

Texas ABLE accounts are for individuals with disabilities

The Achieving a Better Life Experience Act of 2014 (ABLE Act), modeled after the 529 college savings plans, permits individuals with disabilities to have a tax-advantaged savings account without jeopardizing their Medicaid or Supplemental Security Income (SSI) benefits. Texas established its program and opened enrollment in May 2018.

People with disabilities face significant barriers to finding and holding employment, living independently, and saving for the future because their access to government benefits can be lost once they establish a minimum level of savings and income. The ABLE Act is designed to promote their health, independence, and quality of life by allowing individuals with disabilities to fund an account that can grow tax-free and that can be used to pay for disability-related expenses.

To be eligible, the individual must be a Texas resident age 18 or older whose disability occurred prior to the age of 26. Disability standards are met if the person receives SSI or Social Security Disability Insurance (SSDI), if a physician provides a written diagnosis of a disability that meets Social Security's definition, or if the person has a condition listed on Social Security's list of *Compassionate Allowances Conditions*.

To enroll, the eligible person, or their parent, guardian, agent under a Power of Attorney, or trustee of a trust for the disabled person's benefit can establish an ABLE account with a minimum of \$50. The designated beneficiary is the owner of the account and, if capable, can manage it on their own. A beneficiary can have only one ABLE account.

Once the account is established, anybody may contribute to such an account. Contributions may even be made from the designated beneficiary's trust if one exists. Total annual contributions to an ABLE account are restricted to the annual gift tax exclusion, currently \$15,000 in 2021, or more for certain beneficiaries who work. ABLE accounts can be useful for small inheritances or gifts or lump sum back payments of Social Security benefits. For beneficiaries who receive SSI, if the ABLE account exceeds \$100,000, the SSI benefit will be suspended until the account is below \$100,000. The beneficiary would continue to be eligible for Medicaid. Any assets remaining in an ABLE account upon the death of the beneficiary will be used to reimburse Texas Medicaid for payments it made on behalf of the beneficiary.

Withdrawals are made to pay qualified disability expenses (QDEs), which are expenses related to the eligible beneficiary's disability made for their benefit, including the following: 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 other expenses.

A major benefit is that withdrawals for housing-related expenses can be made without reducing SSI income. Without ABLE, if a beneficiary's housing expenses are paid directly by someone else, including their supplemental needs trust, their SSI income is reduced by one-third. With ABLE, the trust or other person can contribute to their account, which can then be used to pay housing expenses without the SSI income being reduced. Unlike other QDEs, housing-related expenses must be paid within the same calendar month as withdrawals from the ABLE account.

The chief financial benefit is that investments grow tax-free. Contributions to an ABLE account are made with after-tax dollars. Earnings on investments in ABLE accounts and distributions from the account for QDEs do not count as taxable income of the contributor or the eligible beneficiary.

Texas ABLE can be a good opportunity for individuals with disabilities to have more financial independence.

You may visit our website at www.wrightabshire.com. Thank you to Wright Abshire associate attorney Theresa A. Clarke who contributed to the article. Wesley E. Wright and Molly Dear Abshire are attorneys with the firm Wright Abshire, Attorneys, P.C., with offices in Bellaire, the Woodlands, and Carmine. Both are Board Certified by the Texas Board of Legal Specialization in Estate Planning and Probate Law and are certified as Elder Law Attorneys by the National Elder Law Foundation. Nothing contained in this publication should be considered as the rendering of legal advice to any person's specific case but should be considered general information.