as a way to empower and promote independence for people with disabilities. Additionally, all income earned within an ABLE account can grow tax-free if properly administered. A copy of the applicable IRC section (26 U.S. Code § 529A) may be found in Appendix A.

In March of 2015, the U.S. Department of the Treasury, in collaboration with the Internal Revenue Service (IRS), issued Internal Revenue Bulletin 2015-18 providing authority for states to establish ABLE programs before full federal guidance on IRC § 529A. The majority of states that have established an ABLE program have done so through their State Treasurer or their state's existing 529 Qualified Tuition Program (QTP). Other states have authorized governmental agencies, such as their Department of Health and Human Services, to provide ABLE account administration services. It is important to note that the original Act language indicated that qualified individuals were only allowed to open ABLE accounts in their specific state of residence. However, that regulation was amended to remove the beneficiary residency requirement in the Consolidated Appropriations Act of 2016 (Pub. L. No. HR 2029 § 303). This means that people with disabilities can open an ABLE account sponsored by any state, regardless of their residence.

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