

The ABLE Act and Your Special Needs Child

by Paula L. Peaden



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Parents with a special needs child are apt to worry about the future perhaps even more so than other parents. A law passed at the end of 2014, known as the Achieving a Better Life Experience or ABLE Act, recognizes the extra and often significant costs of living with a disability. The act allows for the creation of tax-free savings accounts for individuals with disabilities. These so-called “ABLE accounts” can be used to cover various qualified expenses such as housing, transportation, education, and burial expenses.

To be eligible for an ABLE account, an individual must have a significant disability that was onset prior to age 26. If a person meets those criteria and is already receiving SSI (Social Security Income) and/or SSDI (Social Security Disability Income), he or she is automatically eligible to establish an ABLE account. A person who is over the age of 26 may still be eligible to open an ABLE account, so long as he or she has documentation that indicates that the age of onset of the disability occurred before the age of 26.

Once an ABLE account has been established, individuals can contribute a total of \$14,000 per year to the account, adjusted annually for inflation. The total lifetime contribution limit of the ABLE account is subject to Virginia’s limit for education-related 529 savings accounts (\$350,000). Additionally, ABLE accounts for individuals with disabilities who are receiving SSI and Medicaid are subject to further limitations. The first \$100,000 in an ABLE account is exempt for SSI, but if it exceeds this amount, SSI eligibility will be lost. Medicaid will not be lost.

There are a number of other ways for a family to provide for the continued care of a disabled individual, including a Special Needs Trust (SNT). With a Special Needs Trust there is no limit to amount of money that can be protected. Further, at the death of the individual, the money can be left to other relatives, and not “paid back” to the state of residence.

Opening an ABLE account is less expensive than establishing an SNT, but there are disadvantages, the primary disadvantage being a payback provision. This means that at the death of the beneficiary the state of residence may request to be “paid back” for disability expenses.

Determining which option best suits a disabled individual’s needs depends on his or her specific circumstances. An experienced special needs attorney can help explain the advantages and disadvantages of each plan and help decide which one will best provide for a disabled individual’s care.

About the Author

Paula Peaden is listed in Virginia Super Lawyers for estate planning and was named Best Lawyers’ 2014 Richmond Elder Law Lawyer of the Year. Ms. Peaden is a member of the Special Needs Alliance and the Estate Planning Council of Richmond. She was named to Virginia Lawyers Media’s Leaders in the Law, is AV-rated by Martindale, and is listed in its Preeminent Women Lawyers. Ms. Peaden is a frequent lecturer on estate planning and elder law topics, and recently authored a textbook chapter on best practices for structuring trusts and estates. She can be reached at ppeaden@parkerpollard.com or 804.261.7326.

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