

# Enabling ABLE: Five Potential Positives for 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 "Disabling Able: Five Possible Pitfalls When Implementing the ABLE Act" on page 70), Hershey et al. examine the benefits the 2014 legislation can offer 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 new potential positives for planners working with clients with special needs that will emerge as the ABLE Act is implemented across the country. These are: (1) increasing the client pool, (2) leveraging new funding sources, (3) generating economies of scale, (4) provisioning for ABLE account inheritances (within the boundaries of legal limits), and (5) coordinating with existing special-needs financial planning tools. The manner in which planners take advantage of ABLE accounts can create new and exciting opportunities to service clients with special needs and their families, though these opportunities are not inevitable. The realization of these potential positives will emerge from effective financial planning.

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## Introduction

**I**ncreasing 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) of 2010 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.<sup>1</sup> They conclude that the ACA is still a work in progress and note that financial service professionals are ethically required to recognize that expanding access to health services remains a desirable public policy goal.<sup>2</sup> Similarly, the passage of the Stephen Beck, Jr., Achieving a Better Life Experience (ABLE) Act also expands access to health services for the population with special needs by creating tax-favored savings incentives to help beneficiaries with special needs better afford health services, while allowing them to still stay eligible for public health care assistance such as Medicaid, within certain limits.<sup>3</sup> While laudable in intent, others note that the ABLE Act may have unforeseen consequences that may complicate and even reduce financial resources for some individuals with special needs in the long run. For example, Abbey and Hershey describe circumstances in which ABLE Act beneficiaries suffer loss of possible benefits in the event of intergenerational disability continuing in the same family.<sup>4</sup> Nevertheless, in the last year more

planners have been considering the ABLE Act as a positive, proactive planning tool to help clients with special needs. This article summarizes that literature and argues that there are at least five potential positives for increasing access of clients with special needs to better funding and saving for disabilities as ABLE Act programs are implemented within each state.

## 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.<sup>5</sup> The ABLE Act builds on the 529 college savings plan legislation to encourage private savings to help people with special needs, particularly children and young adults.<sup>6</sup>

As Abbey and Hershey note:

To qualify, 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.”<sup>7</sup>

ABLE Act programs can be established as tax-favored savings accounts to pay a beneficiary’s qualified disability expenses.<sup>8</sup> ABLE account distributions are excluded from the account beneficiary’s income to the extent of his or her qualified disability expenses for the tax year.<sup>9</sup> In the same vein as a traditional first-party special needs trust (SNT), an ABLE account is a mechanism for qualified beneficiaries, and their family and friends, to contribute money for supplemental needs without the threat of losing means-tested government benefits. Disability rights advocates have long argued that individuals with disabilities should never have to choose between having proper health care coverage through Medicaid and

maintaining a modest savings that would place them in violation of Medicaid’s asset limit. As congressional hearings regarding the ABLE Act point out, “This dynamic forces individuals with disabilities to rely upon their family or community, but this support is often not enough to cover their long-term needs.”<sup>10</sup>

Under the asset protection laws of many states, funds held in an ABLE account are exempt from creditors (with the exception of the government) and are not liable to attachment, levy, garnishment, or other process.<sup>11</sup> Many state statutes mandate that ABLE account funds may not be “seized, taken, appropriated, or applied by any legal or equitable process or operation of law to pay any debt or liability of any contributor or beneficiary.”<sup>12</sup> The ABLE Act also allows parents who have saved money in a traditional 529 account to roll the funds into an ABLE account if their child is diagnosed with a disability before age 26.<sup>13</sup> Given these changes in law, it is not surprising that there is a rapidly emerging interest in ABLE accounts as a special-needs planning tool.

## Emerging Interest in ABLE Accounts as a Special-Needs Planning Tool

Fifty years after the 89th U.S. Congress passed the laws to create the Medicare and Medicaid programs, the 113th Congress passed the ABLE Act.<sup>14</sup> In adding a new section titled 529A to the Internal Revenue Code of 1986, the ABLE Act creates another tool to improve the quality of life and care for individuals who were disabled before age of 26. Modeled off of the popular 529 college savings account program, ABLE account growth is generally federal and state income tax-free. ABLE account beneficiaries can keep a nest egg of savings to supplement their needs or save for emergencies—provided their balance does not exceed the Medicaid total threshold of \$102,000—and continue to rest assured that Medicaid will cover their health care costs. Previously, traditional SNT and pooled-trust approaches necessitated the use of attorneys and planners to achieve this aim, adding time, cost, and expense to the saving for special needs.

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During congressional hearings analyzing the ABLE Act, the Senate Committee on Finance heard testimony that “individuals with disabilities should have the opportunity to save for their future costs on an even playing field with other citizens across the country.”<sup>15</sup> The ABLE Act affirmed that people with disabilities have a “great ability to live a life full of opportunity and lead a life full of achievement and success.”<sup>16</sup> As such, the ABLE Act represents a new opportunity for planners by creating a mechanism for paying for disability-related costs because it encourages private sources to provide assistance rather than relying solely on state and federal government programs. As state legislatures continue to work on their respective state plans for implementing the ABLE Act, the national organizations that serve populations with disabilities and special needs anticipate that ABLE accounts will provide some long-awaited gains for their constituents.<sup>17</sup> For example, Michael Morris, a representative from the National Disability Institute, says that an ABLE account is “certain to be a valuable tool for individuals with disabilities and their families.”<sup>18</sup> All in all, the ABLE Act has the potential to provide owners with direct control over how their funds are distributed and increases the choices available for special-needs planning.

A review of the literature shows the ABLE Act to be an emerging, evolving planning tool providing new funding opportunities to families with children who have special needs. A careful, though hardly exhaustive, analysis of the ABLE Act identifies at least five important new special-needs planning opportunities, or potential positives, if leveraged optimally by planners. These are: (1) increasing the client pool, (2) leveraging new funding sources, (3) generating economies of scale, (4) provisioning for ABLE account inheritances (within the boundaries of legal limits), and (5) coordinating with existing special needs financial planning tools. Each of these potential benefits of ABLE is described below.

### Increasing the Client Pool

Multiple states are coordinating resources to help expedite the implementation of the ABLE Act and to lower costs. For example, O’Brien reports that nine

states have “announced they had joined together to form an ABLE Act consortium that aims to lower costs by increasing the number of potential participants.”<sup>19</sup>

The cornerstone of the ABLE Act is a requirement that each state operate its own dedicated ABLE account plan.<sup>20</sup> The law originally contained a residency clause that restricted consumers’ access to their home state’s ABLE accounts only.<sup>21</sup> As part of the Protecting Americans from Tax Hikes Act of 2015, Congress allowed qualified ABLE account beneficiaries to choose among all available plans in each state.<sup>22</sup> Opportunities to leverage the ABLE Act are expanding and providing more choices for funding clients with special needs. The emerging interest in the ABLE account as an additional and necessary special-needs planning tool is quickly becoming a focus of national organizations that support populations with disabilities and special needs and of an increasing number of financial planners.<sup>23</sup>

The ABLE Act can be leveraged for many types of disability-related expenses. ABLE accounts allow people to set aside money for expenses that are not otherwise covered by personal accounts with asset limitations, Medicaid, or private health care insurance. Once implemented, the ABLE Act has the potential to increase accessibility to special-needs funding sources, expand employment opportunities, and increase financial independence and autonomy for people with disabilities. Federal regulations state that spending distributions from an ABLE account may be used for a wide variety of “qualified disability expenses” related to the individual’s disability or blindness provided they are incurred for his or her benefit.<sup>24</sup> These include day-to-day costs like education, housing, and transportation, but an ABLE account can also be used to procure employment support, vocational training, general educational needs, assistive technology, or personal support services.<sup>25</sup> Qualified disability expenses include basic living expenses and are not limited to items for which there is a medical necessity or that would benefit a disabled person only.<sup>26</sup> Congress has broadly defined

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the scope of qualified disability expenses to include proactive care offered through private clinicians for “prevention and wellness.”<sup>27</sup> Qualified disability expenses include spending related to counseling, preventative, and wellness health care; such items are not consistently covered under Medicaid and other government-sponsored assistance programs. Funeral and burial expenses are also expressly covered.

All in all, the ABLE Act recognizes that disability-related costs, particularly other out-of-pocket service providers, can place an enormous financial burden on families. Much of the congressional testimony in support of the ABLE Act discussed this issue at length, noting that individuals with disabilities and their families often face “unique emotional and financial obstacles” and require financial planning to help meet many “challenges, whether it is paying for specialized care or a more individualized education, to maintain their health and their independence, or provide for a better quality of life.”<sup>28</sup> With an eye toward promoting financial peace of mind, ABLE allows individuals to allocate funds for practical, everyday needs (e.g., public transportation and rent) as well as long-term financial management (e.g., financial monitoring assistance and legal fees).<sup>29</sup> Over the next several years, it is likely that the ABLE Act will expand the financial planning marketplace by reaching out to a new client pool of individuals who are not currently served by traditional third-party SNTs. This population may greatly benefit by opening tax-exempt ABLE accounts so that they can plan how best to use their own funds to cover living expenses.

### Leveraging New Funding Sources

Multiple individuals may make contributions to an ABLE account—there is no legal requirement that a donor be a relative. Therefore, special-interest groups, churches, charities, and other broad-based benefactors can fund ABLE accounts. While there is nothing prohibiting such funding for traditional third-party SNTs, the private nature and labor-intensive aspects of drafting and implementing SNTs are usually the work of only

the most immediate family and their financial advisors and estate planning attorneys. By securing the necessary funds to help cover out-of-pocket costs for health services, financial well-being, and items that enrich daily living, individuals, families, and communities can invest in physical, mental, and emotional health care for loved ones with disabilities who might otherwise have to rely on public charity alone. In addition, gift tax or generation-skipping transfer (GST) taxes will not generally apply to a change in an ABLE account’s designated beneficiary if, as of the beginning of the year, the new beneficiary is both an eligible individual for the taxable year and a brother, sister, stepbrother, or stepsister of the original beneficiary.<sup>30</sup> Whereas funding from immediate family members usually characterizes traditional SNTs, one can hope that the use of ABLE accounts will bolster new and innovative funding sources. Indeed, it is possible to imagine community-based crowdfunding of ABLE accounts typical of giving in response to accident or injury, or even organized under an umbrella organization created for that purpose, using a GoFundMe account or similar venue.<sup>31</sup>

### Generating Economies of Scale

With over 56 million Americans living with disabilities and only 285,000 financial advisors in the United States, there are approximately 200 individuals with special needs for every one potential special-needs planner.<sup>32</sup> Not all individuals with disabilities are eligible for ABLE accounts, but as Hershey et al. point out, children with disabilities are estimated to comprise about 19.1 percent of the overall underage population.<sup>33</sup> Servicing such a large number of clients under traditional, customized SNTs can be extremely expensive and labor-intensive. Of course, only after careful consideration and research can financial planners establish which state’s ABLE Act program is in the best interest of their particular client. Because the risks and benefits for state ABLE programs vary, confirming the best available offering for any one individual is no simple feat. Nevertheless, once the proper state jurisdiction is established, ABLE account cre-

ation can be standardized on a state-by-state basis so that insurance companies and other large vendors can utilize turnkey ABLE account products and leverage economies of scale. A “make-once, sell-many” ABLE product can be branded and marketed alongside existing insurance products, increasing the likelihood of greater market penetration. It is to be expected that private insurers entering the ABLE account market will first do so in states with large, urban populations of individuals with special needs and eventually provide nationwide coverage.

### **Working within the Statutory Limitations on Inheritances of ABLE Accounts**

ABLE accounts can be established for and owned by only a single eligible individual, who is labeled as the designated beneficiary.<sup>34</sup> Abbey and Hershey explain that an ABLE account “can be transferred to another beneficiary, without additional taxes or penalties, but only to a sibling or step-sibling who has a qualified disability.”<sup>35</sup> By opening the door to certain intragenerational ABLE account transfers between siblings, financial planners may be encouraged to expand their special needs practices to address this growing market. The potential for ABLE account transfers to siblings, whether the beneficiaries are related by adoption, birth, or marriage, may increase the demand for long-term professional planning with dedicated special needs experts.

As couples continue to have their children later in life and families change over time through divorce or remarriage, siblings are more often separated in age by a large number of years. This dynamic creates a longer timeline for special-needs planning within and across sibling generations. Another positive potential for sibling ABLE account transfers is that if a successor beneficiary sibling acquires a disability before age 26, his or her ability to inherit a sibling’s existing ABLE account could help to ease that family’s financial planning burdens. Because many families have only limited funds available for unexpected special needs care, the ability to free up and transfer funds invested in an existing

ABLE account could prove critical to helping to maintain a family’s long-term financial stability. This issue may be particularly relevant in cases where unexpected special needs costs for a child with a new disability arise later in the life of a parent or guardian.

Planners should note that a designated ABLE beneficiary can make a contribution to fund his or her own ABLE account without facing a gift tax for that contribution.<sup>36</sup> Transfers of funds that do not meet ABLE Act rollover requirements constitute “nonqualified withdrawals” and are subject to additional federal taxes. If ABLE funds are changed to a different designated beneficiary who is not a sibling of the original beneficiary, the portion of the then-fair market value of the transferred ABLE funds (and any related earnings) will likely constitute a gift by the designated beneficiary to the successor designated beneficiary.<sup>37</sup> In these cases, standard gift and GST tax rules will apply.<sup>38</sup>

### **Coordinating ABLE Accounts as Another Financial Planning Tool besides Special Needs Trusts**

Before the creation of ABLE accounts, utilizing an SNT was the only way most families could save for the future of a child with disabilities without losing access to Supplemental Security Income (SSI) and Medicaid benefits. Kristen Denzinger praises the versatility of SNTs by stating, “Permissible disbursements from a SNT are limited only by the creativity of the drafting attorney [or planner] and the overriding requirement that the beneficiary derive the primary benefit.”<sup>39</sup> Nevertheless, a high-quality, professionally constructed SNT that is tailored to individual needs is a labor-intensive and expensive endeavor. SNTs often require a team of financial professionals to obtain and are thus often out of practical reach for many families. Opening an SNT requires both short- and long-term costs including attorney’s fees to structure the trust, trust administration charges, and investment management of IRS-sensitive issues. With ABLE accounts, individuals with disabilities and their families now have another avenue for saving that may prove to be easier

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to navigate without extended professional assistance. This has the potential to allow ABLE account users to pay lower fees than those required by traditional trusts.

Extensive, individualized research on an individual's financial budget, health and wellness needs, and projected short- and long-term income is necessary to establish whether an SNT, an ABLE account, or both is the best fit for a particular client. When placed into an SNT, a sum of money or resource that exceeds \$2,000 maintains eligibility when it would otherwise result in ineligibility for federal means-tested benefits. SNTs can be separated into two primary types: first-party SNTs and third-party SNTs. The former is commonly used when an individual with a disability receives a windfall, such as a large inheritance or a substantial settlement from a personal injury case. Federal law authorizes both standard and pooled first-party trusts.<sup>40</sup>

In analyzing these financial planning avenues, Franklin points out,

The ABLE account will be useful for a beneficiary's excess earnings, those Christmas and birthday cards that rain cash or a small windfall. However, because of the \$14,000 aggregate annual limit on contributions, we will continue to need first-party SNTs, and of course, the ABLE account should not take the place of a third-party or 'Mom and Pop' trust.<sup>41</sup> She adds:

The ABLE account has been lauded as a place for families and friends to contribute funds for the benefit of the person with a disability. That's understandable if it is Grandma's \$50 birthday check. However, in most cases, a third party, such as Grandma, would not be happy if she understood that the funds she contributed to an ABLE account or any other first-party special needs trust account may be used to reimburse the Medicaid program. Grandma, mom, and pop should establish a special needs trust in their estate plan because then they have control over who receives the funds after the beneficiary's death. Grandma's small birthday check should go into the individual's regular checking account

or his ABLE account depending upon the facts and circumstances.<sup>42</sup>

Although ABLE plans show promise for their ability to provide some financial security for certain immediate needs, they are not designed to serve as replacements for SNTs. They are best considered as another approach to weigh in the disability planning process. Per Franklin, "It could be beneficial to utilize both an ABLE Act account and special needs trust, taking advantage of the strengths and avoiding the weaknesses of each."<sup>43</sup> For instance, in ABLE accounts, like pooled SNTs, eligible individuals can establish an ABLE account funded with his or her own assets without requiring a judge's involvement.<sup>44</sup> Because both ABLE accounts and pooled trusts relieve the beneficiary of the burden of finding an adequate pool of potential trustees, they allow the beneficiary to avoid one of the more difficult establishment issues with individual SNTs.<sup>45</sup> SNTs and ABLE accounts may serve as remedies for excess income deemed countable income for SSI purposes when funded with an irrevocable assignment of periodic payments (including child support or alimony payments under certain circumstances).<sup>46</sup> For reference, the *Tennessee Bar Journal* has put forth a high-level contrast of first-party trusts, a third-party trust, and an ABLE account.<sup>47</sup>

There are many reasons to label SNTs as impractical or inconvenient. Today's SNT planners need to be prepared to navigate the complex modified adjusted gross income (MAGI) rules, changes to the federal poverty level guidelines, and how clients' incomes will affect their SNT eligibility and choices.<sup>48</sup> In addition, the costs and time necessary to establish and administer an SNT are often significant. For some, it is more than they can reasonably afford. A trust, by definition, requires the beneficiary with a disability to lose control over his or her assets, but as Fuller points out, "This loss of control is problematic for those who have [the] capacity to manage their own financial affairs."<sup>49</sup> Even if an individual with a disability has sheltered her or his assets in a qualifying trust, if that SNT is improperly administered by a nonprofessional, do-it-yourself plan-

ner, the complicated rules surrounding the trust's administration may cause persons with disabilities to end up losing eligibility for their governmental benefits.<sup>50</sup> When exploring the complexities of SNTs, Solkoff notes that explicit attention to detail and phrasing in SNTs is required to balance "flexibility with the need to ensure that the trust will not jeopardize the beneficiary's eligibility for public benefits."<sup>51</sup> Particularly in cases where the beneficiary wishes to save a small amount of funds, an ABLE account may be preferable over an SNT as many of the above-named risks or concerns are either minimal or nonexistent with 529A accounts.

### Summary: Five Potential Positives for Implementing the ABLE Act

In sum, the ABLE Act allows people with disabilities and their families to set up a special savings account for disability-related expenses. In the past, the traditional SNT necessitated use of attorneys and planners, adding time, cost, and expense to the saving for special needs. ABLE accounts open up new opportunities for planners and special needs families alike, and they reveal an increasing interest in ABLE accounts as an emerging new planning tool. An examination of the emerging literature suggests at least five positive potentials from the implementation of ABLE that financial planners should consider when servicing their clients with special needs:

- 1. Greatly expands number of potential clients.** The low cost of setting up and administering an ABLE account relative to a traditional SNT makes saving for disability expenses accessible to a potentially much larger population.
- 2. New sources of funding possible.** ABLE accounts are limited to the amount per year that can be put into savings but not the sources of that funding. It is possible to imagine the formation of community-action funding groups—akin to the Wounded Warrior Project for veterans with disabilities—to help address the special needs expenses of members of the greater community. Additionally, much as social media now allow fundraising programs for

medical and funeral expenses, so too might such crowdfunding venues such as GoFundMe and other third-party groups encourage unrelated individuals to become active in helping to organize and fundraise for citizens with special needs.<sup>52</sup> The ABLE Act's potential to expand funding sources to a larger donor community presents an unprecedented opportunity for citizens with special needs to increase their savings.

- 3. Economies of scale.** Traditional SNT planning is by nature a time-consuming, labor-intensive process involving one or more highly skilled professionals engaged in customized planning to meet client-specific needs. However, the nature of ABLE accounts potentially allows firms to create turnkey ABLE account templates as retail financial products. This can create economies of scale as those products are rolled out to a larger number of customers, lowering the cost to beneficiaries and further expanding penetration of the special needs market.
- 4. Ability of qualified siblings to inherit ABLE.** The ABLE Act allows a sibling with a disability to inherit an ABLE account upon the death of the original beneficiary. Such intragenerational transfer potential may encourage producers to expand their practices within the special needs market. The longer time horizon for service complements the economies of scale potential mentioned previously. The inheritance option may prove particularly critical for older parents or guardians who are close to retirement and have less time to save for unanticipated disability-related costs.
- 5. Coordination with other planning tools.** As noted by Abbey and Hershey, it can be beneficial to combine ABLE accounts with other planning tools, such as traditional third-party SNTs.<sup>53</sup> The ability to enhance and expand the existing special-needs planning toolkit generates additional potential to increase the assets available to pay for special needs services. As Fuller explains, while on one level the ABLE

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Act represents sweeping change and new opportunities, “The future of special-needs planning will be much like it has been in the past: Finding ways to access health care, protect and grow assets, and enhance the quality of life for people with disabilities.”<sup>54</sup> The implementation of the ABLE Act nationwide will doubtless continue to evolve and these five potential positives portend well 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) *Ibid.*

(3) The Stephen Beck, Jr., Achieving a Better Life Experience Act (ABLE Act) of 2014, 26 U.S.C. § 529A (2014). 26 U.S.C. § 529A note regarding Treatment of ABLE Accounts under Certain Federal Programs (as amended by Pub. L. 113–295, div. B, title I, § 103, Dec. 19, 2014, 128 Stat. 4063).

(4) 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.

(5) 26 U.S.C. § 529A.

(6) Abbey and Hershey (2016), endnote 4, p. 46.

(7) Abbey and Hershey (2016), endnote 4, citing IRC Sec. 529A.

(8) 26 U.S.C. § 529A(e)(5).

(9) 26 U.S.C. § 529A(c)(1)(B)(i).

(10) *Saving for an Uncertain Future: How the ABLE Act Can Help People with Disabilities and Their Families: Hearing 598 before the Subcommittee on Taxation and IRS Oversight of the Committee on Finance, United States Senate*, 113th Cong., July 23, 2014: 2 (opening statement of Senator Robert Casey, Pennsylvania).

(11) 26 U.S.C. § 529A(f), clarifying that the state will be deemed as a “creditor of an ABLE account and not a beneficiary.” See also Fla. Stat. § 222.22 (5) (2015); R.I. Gen. Laws § 42-7.2-20.8 (2015); and Va. Code Ann. § 23-38.81 (2015).

(12) *Ibid.*

(13) “Form 1099-QA: Distributions from ABLE Accounts,” IRS.gov; accessed October 9, 2016, at: [www.irs.gov/pub/irs-pdf/f1099qa.pdf](http://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](http://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](http://www.irs.gov/pub/irs-pdf/i1099qa.pdf?_ga=1.113496002.414714767.1475799263).

(14) Social Security Act, Volume I, Title 19 [codified at 42 U.S.C. §§ 1396–1396v (enacted 1965)]; 26 U.S.C. § 529A (enacted 2014).

(15) See *Saving for an Uncertain Future* (2014), endnote 10: 2.

(16) *Ibid.*

(17) *Ibid.*, 33; Statement by Sara Wolff on behalf of the National Down Syndrome Society. See also “ABLE Act,” *National Disability Institute* (2016); accessed at: [www.realeconomicimpact.org/public-policy/able-act](http://www.realeconomicimpact.org/public-policy/able-act). The ABLE National Resource Center (ANRC) was founded by National Disability Institute (NDI) to provide ABLE stakeholders with consistent, reliable information concerning the benefits of ABLE programs and accounts.

(18) Michael Morris, “10 Things You Must Know about the ABLE Act,” *National Alliance on Mental Illness*, May 27 2015; accessed at: [www.nami.org/Blogs/NAMI-Blog/May-2015/10-Things-You-Must-Know-about-the-ABLE-Act](http://www.nami.org/Blogs/NAMI-Blog/May-2015/10-Things-You-Must-Know-about-the-ABLE-Act).

(19) 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](http://www.marketwatch.com/story/parents-of-special-needs-children-plan-for-two-futures-2016-07-07).

(20) 26 U.S.C. § 529A(b)(2).

(21) 26 U.S.C. § 529A(b)(1)(B)-(D) (2014). The 2015 amendments to subsection (b)(1)(B)-(D) of Pub. Law 114–113 § 303(a) inserted



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“and” at end of subparagraph (B); redesignated subparagraph (D) as (C); and struck out former subparagraph (C), which read as follows: “which allows for the establishment of an ABLE account only for a designated beneficiary who is a resident of such State or a resident of a contracting State, and...” Subsection (d)(3) of Pub. Law 114–113 §303(b)(1) struck out the phrase “and State of residence.”

(22) *Ibid.*

(23) See *Saving for an Uncertain Future* (2014), endnote 10: 7–9. While the Senate was weighing ABLE, its Committee on Finance heard the story of Sara Wolff, a woman who described herself as a 31-year-old from Pennsylvania who happens to have Down syndrome. Ms. Wolff testified that without ABLE accounts, many individuals who are disabled are not incentivized to save because even a modest savings could render them ineligible to receive income-based federal health care benefits. Ms. Wolff further testified that the strict income requirements for government means-tested programs held her back from seeking the career of her choice and working in a full-time position. Because the ABLE Act would allow her to save some money without losing her SSI payments and Medicaid eligibility, she stated that the law would “dramatically and forever” change her life.

(24) 26 U.S.C. § 529A(e)(5).

(25) *Ibid.* Note, however, that an ABLE program must be able to distinguish and identify any amounts distributed for housing expenses as is defined for purposes of the Supplemental Security program of the Social Security Administration.

(26) *Ibid.*

(27) *Ibid.*

(28) *Saving for an Uncertain Future* (2014), endnote 10: 4 (statement of Senator Michael Enzi, Wyoming).

(29) 26 U.S.C. § 529A(e)(5).

(30) 26 U.S.C. § 529A(c)(2)(C).

(31) “How It Works,” *GoFundMe*; accessed October 1, 2016, at: [www.gofundme.com/tour](http://www.gofundme.com/tour). Note that GoFundMe personal online fundraising Web sites can be set up for individuals, groups, and organizations.

(32) “Disabilities,” *WhiteHouse.gov*; accessed July 1, 2016, at: [www.whitehouse.gov/issues/disabilities](http://www.whitehouse.gov/issues/disabilities); and “Number of U.S. financial advisers fell for fifth straight year—report,” *Reuters Funds News*, February 11, 2015; accessed at: [www.reuters.com/article/wealth-cerulli-advisor-headcount-idUSL1N0VL23920150211](http://www.reuters.com/article/wealth-cerulli-advisor-headcount-idUSL1N0VL23920150211) (discussing the continuing wave of retiring financial advisors and noting that the financial planning industry lost more than 39,000 advisors—roughly 12 percent of the industry’s pool—between 2008 and 2014).

(33) Lewis Hershey et al., “When to Stretch and When Not to Stretch an Inherited IRA: The Special Case of the Special Needs Trust,” *Journal of Financial Service Professionals* 69, No. 2 (March 2015): 59.

(34) 26 U.S.C. § 529A(e)(3).

(35) Abbey and Hershey (2016), endnote 4.

(36) 26 U.S.C. § 529A(c)(2).

(37) “Federal Taxation: The Gift Tax: Taxable Transfers,” *American Jurisprudence* 34B, No. 147,161.3 (February 2016), citing Prop. Treas. Reg. § 1.529A-4(a)(3).

(38) *Ibid.*, citing 26 U.S.C. § 529A(c)(2)(A)(i); Prop. Reg. § 1.529A-4(a)(1); and Prop. Reg. § 25.2503-3(a).

(39) Kristen Denzinger, “Financial Planning: Special Needs Trusts,” *American Bar Association General Practice, Solo and Small Firm Section Law Trends & News Estate Planning Newsletter* 1, No. 2 (February 2005).

(40) 42 U.S.C. § 1396p(d)(4)(A), codifying federal standard first-party trust standards; 42 U.S.C. § 1396p(d)(4)(C), codifying federal first-party pooled trust standards.

(41) Monica Franklin, “An Alternative to a Special Needs Trust? The ABLE Account,” *Tennessee Bar Journal* 51, No. 29 (February 2015).

(42) *Ibid.*

(43) *Ibid.*

(44) 42 U.S.C. § 1396p(d)(4)(C).

(45) *Ibid.*

(46) Thomas Beltran, “Achieving Ability: Under the ABLE Act, Tax-Advantaged Savings Accounts Will Soon Be Available to Provide for Disability Expenses,” *Los Angeles Lawyer* (September 2015), discussing POMS SI 01120.200.G.1.d.

(47) 42 U.S.C. § 1396p(d)(4)(C), endnote 44.

(48) Scott Solkoff, “Report on the Patient Protection and Affordable Care Act: Its Impact on the Special Needs and Elder Law Practice,” *NAELA Journal* 11, No. 1 (Spring 2015). Note that under the ACA, clients may be newly eligible for Medicaid under the expansion program. Now that insurance companies can no longer deny coverage based on preexisting conditions, many individuals with a disability can also obtain private insurance coverage that was previously unavailable to them. See also 42 U.S.C. § 1382c(a)(3)(a).

(49) Michele P. Fuller, “Planning for a Person with Disabilities: Traditional and Emerging Planning Considerations,” *Michigan Bar Journal* 93, No. 11 (November 2014): 38–40.

(50) *Ibid.*, indicating that if an individual’s assets caps are exceeded, a properly drafted SNT must provide a safe harbor for the excess assets to allow the beneficiary to maintain enrollment in needs-based programs like Medicaid.

(51) Solkoff (2015), endnote 48.

(52) *GoFundMe*, endnote 31.

(53) Abbey and Hershey (2016), endnote 4.

(54) Fuller (2014), endnote 49.

## Society of Financial Service Professionals CE Schedule

March 7, 2017 · 12:00 noon–1:00 p.m. ET  
**Charitable Giving: Tax and Estate  
Planning in the Trump Administration**  
Webinar  
*Sponsored by American Cancer Society*

March 15, 2017 · 12:00 noon–1:00 p.m. ET  
**Retirement Solutions: Keeping Options  
Open for Boomers**  
Webinar  
*Sponsored by Ash Brokerage*

March 28, 2017 · 12:00 noon–1:00 p.m. ET  
**Retaining Capital through Life  
Insurance Premium Finance**  
Webinar  
*Sponsored by Aurora Capital*

April 7, 2017 · 2:00 p.m.–5:00 p.m. CT  
**Navigating the Complex Issues of the  
Closely Held Business: A View from a  
Collaborative Team**  
Educational Meeting  
Chicago Airport Marriott, Chicago, IL

April 19, 2017 · 12:00 noon–1:00 p.m. ET  
**Topic: How to Discuss Risk with  
Your Clients: The Quant and the Advisor**  
Webinar  
*Sponsored by Covisum*

May 5, 2017 · 2:00 p.m.–5:00 p.m. ET  
**Navigating the Complex Issues of the  
Closely Held Business:  
A View from a Collaborative Team**  
Educational Meeting  
Tampa Airport Marriott, Tampa, FL

May 17, 2017 · 1:00 p.m.–3:10 p.m. ET  
**Topic: Social Security**  
Video Teleconference

June 1, 2017 · 12:00 noon–1:00 p.m. ET  
Webinar  
*Sponsored by Lincoln Financial Group*

June 13, 2017 · 12:00 noon–1:00 p.m. ET  
**Topic: Donor Advised Funds**  
Webinar  
*Sponsored by American Cancer Society*

June 21, 2017 · 12:00 noon–1:00 p.m. ET  
Webinar  
*Sponsored by Ash Brokerage*

June 27, 2017 · 12:00 noon–1:00 p.m. ET  
Webinar  
*Sponsored by Guardian*

August 8, 2017 · 12:00 noon–1:00 p.m. ET  
**Roles and Responsibilities of a Trustee**  
Webinar  
*Sponsored by American Cancer Society*

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