NJ ABLE PROGRAM OFFERS A NEW SAVINGS OPTION FOR THE DISABLED

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Earlier this month, New Jersey joined the list of states with an ABLE Plan. An ABLE account is a special tax-favored disability savings account designed to help individuals living with a severe disability save and manage their own funds, while protecting their SSI, Medicaid and DDD eligibility. The account can only be opened in connection with a state ABLE Program. Information regarding the NJ ABLE Program is available online at https://savewithable.com/nj/home.html. ABLE accounts are important because they provide a competent disabled individual with an option to preserve their continued eligibility for Medicaid, SSI, SNAP, Section 8 housing assistance, DDD services and other benefits, while saving and investing funds in the account, which they can use to pay for qualified disability expenses.

In 2018, up to $15,000 annually from parents, grandparents, the disabled individual, or anyone else, may be deposited into an ABLE account for a qualifying disabled person. Disabled beneficiaries with their own ABLE account may now fund an ABLE account from their own earnings, as long as they do not participate in an employer's retirement plan. Alternatively, an ABLE account could be funded through a tax-free rollover of up to $15,000 in funds held in an educational savings section 529 plan. For the rollover to be tax-free, the ABLE account must be either for the same beneficiary of the section 529 plan or for a family member of that individual. If more than $15,000 in funds held in an educational savings plan is rolled over into an ABLE account plan in the same taxable year, the excess over the $15,000 limit is treated as an excess contribution, subject to a safe harbor provision. The ABLE provisions of the Tax Cuts and Jobs Act of 2017 expire on December 31, 2025.

While in the ABLE account, the funds are invested, similarly to funds invested in a 529 educational savings account. The competent, disabled individual can withdraw funds as needed from the ABLE account, at which time, any investment return on the original proceeds would be includible in the gross income of the account beneficiary (i.e., the disabled individual). See IRC § 529A(c)(1)(A). The account earnings and the original return of principal, once withdrawn from the ABLE account, are includible in determining the income of the disabled account beneficiary for the month in question and generally are taken into

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account in determining the individual's Medicaid eligibility and SSI eligibility.

However, the funds would not be taken into account for Medicaid eligibility purposes, to the extent that they are offset by any qualified disability expenses incurred by the beneficiary during the taxable year in question. See I.R.C. § 529A(c)(1)(B). That means that funds may be distributed out of the ABLE account directly for a disabled individual, as long as the distribution proceeds are used to pay for qualified disability expenses during the same calendar year. The beauty of an ABLE account is that for income tax and public benefits purposes, the distributions from ABLE accounts are generally excluded from a qualifying disabled beneficiary's income so long as the distribution proceeds are used for qualifying disability expenses. The definition of qualifying disability expenses is very broad and may include expenses for housing, education, transportation, employment training and support and assistive technology, even if the disabled individual receives SSI.

If the balance on deposit in an ABLE account increase to exceed the sum of $100,000, the disabled beneficiary will lose any eligibility for SSI until the ABLE account proceeds are spent down below the $100,000 limit; however, the funds in the ABLE account will remain an exempt resource for Medicaid.

Upon the death of a disabled beneficiary, any state paying Medicaid benefits during the disabled beneficiary's lifetime will have a Medicaid lien on the account proceeds. If there are funds remaining in the account after the payment of the Medicaid lien, the account balance may be disbursed to the estate of the disabled beneficiary.

An ABLE account may be an option where there is a qualified disabled beneficiary, whose disability was incurred (and documented) prior to age 26.

For qualified disabled individuals, an ABLE account may also be a good way to "spend down" proceeds from an UTMA or UGMA.

Once opened, an ABLE account is generally portable if the beneficiary moves to another state. State ABLE plans may offer different features and attributes, such as debit cards, online account access, checking accounts, and a range of investment options, such as mutual funds, exchange traded funds, and interest bearing bank accounts.

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Jane Fearn-Zimmer dedicates her practice to serving clients in the areas of elder and disability law, special needs planning, asset protection, tax and estate planning and estate administration. She is also currently serving as the Editor of the Elder Law Report, Including Special Needs Planning, a subscription based publication of WoltersKluwers, designed to update both experienced and aspiring elder and disability law attorneys in current developments and to provide them with new practice tips. She can be reached at 856.661.2283 or jane.zimmer@flastergreenberg.com.