

BACK STORY

ABLE ACT – SAVINGS ACCOUNTS FOR NEVADANS WITH DISABILITIES

BY SCOTT G. WASSERMAN, ESQ.

In December 2014, Congress enacted The Stephen Beck, Jr., Achieving a Better Life Experience Act, or the “ABLE Act of 2014” (ABLE Act). The act allows states to create a program under which certain persons with disabilities can establish an account for use in paying for qualified disability expenses. To be eligible, the covered disability must have occurred before the individual’s 26th birthday. The purpose of the act is to encourage and assist individuals and families in saving private funds for the purpose of supporting persons with disabilities in their efforts to maintain health, independence and quality of life (Sec. 101 of the act).

ABLE accounts are similar to the widely-known and used 529 college savings plans, which provide savings accounts on which account earnings are exempt from federal income tax if those earnings are used for qualified educational expenses. Similarly, the earnings of an ABLE account are exempt from federal tax if those earnings are used for qualified disability expenses. Qualified disability expenses are those that relate to the individual’s disability and are used to maintain or improve his or her health, independence or quality of life.

A Person with Disabilities with More than \$2,000 in Savings/Assets Can Lose their SSI Benefits

A key feature of the ABLE Act is that the balance in an ABLE account, up to \$100,000, is not considered for purposes of determining the disabled person’s eligibility for certain means-tested federal programs. For example, under current law, a disabled person whose savings account exceeds \$2,000 could lose their eligibility for supplemental security income (SSI). This constrains persons with disabilities to maintain a financially perilous situation by limiting their savings to no more than \$2,000 in order to avoid a loss of critical financial assistance. Such a financial restraint means people with disabilities cannot save for everyday living expenses, such as for work (e.g. reliable transportation), housing (e.g. down payments on homes) or education (e.g. books, tuition), without risking the loss of basic support. The \$2,000 limit acts as a barrier, depriving people with disabilities from the ability to live independent lives. This \$2,000 limit has not been increased since 1989.

Recognizing these factors, Congress enacted the ABLE Act of 2014, allowing disabled persons to accumulate up to \$100,000 in assets in their ABLE Account that is not

considered in determining the disabled person’s eligibility for SSI benefits. ABLE accounts are not funded with public money, but are funded by the disabled person’s own private funds and/or gifts from family and friends. ABLE accounts were established by Congress to help disabled persons and their families meet their financial needs by facilitating the ability of persons with disabilities to work and live independently without losing access to Medicaid and SSI.

The ABLE Act limits a person to holding only one ABLE account, and limits annual contributions to that ABLE account to the amount of the annual federal donee gift tax exclusion, currently \$14,000 annually, and a lifetime contribution limit matching the applicable state’s limit for Section 529 college savings accounts, which currently is \$370,000 in Nevada.

The Nevada ABLE Savings Program

Four states have established ABLE accounts: Florida (open to Florida residents only), Nebraska, Ohio and Tennessee. In 2015, without a dissenting vote, the Nevada Legislature passed SB 419 to require the Nevada State Treasurer, in cooperation with the Aging and Disability Services Division of the Department of Health and Human Services, to establish the Nevada ABLE Savings Program. Nevada is joining Alaska, Illinois, Iowa, Kansas, Minnesota, Missouri, New Jersey, Pennsylvania and Rhode Island as a consortium of states to establish state ABLE plans. As of the writing of this article, State Treasurer Dan Schwartz indicates in a statement on the treasurer’s website that “...my office has been working hard to bring a high-quality, low-cost program to Nevada and we plan to have it up and running in October 2016. We look forward to the implementation of this program and what it will mean for our families in Nevada.”

While the ABLE Act could not and does not address all factors involved in maintaining and improving the health, independence and quality of life of persons with disabilities, it is a significant step in the right direction. **NL**

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