Texas ABLE Rules

http://www.sos.state.tx.us/texreg/archive/July82016/Proposed%20Rules/34.PUBLIC%20FINANCE.html#46

Comments were due by 8/6/16 to Linda.Fernandez@cpa.texas.gov

By Amy Litzinger

SB1664

- Federal legislation created ABLE accounts; states need to define their own process.
- Texas legislation (SB1664) signed in June, 2015 created the Texas ABLE Program.
- The ABLE Advisory committee was formed.
- Resulting rules are closed for comment on August 6, 2016.

Today:

- For people using Medicaid supports and services, one may only own up to $2,000. We regularly prove as the month ends, that we own less than this amount.
- If on SSI, one can have a PASS plan to save money for pre-approved work-related purchases, but not while on SSDI. It becomes complicated if you suddenly qualify for SSDI before you achieve your plan. This can be for DME, vehicle or education, but not for a house.

Coming soon, possibly 2017.

- Individuals with disability may save in a 529A account for a wide range of items related either to education or disability.
- People may have only one 529A account, so if one already uses one for educational reasons, there will be a process to prove disability and thus begin using savings for qualified disability expenses.

Who is Eligible for an ABLE account?

- An individual is eligible if they became disabled or blind before the age of 26, and either is currently entitled to Social Security Disability Insurance (SSDI) or Supplemental Security Income (SSI), or gets a disability certification under rules the U.S. Treasury will write.
- The U.S. Treasury proposes that a person with signature authority, like an agent having power of attorney, or a parent or legal guardian, may aid eligible individuals who may not be able to open an ABLE account themselves.

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- There is an annual limit on the total amount that can be paid into an ABLE account. Annual deposits (contributions) to an ABLE account cannot exceed the individual gift tax exclusion in effect for the calendar year in which the contribution is made ($14,000 in 2016).

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- An ABLE account is considered a 529 account by the IRS. The maximum contribution limit for all Texas 529 plans combined for a designated beneficiary is \$370,000 – this includes any 529 prepaid tuition or college savings accounts the beneficiary may have.

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- The first $100,000 in an ABLE account would not be considered a resource when determining eligibility for Supplemental Security Income (SSI). If the account exceeds $100,000, the designated beneficiary could lose their monthly SSI cash payment but would continue to receive Medicaid benefits.

Distributions (disbursements):

An ABLE account must be used for **“qualified disability expenses” that relate to the designated beneficiary’s** blindness or disability and are for the benefit of that beneficiary in maintaining or improving his or her health, independence or quality of life. Internal Revenue Code, Section 529(e)(5), lists the following as qualified disability expenses:

- Education
- Housing
- Transportation
- Employment training/support
- Assistive technology
- Personal support services
- Health
- Prevention and wellness
- Financial management
- Administrative services
- Legal fees
- Expenses for oversight and monitoring
- Funeral and burial expenses
- Any other expenses that may be identified in future IRS publications

Note:

A distribution for housing expenses from an ABLE account would be considered a resource when determining eligibility for Supplemental Security Income (SSI) and could affect the designated beneficiary's Medicaid benefits.

Pro:

- Distributions from an ABLE account, including any earnings, are not taxed if used for qualified disability expenses. If a distribution is not used for a qualified disability expense, that amount could be subject to income tax and imposed a 10 percent penalty.
- Distributions not used for qualified disability expenses could also affect other benefits. For federal income tax purposes, the ABLE owner should keep careful records when funds are withdrawn.

Con:

- Upon death of the beneficiary, unobligated money remaining in an ABLE account could be subject to a state reimbursement claim (referred to as “Transfer to State”) for medical expenses that were paid by Medicaid for the designated beneficiary during the period that their ABLE account was open, less any exceptions identified in the Medicaid Estate Recovery Program (MERP).