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Achieving a Better Life Experience (ABLE) Programs

Background on ABLE Programs

On December 19, 2014, President Barack Obama signed into law the Stephen Beck, Jr., Achieving a Better Life Experience Act (ABLE Act) of 2014 as part of P.L. 113-295 (Division B). The ABLE Act created section 529A of the Internal Revenue Code (IRC), which allows states to establish and maintain a new type of tax-favored savings program designed specifically for individuals with disabilities. The stated purpose of the act is to

- 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
- provide secure funding for disability-related expenses on behalf of designated beneficiaries with disabilities that will supplement, but not supplant, benefits provided through private insurance, Medicaid, Supplemental Security Income (SSI), the beneficiary's employment, and other sources.

Under a state's qualified ABLE program, contributions may be made to the investment account of an eligible disabled individual, known as the designated beneficiary. Funds from an ABLE account may be used for the short-term needs or long-term benefit of the designated beneficiary to pay for qualified disability expenses. ABLE programs are modeled loosely on 529 college-savings plans, also known as qualified tuition programs. One notable difference between the two is that, unlike 529 plans, a designated beneficiary is limited to one ABLE account at a time.

Contributions to an ABLE account are not tax deductible and must be made in cash from the contributor's after-tax income. Total annual contributions to an ABLE account of a designated beneficiary must not exceed the annual gift tax exclusion, which is $14,000 in 2017. (This amount is adjusted annually for inflation.) Thus, the maximum amount that an ABLE account can receive in 2017 from all contributors (e.g., the designated beneficiary, family, and friends) is $14,000. Contributors are not limited in the number of different beneficiaries to which they may contribute.

A qualified ABLE program must ensure that cumulative contributions to an ABLE account on behalf of a designated beneficiary do not exceed the sponsoring-state's limit for aggregate contributions under its 529 plan. In most states, this limit is between $250,000 and $500,000 per beneficiary. No additional contributions may be made to an ABLE account once its balance reaches the cumulative limit.

A designated beneficiary is the eligible individual who establishes and owns the ABLE account. However, under proposed regulations issued by the Internal Revenue Service (IRS), if an individual is unable to establish or manage an ABLE account, an agent under a power of attorney, or if none, a parent or legal guardian may establish and exercise signature authority over an ABLE account on behalf of the designated beneficiary. To establish an ABLE account, an individual must have a qualifying impairment that began before age 26. Specifically, the individual must

- be entitled to Social Security or SSI benefits due to blindness or disability and such impairment occurred before the date the individual attained age 26; or
- be certified by a physician that his or her impairment meets the blindness or disability standards used for children under the SSI program, regardless of the individual's age, and such impairment occurred before the date the individual attained age 26.

Qualified disability expenses (QDEs) are expenses incurred for the benefit of the designated beneficiary and are related to his or her disability. QDEs include costs related to education, housing, transportation, employment training and support, assistive technology and personal support services, health and wellness (including long-term services and supports), financial management and administrative services, legal fees, expenses for oversight and monitoring, funeral and burial expenses, and other expenses identified in guidance published by the IRS. In the proposed IRS regulations, QDEs are defined to include basic living expenses and are not limited to costs for which there is a medical necessity or which benefit the designated beneficiary exclusively.

Interaction with Federal Means-Tested Programs

ABLE accounts have two distinct benefits for eligible individuals with disabilities. First, assets in an ABLE account can grow tax-free annually and distributions from the account for QDEs are not included in the designated beneficiary's gross income for federal income tax purposes. However, if distributions from an ABLE account are used for non-QDEs, the earnings portion of the withdrawal (i.e., the part attributable to investment growth) is subject to federal income tax as well as a 10% penalty.

Second, assets in an ABLE account and distributions from the account for QDEs are excluded in determining a designated beneficiary's eligibility for most federal means-tested programs, including Medicaid. Under the SSI program, however, only the first $100,000 in an ABLE account is excluded. If the amount of ABLE funds over $100,000 causes an SSI recipient to exceed SSI's $2,000

resource limit ($3,000 for a couple), the individual's cash benefits are suspended—without a time limit—until the ABLE account balance falls to or below $100,000. This suspension does not affect the SSI recipient's eligibility for Medicaid. In addition, a distribution from an ABLE account for housing-related QDEs is counted against the resource limit unless the distribution is spent in the month of receipt.

Any assets remaining in an ABLE account upon the death of a designated beneficiary who participated in Medicaid are used to reimburse the state Medicaid agency for payments made on behalf of the beneficiary after establishment of the ABLE account. This is similar to Medicaid's treatment of special needs trusts for individuals with disabilities. However, this reimbursement is made only after the payment of all outstanding QDEs and is net of any premiums paid by or on behalf of the designated beneficiary to the state's Medicaid Buy-In program.

Although ABLE accounts do not relax the basic financial eligibility criteria for SSI, the accounts allow certain individuals with disabilities to more easily establish or maintain their eligibility for benefits. The ABLE Act effectively created a new SSI-resource exclusion that permits qualified individuals to hold more cash assets than they otherwise could without having to spend down their resources to meet the program's statutory limits. Similarly, under Medicaid, assets in ABLE accounts are excluded as a resource for the purposes of determining eligibility.

As with SSI and Medicaid, many other federal low-income programs use explicit income and resource tests to restrict eligibility for benefits and services to individuals with limited financial means. Thus, ABLE accounts allow more individuals with disabilities to establish or maintain their eligibility for other federal low-income programs because assets in and distributions from an ABLE account for QDEs are disregarded in determining program eligibility. (ABLE accounts generally do not affect eligibility for federal programs without a means test, such as Social Security Disability Insurance [SSDI].)

Because eligibility is limited to individuals whose disability began before the age of 26, ABLE accounts are likely to benefit individuals with developmental or neurological disorders that occur early on in life (e.g., Down syndrome, autism spectrum disorder, cerebral palsy). Of the 7.2 million blind or disabled individuals on SSI in December 2015, about 44% first became eligible for the program before the age of 26.

ABLE Act Implementation

To date, the Treasury Department and IRS have issued proposed regulations and departmental guidance. Certain federal agencies, such as the Social Security Administration and the Food and Nutrition Service at the U.S. Department of Agriculture, have also released guidance on the treatment of ABLE accounts under their respective programs. The following section details key developments in the implementation of the ABLE Act.

On March 23, 2015, Treasury and IRS released preliminary guidance on ABLE programs and accounts in Notice 2015-18. The guidance assured states that may have operational programs prior to final regulations that they would be provided transition relief to enable state programs to be brought into compliance with federal criteria.

On June 22, 2015, Treasury and IRS issued a Notice of Proposed Rule Making (NPRM) for implementing the ABLE Act (80 FR 35602). The NPRM provides the rules under which a state may establish and maintain an ABLE program. On August 7, 2015, Treasury and IRS issued several technical corrections to the NPRM (80 FR 47430). In comments to Treasury and IRS, states and disability advocates expressed concern over several aspects of the NPRM regarding state responsibilities for administering an ABLE program, namely, requirements to

- establish safeguards to categorize distributions from ABLE accounts;
- collect taxpayer identification number (TIN) of each contributor to an ABLE account; and
- process disability certifications with signed physicians' diagnoses.

Specifically, commenters noted that these requirements would impose substantial administrative and cost burdens on states for maintaining a qualified ABLE program. In response, Treasury and IRS released interim guidance in Notice 2015-81 on November 20, 2015, relaxing these three requirements to further facilitate states' establishment of qualified ABLE programs. Treasury and IRS noted that these changes would be addressed in the final regulations.

On December 18, 2015, President Obama signed into law the Consolidated Appropriations Act, 2016 (P.L. 114-113), which contained the Protecting Americans from Tax Hikes Act (PATH Act) of 2015. Among its many provisions, the PATH Act eliminated the requirement that an ABLE account generally be established only in the designated beneficiary's state of residence (Division Q). Consequently, eligible disabled individuals in one state may open an ABLE account in another state, provided the sponsoring-state permits out-of-state residents to participate in its qualified ABLE program. Designated beneficiaries, however, are still limited to one ABLE account at a time.

Status of ABLE Programs

On June 1, 2016, Ohio became the first state to launch an ABLE program. According to the disability advocacy organization The Arc (thearc.org), as of February 27, 2017, 18 states had active ABLE programs. Some programs limit enrollment to in-state residents only, while others permit out-of-state residents to participate. Many more states have enacted ABLE legislation and additional programs are expected to be operational in 2017.

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