

Good News : The ABLE Act, which stands for Achieving a Better Life Experience Act of 2014, was passed by the New York State legislature in June, 2015 and signed into law by Governor Cuomo December 22, 2015. The law, which is modeled after college savings accounts, will enable the establishment of ABLE accounts to help people with disabilities and their families save for housing, education, transportation, medical and other expenses. Assets in ABLE accounts are exempt for determining eligibility for means tested government benefits, including Medicaid and Supplemental Security Income (SSI). Here's how the accounts will work:

1. Any person (the "donor") such as a family member, a friend, or the disabled person him or herself, can establish an ABLE account for an eligible disabled beneficiary. The eligible beneficiary may only have one ABLE account, and it must be established in the state in which he or she resides.
2. An ABLE account may not receive annual contributions exceeding the annual gift-tax exemption, which is indexed for inflation and currently \$14,000. Additionally, aggregate contributions to an ABLE account must not exceed the state-based limits for 529 accounts, which in New York State is currently \$375,000.
3. An eligible beneficiary is a disabled person who meets the SSI program's disability standard and had the debilitating condition prior to age 26.
4. Qualified disability expenses are any expenses made for the benefit of the disabled beneficiary related to education; housing; transportation; employment training and support; assistive technology and personal support services; health, prevention, and wellness; financial management and administrative services; legal fees; expenses for oversight and monitoring; funeral and burial expenses; and any other expenses approved by the Secretary of the Treasury under regulations.
5. Earnings on an ABLE account and distributions from the account for qualified disability expenses would not count as taxable income of the donor or the eligible beneficiary. Contributions to an ABLE account must be made in cash from the donor's after-tax income.
6. Assets in an ABLE account and distributions from the account for qualified disability expenses would be disregarded when determining the qualified beneficiary's eligibility for most federal and state means-tested government benefits. For SSI purposes, only the first \$100,000 in each ABLE account would be disregarded.
7. Assets in an ABLE account could be rolled over without penalty into another ABLE account for either the qualified beneficiary or any of the beneficiary's qualifying family members. Any assets remaining in an ABLE account upon the death of the qualified beneficiary would be used to reimburse a state Medicaid

agency for payments it made on behalf of the beneficiary. So the disabled beneficiary should use the money during his or her lifetime and not let the money accrue.

The ABLE Act is a useful mechanism for improving the lives of disabled loved ones. The supplemental needs trust is another planning tool that offers similar protections, as well as additional benefits and should be investigated as an alternative to establishing ABLE account. We look forward to advising our clients of the rules and mechanics of establishing and using ABLE accounts and supplemental needs trusts.

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