Disabling ABLE: Five Possible Pitfalls When Implementing the ABLE Act

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Editor's note: In this article, one of two in this issue of the Journal on the ABLE Act (see also "Enabling Able: Five Potential Positives When Implementing the ABLE Act" on page 60), Hershey et al. examine the drawbacks of the 2014 legislation for those with special needs.

ABSTRACT

This article reviews recent literature on the Stephen Beck, Jr., Achieving a Better Life Experience (ABLE) Act [26 U.S.C. § 529A (2014)] and concludes that there are at least five possible pitfalls arising from the act that should be carefully considered by financial planners working with clients with special needs. These are: (1) age of disability, (2) increased likelihood of do-it-yourself account management, (3) predatory practices, (4) inheritance limitations, and (5) recapture under Medicaid estate recovery law. Aspects of how the ABLE Act is structured create openings for the emergence of scenarios that might harm the very persons ABLE accounts are meant to help, though such outcomes are not inevitable. As such, these openings constitute possible pitfalls that should generate caution among financial planners seeking to help clients with special needs.

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Introduction

Increasing access to health care services in the United States has been a key shift in public policy during the last decade. For example, Cooper and Gardner detail the genesis and development of key issues underpinning the Affordable Care Act (ACA) as well as the negative financial outcomes of many of the Consumer Operated and Oriented Plans (CO-OPs) created to market the insurance programs offered under the ACA.[1] They conclude that the ACA is still a work in progress, while noting the ethical need for financial service professionals to recognize that expanding access to health services remains a desired goal. However, while the Stephen Beck, Jr., Achieving a Better Life Experience (ABLE) Act does provide new opportunities to create additional funding sources for clients with special needs, it is by no means without defects or possible pitfalls that might limit its potential without due caution, or worse, cause financial harm to unwary or unsophisticated consumers.[2] As such, financial planning professionals should look to the literature on the ABLE Act and exercise caution in advising clients in the deployment of ABLE accounts, also known as 529A accounts, especially in the do-it-yourself (DIY) market, which is likely to experience significantly higher market share than is seen in the traditional special-needs trust planning area. This ar-

ticle summarizes that literature and argues that there are at least five possible pitfalls that financial planners servicing clients with special needs should be aware of and guard against as the ABLE Act is implemented.

Overview of the ABLE Act

Passed in December 2014, the ABLE Act provides new avenues for families with children who have special needs to save for disability-related expenses, subject to certain restrictions.[3] The twofold purpose of 529A accounts is expressly stated within the notes of the ABLE statute:

> (1) To encourage and assist individuals and families in saving private funds for the purpose of supporting individuals with disabilities to maintain health, independence, and quality of life; [and] (2) To provide secure funding for disability-related expenses on behalf of designated beneficiaries with disabilities that will supplement, but not supplant, benefits provided through private insurance, the Medicaid program under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.], the supplemental security income program under title XVI of such Act [42 U.S.C. 1381 et seq.], the beneficiary's employment, and other sources.[4]

ABLE programs are modeled after qualified tuition programs (QTPs) for 529 college savings accounts, and they share with the existing program a maximum contribution per year of $14,000 from after-tax dollars.[5] The IRS has created two forms to report annual ABLE account information: Form 1099-QA (Distributions from ABLE Accounts) and Form 5498-QA (ABLE Account Contribution Information).[6] Each designated ABLE Act beneficiary is limited to one account.[7] Once an ABLE account is established, no savings account subsequently created for that beneficiary can be deemed an ABLE account. Lawmakers have carved out an exception to this prohibition provided the following two criteria are satisfied: (1) One account is established for purposes of a rollover to the designated beneficiary or a member of his or her family, and (2) transferor account must be closed within the 60-day rollover period.[8]

To qualify for an ABLE account individuals creating an ABLE 529A account must establish it for "the purpose of meeting the qualified disability expenses for the designated beneficiary of the account." Qualified disability expenses under IRC Sec. 529A(e)(5) include "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."[9]

It should be noted however that saving for college and saving for disability are not altogether similar financial planning issues. On the one hand, while expensive, the cost of college is relatively easy to predict and typically finite in duration. On the other hand, the cost of lifelong disability is open-ended, evolving in cost and complexity and subject to perhaps decades-long inflation and the cost of emerging medical technologies. Planners should use caution when considering or implementing financial planning tools that are based upon one set of assumptions, such as the cost of college, when weighing an entirely different set of assumptions, such as the cost of funding medical and other expenses for a lifetime disability.

Concerns about ABLE Accounts as Special-Needs Planning Tools

While many aspects of the ABLE Act undoubtedly have potential positives, the lack of standardization in implementation across 50 states is cause for concern. In December 2015, Congress eliminated the requirement that ABLE accounts be established only in the ABLE account owner's state of residence.[10] Consequently, an ABLE account can be established

for a beneficiary who is not a resident of the state maintaining the ABLE program.[11] Provided states maintain their ABLE programs in compliance with federally mandated baselines, policymakers in different states are free to structure and execute their 529A plans differently. This creates the possibility for confusion in the marketplace as news of ABLE accounts in one state becomes misconstrued by those seeking to set up ABLE accounts in another state.

Additionally, financial windfalls, through gifts or inheritance, can create problems for ABLE account special-needs planning. For example, O'Brien notes that, "Too often, people seek financial advice after their finances change. But if they wait until after a windfall to seek guidance, and the special needs child directly inherited that windfall, then means-tested benefits may already have been compromised."[12] So, even financial windfalls given with the best of intentions can create difficulties for clients with special needs and in some cases, cause them to be ineligible for much-needed and -relied-upon public services.

As a result of these issues, a careful analysis of the ABLE Act identifies at least five important issues, or possible pitfalls, that planners should consider when weighing the use of ABLE accounts for clients. These are: (1) age of disability, (2) increased likelihood of DIY account management, (3) predatory practices, (4) inheritance limitations, and (5) Medicaid estate recovery recapture. Each of these possible pitfalls of ABLE is described below.

The ABLE Act's Cutoff Threshold for the Qualifying Age of Disability

ABLE Account Ownership Limited to Children and Young Adults

Under the current law, only children and young adults are eligible for ABLE accounts. To be an ABLE account beneficiary, the individual must acquire a severe disability before age 26 and either: (1) meet the disability requirements for Supplemental Security Income (SSI) or Social Security Administration (SSA) disability benefits, or (2) submit a certification that satisfies government-recognized disability criteria with a signed physician's diagnosis.[13] The latter option is closely aligned with SSA's disability categories. A federal evaluation of a disability typically requires documentation of a medically determinable impairment and consideration of two primary factors: the degree of limitation the impairment imposes on an individual's ability to work, and whether the limitations caused by the disability have lasted (or are expected to last) for a continuous period of at least 12 months.[14] The strict limits of an ABLE account offer no recourse to those who, through no fault of their own, fall just outside the parameters of the age threshold. For example, under these criteria, if a 26-year-old is in a terrible car accident and is rendered a lifelong quadriplegic on the day of his 26th birthday, he or she is ineligible for an ABLE account.[15]

ABLE Accounts Fail to Account for Disability Prevalence across All Age Groups

The ABLE Act's age cutoff for designated beneficiaries precludes the majority of Americans with disabilities from using ABLE accounts. The ABLE Act's limitations ignore a large body of evidence stating that many Americans over age 26 are likely to develop a disability in the future. It is well documented that the chance of acquiring a disability increases significantly with age.[16] Over 56 million Americans live with disabilities, but only 15 percent of those Americans were born with a disability.[17] For people 15 years of age or younger the chance of developing a disability is less than 10 percent, but for people 80 years of age or older, the likelihood of developing a disability is nearly 75 percent.[18] According to the U.S. Census Bureau and the Centers for Disease Control and Prevention (CDC), people with disabilities make

up roughly 19 percent of the American population, and nearly one out of every five adults in the United States reports having a disability.[19] Nearly a third of Americans with disabilities are over 65.[20] The SSA estimates that just over one in four of today's 20-year-olds will become disabled before reaching age 67.[21] Alarmingly, the SSA further reports that a 69 percent majority of the private-sector workforce currently has no private long-term disability insurance.[22] So, while the ABLE Act offers assistance to some of the population with a disability, its exclusion of the majority of those with disabilities is a serious shortcoming.

Increased Likelihood of DIY Account Management

While the ABLE Act will likely attract current retail financial planner firms to offer template-based products that include professional management, the statute does not require use of a trustee or a professional financial manager. This could encourage nonprofessionals who do not have a financial planning background to engage in DIY management of ABLE accounts. A key pitfall of ABLE account DIY management is that an unsophisticated owner who is not knowledgeable about tax law dynamics could inadvertently create investment results that exceed account limitations and open the beneficiary to penalties and the loss or suspension of certain public benefits. While many ABLE account sponsors will doubtless seek to design safeguards against such occurrences, it is nevertheless a risk the financial planner should guard against.

Considering the many competing budgetary priorities and resource constraints states face, it is not surprising that many states are still working to develop their ABLE programs and do not yet offer would-be DIY "managers" any meaningful guidance or direction on ABLE account best practices. The maximum contribution limit for ABLE accounts is tied to the existing 529 account limits within each state. At present, these range from $235,000 to $511,758.[23] The federal government does not yet offer information delineating the differences among state plans to help DIY managers to choose which state's ABLE program best fits the needs of the particular beneficiary.

Key Limitations to ABLE Protections that May Be Overlooked by DIY Account Managers

On March 21, 2016, the SSA issued new guidance on the impact of the ABLE accounts on SSI recipients, noting that SSI benefits will be reinstated "for any month in which the individual's ABLE account balance no longer causes the recipient to exceed the resource limit and he or she is otherwise eligible."[24]

As a general rule, a designated beneficiary's ABLE account is disregarded in determining a beneficiary's eligibility under federal means-tested programs like Medicaid, the Supplemental Nutrition Assistance Program (SNAP), and Temporary Assistance for Needy Families (TANF).[25] There are two key exceptions to this protection: (1) Certain SSI program housing expenses can be considered as income, and (2) SSI benefit checks can be suspended during periods of excessive account funds.[26] In the case of the SSI program, distributions for certain housing expenses are not disregarded, and the ABLE account balance (including any earnings) is considered a resource of the designated beneficiary to the extent that balance exceeds $100,000.[27] An individual's SSI eligibility cannot be terminated because of excess resources in their ABLE account; however, the benefits can be suspended until surplus funds are spent down.[28] Lawmakers have been expressly clear that ABLE accounts do not impact Medicaid eligibility or benefits; ABLE account beneficiaries who are currently receiving Medicaid benefits cannot lose their benefits even if their SSI benefits are suspended.[29] While clearly a benefit of the ABLE Act, such calculations may be difficult for the DIY ABLE account manager to navigate.

ABLE account distributions are primarily excluded from the designated beneficiary's income for the respective tax year.[30] Certain distributions that exceed the beneficiary's qualified disability expenses may be included in the distributee's taxable income. A 6 percent excise tax applies to excess contributions to ABLE accounts.[31] For gift and generation-skipping-transfer taxes, any contribution to an ABLE account in a qualified ABLE program on behalf of a designated beneficiary is treated as a completed gift and not as a future interest in property.[32] Account distributions that exceed a beneficiary's qualified disability expenses must be included in the distributee's income and taxed under the rules that apply to annuity distributions (unless it is excludable under some other provision of federal or state tax code).[33] Excess distribution must be reduced by the ratio that the qualified disability expenses bear to the distributions.[34] Notably, excess ABLE account distributions can be subject to a 10 percent penalty tax.[35] To help financial planners to better understand the excess distribution provisions within Section 529A(c), the U.S. House Ways and Means Committee provided the following hypothetical:

> A qualified ABLE account with a balance of \$100,000, of which \$50,000 consists of contributions, distributes \$10,000 to a beneficiary who has incurred \$6,000 of qualified disability expenses. Under the annuity rules, 50 percent of the distribution (\$5,000) is includible in gross income. However, this amount is reduced by \$3,000 (\$6,000/\$10,000 × \$5,000). Thus, the includible amount is \$2,000. An additional tax of \$200 (10 percent × \$2,000) is imposed on the distribution.[36]

Given the complex relationship of SSI, Medicaid, and ABLE benefits, these tax provisions may challenge the abilities of the average DIY ABLE manager.

Lastly, many unseasoned planners may experience difficulty navigating the complex intersection of an ABLE account and bankruptcy law. Upon filing of a bankruptcy petition, debtors are required to declare any interest they hold in an ABLE account.[37] If a debtor's ABLE contributions were made no later than 365 days before the debtor filed a bankruptcy petition, any amounts remaining in the ABLE account will likely be excluded from the bankruptcy estate.[38]

Predatory Practices

Lack of regulation or statement of expectations for how ABLE accounts are to be marketed is also cause for concern. The majority of state government Web sites lack detailed information on expert financial management and best practices regarding ABLE account administration. Only 10 states, as of May 2016, had an ABLE enrollment program Web site to update potential enrollees on program development.[39] Of these, all provide e-mail contact information for plan development updates, while Florida, Maryland, Nebraska, Ohio, Tennessee, and Texas also provide telephone numbers to reach government employees and subcontractors for ABLE account finance counseling or questions.[40]

There are very few state ABLE program Web sites that provide interested parties with detailed information regarding ABLE account financial planning considerations and best practices. One seemingly well-meaning state representative's Web site compares selecting the proper ABLE account option to ordinary comparison shopping. It reads: "You should also look for the best option in the same way you would shop for an apartment, car, job, blender, etc. Go online, talk to other folks who have ABLE accounts and keep asking questions."[41] It is unreasonable for lawmakers to expect the average American family to have the interdisciplinary knowledge and resources necessary to meaningfully estimate all of the costs associated with care for a child with a disability and then cherry-pick a program that directly addresses all that is needed for their child's lifelong financial future.

Such lack of oversight may be attractive to unscrupulous vendors that offer "turnkey" ABLE plans at excessive rates for setup or charge exorbitant management fees for investments inside the ABLE account. Indeed, in the absence of regulation, it is possible to imagine the emergence of fee-only ABLE account advisors whose only credential or experience is the same DIY starting point open to unsophisticated consumers, who in turn may lack the ability to recognize misleading claims in a well-delivered marketing campaign.

Inheritance Limitations

A key pitfall of the ABLE Act is the limitation for inheritance by a disabled sibling only. There is no intergenerational inheritance transfer of any kind allowed under the legislation. In families with congenital conditions that often result in disability, the lack of any provision to share ABLE account balances across generations is a glaring flaw for planners seeking to use ABLE accounts to help families with intergenerational disabilities. In some cases, the lack of inheritance means that the disabled dependent child of a disabled parent who is already the beneficiary of an ABLE account will lose benefits at the death of the parent, albeit indirectly. That is, prior to death while the financial benefits of the parent's ABLE account flow directly to the parent, a dependent child lives in the household and shares some aspects of those benefits, even if limited only to the fact that other financial resources for maintaining the household are less stressed than they would be without an ABLE account. But if the parent beneficiary dies, the ABLE account in effect dies with him or her, leaving the dependent child with a disability with fewer resources than if he or she could inherit the ABLE directly.

Medicaid Estate Recovery Recapture

Both Congress and federal administrative agencies have long claimed that Medicaid estate recovery programs provide a cost-effective way to offset state and federal costs while promoting more-equitable treatment of Medicaid recipients.[42] In 1993, Congress included a provision in the Omnibus Budget Reconciliation Act (OBRA) requiring states to implement a Medicaid estate recovery program.[43] When a designated ABLE account beneficiary has also utilized services under Medicaid, his or her ABLE account assets generally will not pass over to family members or other third parties upon the beneficiary's death. While ABLE accounts are largely shielded from creditors, garnishment, and judgments, state Medicaid programs can be primary creditors upon the beneficiary's death. That is, pursuant to the doctrine of Medicaid estate recovery, if an ABLE account beneficiary who is receiving Medicaid benefits dies with funds remaining in her or his ABLE account, the state will be the primary creditor.[44] As noted elsewhere, this functions as a kind of a death tax that can increase the financial burden on another family member who is disabled but not able to inherit an ABLE account from a parent or other close relative.[45] In sum, the emerging concerns about how the ABLE Act is evolving across different state governments, the varying degrees of ability and competence of nonprofessional managers, and the uncertainty about how ABLE accounts will interact with existing special needs planning vehicles and products, suggests caution is needed on the part of planners before fully embracing the ABLE funding model.

Summary: Five Possible Pitfalls When Implementing ABLE

While the ABLE Act allows people with disabilities and their families to set up special savings accounts for disability-related expenses, such an opportunity is not without serious limitations and outright financial dangers. An examination of the ABLE Act and emerging literature then suggests at

least five possible pitfalls from the implementation of the ABLE Act that financial planners should consider when serving their clients with special needs:

1. **Requirement of disability prior to age 26.** The stipulation that ABLE account beneficiaries become disabled before the age of 26 creates a possible pitfall for those unaware of this arbitrary restriction, as may be the case if a nonprofessional is setting up her or his own ABLE account. Additionally, those disabled by accident, injury, or illness after age 26 likewise cannot be covered by ABLE.[46] As such, while the ABLE Act is a welcome addition to the special-needs planning community, this limitation is another possible pitfall of ABLE as currently enacted.
2. **Nonprofessional management.** The pitfall of DIY management of ABLE accounts is that the lack of sophisticated, professional management experience may lead to investment results that exceed account limitations and open the beneficiary to possible loss or suspension of certain public benefits.
3. **Predatory practices.** The lack of sophisticated, professional management experience of the DIY manager likewise exposes the beneficiary to pitfalls of unethical marketing practices, excessive fees, and the recommendation of inappropriate investments, among other hazards.
4. **Limits on inheritance.** The limits on who may inherit an ABLE account create additional possible pitfalls for ABLE planning. For example, while a qualified sibling with a disability may inherit an ABLE account, a similarly disabled child who is a dependent of an ABLE account beneficiary cannot inherit the account of the parent.
5. **Medicaid recapture may create unintended outcomes.** As Abbey and Hershey point out, ABLE accounts are subject to Medicaid recapture, which under some circumstances functions as the equivalent of a death tax on possible survivors of the beneficiary who also have a disability, such as a spouse or child dependent.[47] The capture of previously tax-free benefits at death possibly creates new revenue for the state but at the expense of continuing to provide funding for special-needs citizens in the same family as the deceased.

As the implementation of ABLE nationwide will doubtless continue to evolve, these five possible pitfalls should caution financial planners from too quickly embracing ABLE options for increasing the coverage and funding options for clients with special needs. ■

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(1) Robert Cooper and Lisa Gardner, "Extensive Changes and Major Challenges Encountered in Health Insurance Markets under the Affordable Care Act," *Journal of Financial Service Professionals* 70, No. 5 (2016): 53–71.
(2) The Stephen Beck, Jr., Achieving a Better Life Experience Act (ABLE Act) of 2014, 26 U.S.C. § 529A (2014). See also Boris Abbey

and Lewis Hershey, "Does the ABLE Act Enable the Wealthy and Disable the Poor?" *Journal of Financial Service Professionals* 70, No. 2 (2016): 46–52.
(3) *Ibid*.
(4) *Ibid*.
(5) *Ibid*. Also, 26 U.S.C. § 529.
(6) "Form 1099-QA: Distributions from ABLE Accounts," *IRS.gov;* accessed October 9, 2016, at: www.irs.gov/pub/irs-pdf/f1099qa.pdf. "Form 5498-QA: ABLE Account Contribution Information," *IRS.gov;* accessed October 9, 2016, at: www.irs.gov/pub/irs-access/f5498qa_accessible.pdf. "Instructions for Forms 1099-QA and 5498-QA: Distributions from ABLE Accounts and ABLE Account Contribution Information," *IRS.gov;* accessed September 16, 2016, at: www.irs.gov/pub/irs-pdf/i1099qa.pdf?_ga=1.113496002.414714767.1475799263.
(7) 26 U.S.C. § 529A(b)(1)(B).
(8) 26 U.S.C. § 529A(c)(4). "Instructions for Forms 1099-QA and 5498-QA: Distributions from ABLE Accounts and ABLE Account Contribution Information," endnote 6. H.R. 4794, 114th (March 17, 2016); as submitted to the House Ways and Means Committee; but this proposed ABLE Financial Planning Act would allow individuals with disabilities to roll over funds saved in a 529 college savings plan to an ABLE account.
(9) IRC Sec. 529A.
(10) Consolidated Appropriations Act of 2016, Pub. L. No. 114-113, 129 Stat. 2242 (2015).
(11) 26 U.S.C. § 529A(b)(1), as amended by the Protecting Americans from Tax Hikes Act of 2015, P.L. 114-113, 129 Stat. 3040 (2015).
(12) Elizabeth O'Brien, "Parents of Special Needs Children Plan for Two Futures," *MarketWatch,* July 7, 2016; accessed at: www.marketwatch.com/story/parents-of-special-needs-children-plan-for-two-futures-2016-07-07.
(13) 26 U.S.C. §§ 529A(e)(1)–(2). Note that the "designated beneficiary" is the account owner.
(14) "Disability Evaluation Under Social Security Part I—General Information: Program Description," *U.S. Social Security Administration* (2016); accessed at: www.ssa.gov/disability/professionals/bluebook/general-info.htm. Note that a "medically determinable" physical or mental impairment is an impairment that results from anatomical, physiological, or psychological abnormalities that can be shown by medically acceptable clinical and laboratory diagnostic techniques. The medical evidence must establish a physical or mental impairment consisting of signs, symptoms, and laboratory findings—not only by the individual's statement of symptoms.
(15) 26 U.S.C. § 529A(e)(1)(A).
(16) See, e.g., "Disability and Health: Other Data & Statistics," *U.S. Centers for Disease Control and Prevention,* March 18, 2016; accessed at: www.cdc.gov/ncbddd/disabilityandhealth/data-highlights.html. "The 2005 Surgeon General's Call to Action to Improve the Health and Wellness of Persons with Disabilities: What It Means to You," *U.S. Department of Health and Human Services Office of the Surgeon General,* 2005; accessed at: www.cdc.gov/ncbddd/disabilityandhealth/pdf/whatitmeanstoyou508.pdf.
(17) "Disabilities," *WhiteHouse.gov;* accessed July 1, 2016, at: www.whitehouse.gov/issues/disabilities.
(18) *Ibid.*
(19) "Table 1: Prevalence of Disability for Selected Age Groups: 2005 and 2010," *U.S. Census Bureau Survey of Income and Program Participation, June–Septemer 2005 and May–August 2010,* 2010; accessed at: www.census.gov/people/disability/publications/disab10/table_1.pdf. Also see Qing Zhang et al., "Prevalence of Disability and Disability Type Among Adults—United States, 2013," *U.S. Centers for Disease Control and Prevention Morbidity and Mortality Weekly Report (MMWR)* 64, No. 29 (July 31, 2015): 777–783; accessed at: www.cdc.gov/mmwr/pdf/wk/mm6429.pdf. Note that the figures may be even higher. Because some of the survey's questions included the subjective modifier "serious," some respondents may identify as having more-moderate limitations or may not perceive a disability to be serious in nature.
(20) *Ibid.*
(21) "Social Security Basic Facts," U.S. Social Security Administration, October 13, 2015; accessed at: www.ssa.gov/news/press/basicfact.html.
(22) *Ibid.*
(23) "Path2College 529 Plan Disclosure Booklet," *TIAA-CREF Tuition Financing, Inc.,* last modified October 1, 2012: 2; accessed at: www.path2college529.com/documents/ga_disclosure.pdf. Note that the maximum 529 contribution amount in Georgia is $235,000. "Mississippi Affordable College Savings (MACS): Program Disclosure Booklet and Participation Agreement," *TIAA-CREF Tuition Financing, Inc.,* September 16, 2014: 2; accessed at: www.ms529.com/documents/ms_disclosure.pdf. Note that the maximum 529 contribution amount in Mississippi is $235,000. "FAQs: Contributions and Rollovers," *Pennsylvania Treasury 529 College Savings Program,* 2013; accessed at: www.pa529.com/faqs/contributions-and-rollovers/contribution-amount. Note that the maximum 529 contribution amount in Pennsylvania is $511,758.
(24) "Achieving a Better Life Experience (ABLE) Accounts," *U.S. Social Security Administration Program Operations Manual System (POMS)* § SI 01130.740, March 21, 2016; accessed at: https://secure.ssa.gov/poms.nsf/lnx/0501130740.
(25) "Treatment of ABLE Accounts under Certain Federal Programs," note to 26 U.S.C. § 529A (as amended by Pub. L. 113-295, div. B, title I, § 103, Dec. 19, 2014, 128 Stat. 4063). See also Bernice Boursiquot, "Disability Characteristics of Income-Based Government Assistance Recipients in the United States: 2011," *U.S. Census Bureau American Community Survey Brief* (February 2016): 11–12; accessed at: www.census.gov/prod/2013pubs/acsbr11-12.pdf. Note that Medicaid uses the term "beneficiary" for program enrollees,

whereas the SNAP (colloquially known as food stamps), SSI, and TANF programs use the term "recipient").
(26) Tax Increase Prevention Act of 2014, Pub. L. 113-295, Div. B, Title I, §§ 103(a)(b) (Dec. 19, 2014) (codified in the 26 U.S.C. § 529A note titled "Treatment of ABLE Accounts under Certain Federal Programs").
(27) *Ibid.*
(28) *Ibid.*, referring to SSI benefits under Title XVI of the Social Security Act.
(29) *Ibid.*
(30) 6 U.S.C. § 529A(c)(1)(B)(i).
(31) 26 U.S.C. §§ 4973(a)(6) and (h).
(32) 26 U.S.C. § 529A(c)(2).
(33) 26 U.S.C. § 529A(c)(1)(A). See generally, "Distributions and Rollovers from ABLE Accounts," *CCH Tax Research Consultant* § INDIV: 30,558 (Wolters Kluwer 2016). Note that, unless the IRS provides otherwise, all distributions during a tax year are treated as one distribution. The value, income, and investment on the contract are computed at the close of the same calendar year when the tax year begins.
(34) 26 U.S.C. §§ 529A(c)(1)(B)(i)–(ii). See also IRS Pub. 575; accessed December 9, 2016, at: www.irs.gov/publications/p575/ar02.html#en_US_2015_publink1000226685. IRS Pub. 575 defines the term "annuity" as a "series of payments under a contract made at regular intervals over a period of more than one full year." Annuities can be either fixed (under which a beneficiary receives a definite amount) or variable (not fixed). Annuity contracts can be self-purchased or acquired via an employer.
(35) 26 U.S.C. § 529A(c)(3). See generally, "Distributions and Rollovers from ABLE Accounts," *CCH Tax Research Consultant* § INDIV: 30,558 (Wolters Kluwer 2016). Note that the penalty tax may be avoided if (A) the payment or distribution is made to a beneficiary or a beneficiary's estate on or after the designated beneficiary's death; or (B) the payment distributes a contribution that was made during the tax year of the designated beneficiary's income tax return, and includes the net income from the contribution. Financial planners should additionally note that net income is included in gross income.
(36) H.R. Rep. No. 113-614, (2014); accessed at: www.congress.gov/congressional-report/113th-congress/house-report/614/1.
(37) 11 U.S.C. § 521(c).
(38) 11 U.S.C. § 541(b). See generally, "Qualified ABLE Accounts," *2016 U.S. Master Tax Guide* § 870 (CCH Inc. 2015), discussing bankruptcy treatment.
(39) "ABLE," *State of Alabama Office of State Treasurer;* accessed May 1, 2016, at: http://treasury.alabama.gov/able/. "Colorado ABLE: Achieving a Better Life Experience," College Invest; accessed May 1, 2016, at: www.coloradoable.org/. "Florida ABLE United Plan," ABLE United; accessed May 1, 2016, at: www.ableunited.com/. "Maryland's ABLE Program," *State of Maryland Department of Disabilities;* accessed May 1, 2016, at: http://mdod.maryland.gov/about/Pages/Able-Act-Taskforce.aspx. "Nebraska Enable Savings Plan," *First National Bank of Omaha;* accessed May 1, 2016, at: www.enablesavings.com. "ABLE Plan for North Dakota," *Bank of North Dakota;* accessed May 1, 2016, at: https://bnd.nd.gov/able/. "State of Ohio Stable Account," *Intuition ABLE Solutions, LLC;* accessed May 1, 2016, at: http://stable account.com/. "Oregon ABLE Savings Plan," *State of Oregon Office of Treasurer;* accessed May 1, 2016, at: http://oregonablesavings.com/. "ABLE TN," *State of Tennessee Treasury Department;* accessed May 1, 2016, at: www.abletn.gov/. "Texas ABLE," *Texas Prepaid Higher Education Tuition Board;* accessed May 1, 2016, at: http://texasable.org/.
(40) *Ibid.*
(41) "ABLE Explanation and FAQs," *Office of State Rep. John Macco, State of Wisconsin General Assembly;* accessed May 1, 2016, at: http://legis.wisconsin.gov/assembly/88/macco/able-explanation-and-faqs/.
(42) See generally, "Policy Brief: Medicaid Estate Recovery," *U.S. Department of Health and Human Services,* April 1, 2005; accessed at: https://aspe.hhs.gov/basic-report/medicaid-estate-recovery, citing "Medicaid Recoveries from Nursing Home Residents' Estates Could Offset Program Costs," *U.S. General Accounting Office,* GAO/HRD-89-56 (March 1989).
(43) Omnibus Budget Reconciliation Act of 1993, P.L. 103-66, amending Section 1917 of the Social Security Act related to liens, penalties for uncompensated asset transfer, and Medicaid estate recovery. OBRA also strengthened penalties on those who dispose of assets to qualify for Medicaid.
(44) *Ibid.* State Medicaid offices have the highest collection priority after the federal Medicare and Indian Health Services programs.
(45) See Abbey and Hershey (2016), endnote 2.
(46) "Disability Evaluation under Social Security Part I: General Information: Program Description," *U.S. Social Security Administration,* 2016; accessed at: www.ssa.gov/disability/professionals/bluebook/general-info.htm. Note that a "medically determinable" physical or mental impairment is an impairment that results from anatomical, physiological, or psychological abnormalities, which can be shown by medically acceptable clinical and laboratory diagnostic techniques. The medical evidence must establish a physical or mental impairment consisting of signs, symptoms, and laboratory findings—not only by the individual's statement of symptoms. Under the above criteria, if a 26-year-old is in a terrible car accident and is rendered permanently disabled on the day of his 26th birthday, he is ineligible for an ABLE account.
(47) See Abbey and Hershey (2016), endnote 2.