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The ABLE Act
What it Means for Individuals with Special Needs

On December 19, 2014, the Achieving a Better Life Experience Act (ABLE Act) was signed into law by the United States Congress. The Act was initiated in 2006 to allow for the creation of a tax-free, private savings account to be used for the care of an individual with special needs. The money in the ABLE account may be used to supplement government benefits for "qualified disability expenses" such as medical care, education needs, housing and transportation, while still allowing the individual to be eligible for governmental benefits.

The ABLE Account is similar to a 529 Education Savings Plan to help families save for college for their children. The ABLE Act provides persons with disabilities the same flexible savings tool. Like 529 plans, income earned by ABLE accounts will not be taxed, and, contributions to the account are not tax-deductible. Currently, ABLE accounts cannot yet be established in Florida. Most likely it will be 2016 before Florida law will allow the creation of an ABLE account. Although the ABLE Act has been signed into law, regulations must first be established in order for states to implement the Act.

Often, individuals with special needs depend on government benefits to help pay for daily living expenses such as food, shelter and health care. In order to be eligible for these government benefits, a person generally must qualify financially and meet certain resource limitations. Typically, an eligible individual can have no more than $2,000 in countable assets including cash, savings, retirement accounts, investment accounts, etc. This rule greatly limits the availability of additional assets which might be used to cover the cost of those things not paid for by government benefit programs. Because of the ABLE Act, ABLE savings accounts could be used to hold assets for the beneficiary and any money in the account would be available to pay for those things not covered by government benefits. Further, the assets in the ABLE account would not count toward the $2,000 asset limit and would not affect the individual's eligibility for Supplemental Security Income (SSI), Medicaid and other benefits that might be available.

Individuals with "significant disabilities" that are present before the age of 26 will be eligible for an ABLE account. If these criteria are met and the individual is already receiving public benefits, they are automatically eligible to establish an ABLE account. If the person is not receiving benefits but still meets the age of disability requirement, he or she would be eligible under a certification process. Specific regulations on how to establish eligibility is expected later in 2015. A person with a disability over age 26 may still qualify for an ABLE account but they will have to provide documentation of the onset of their disability prior to the age of 26.

Like 529 Plans, each individual state will determine the total amount that can be contributed to an ABLE account. Annually, an individual can make contributions to an ABLE account up to the gift tax exemption limit, which in 2015 is $14,000. Any contribution over the exemption limit may result in disqualification of the account as an ABLE account. For individuals who are receiving SSI and Medicaid, the ABLE Act sets further limits. For these individuals, the first $100,000 held in an ABLE account will be exempt from the SSI $2,000 resource limit but if an ABLE account exceeds $100,000 the beneficiary will be suspended from receiving their SSI benefit but would continue to be eligible for Medicaid. Another drawback to an ABLE account is it requires reimbursement to Medicaid for benefits received during the lifetime of the beneficiary. This is known as a payback requirement. As a result, at the death of the beneficiary, Medicaid will have a first lien on the balance of the account before remaining assets can be distributed to surviving family members. Consequently, third party special needs trust may still be a better option when planning for individuals with special needs because there are fewer restrictions and no required reimbursement to Medicaid.

Unfortunately, due to numerous revisions of the ABLE Act, the law includes many more limitations on ABLE accounts than were expected. Consequently, ABLE accounts may not be available for all individuals with special needs. But, the ABLE Act does provide a new and additional resource to help provide for those individuals who do qualify. If you would like more information regarding the ABLE Act, please contact the Law Offices of Hoyt & Bryan at (407)977-8080 or visit our website HoytBryan.com.