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New ABLA Accounts Law Supports Financial Independence for Persons with Disabilities

The Achieving a Better Life Experience Act of 2009 (also known as the **ABLE Act of 2009**) is proposed bipartisan legislation in the 111th Congress (S. 493/H.R. 1205). If enacted, the ABLE Act would authorize the **creation of tax preferred accounts to benefit people with disabilities**. The ABLE Act will enable families and individuals to provide funds for building resources for certain expenses of a beneficiary with disabilities, such as education, housing, transportation, employment support, medical care, life necessities, assistive technology and personal support services, and other government-approved expenses.

Policy Details:

Federal and state governments provide incentives and subsidies through the tax system for certain types of savings and wealth-building. The federal government invests more than \$367 billion a year to subsidize savings for retirement, homeownership and college education. Savings products such as IRA, 401(k), and 529 plans provide tax benefits for targeted investments. No tax-benefited account option is currently available for families to save for the needs of a person with disabilities. In fact, families who receive SSI are discouraged from saving for the needs of a person with disabilities as savings can jeopardize the SSI funds that support the person with a disability.

The ABLE Act would establish this account option by amending the Internal Revenue Code of 1986. Individuals eligible to benefit from such an account are persons who would either:

- Be eligible for or be receiving benefits as a result of a disability or blindness from the Supplemental Security Income (SSI) program or Social Security Disability Insurance (SSDI)
- Would be eligible to receive SSI or SSDI benefits under these programs' definition of disability or blindness if the programs' income, assets, and substantial gainful activity eligibility tests were disregarded

Accounts opened under this Act are meant to supplement, not replace, benefits from private insurance and means-tested public benefit programs such as the Supplemental Security Income (SSI) program or Medicaid. Savings within the account and distributions from the account would be disregarded in determining eligibility for federally means-tested programs if funds are spent for qualified expenses. Qualified expenses cover a broad range of needs and include:

- Education, including tuition, materials, books, special services, tutors, and other related expenses
- Housing, including mortgage or rent payments, maintenance costs, utility payments, property taxes and home modification
- Transportation, including vehicle purchase or modification, use of the public transportation system, and moving expenses
- Employment support necessary to obtain and maintain employment
- Medical care, including insurance and out-of-pocket expenses, rehabilitation services, equipment, therapy, long term services, and other related expenses
- Life necessities, including clothing, religious/cultural/recreational activities, community based supports, and personal care needs
- Assistive technology and personal support services

Up to \$2,000 in contributions to an account would be tax deductible per beneficiary per year. The deduction begins phasing out when modified adjusted gross income reaches \$60,000 for couples filing jointly, \$45,000 for heads of household, and \$30,000 for all other tax filers. The deduction is fully phased out when modified adjusted gross income reaches \$70,000 for a couple filing jointly, \$52,500 for heads of household, and \$35,000 for all other tax filers. Lifetime contributions to an account are capped at \$500,000. Lifetime contribution limits and deduction phase out amounts would be adjusted for inflation.

SSI beneficiaries with disabilities or blindness would experience a significant change in asset test criteria as a result of the ABLE Act. Currently, individual SSI beneficiaries are limited to \$2,000 in assets and couples are limited to \$3,000. SSI recipients' only government-sponsored option to accumulate modest funds is to formulate a Plan to Achieve Self-Support (PASS) or enroll in a federally funded Individual Development Account (IDA). However, neither PASS nor IDAs are widely available, and both strongly limit the types of goals for which accountholders are allowed to save. A PASS allows a beneficiary to save for a time-limited, work-related goal. Funds in IDAs are generally limited to homeownership, education, or entrepreneurship. If enacted, the Act would enable people with disabilities and their families to put aside resources for additional goals that would improve a beneficiary's quality of life in the future.

[**Note:** While ABLE Accounts will allow families to accumulate funds for the benefit of a disabled child, there are a number of limitations on such accounts that may advocate in favor of a **special needs trust** for the child instead. For help in determining the best financial solution for your child with a disability, contact us to discuss the options.]

Legislative Status:

September 2009: the Senate and House versions of the bill are identical. Senate Bill 493 was introduced by Sen. Casey, Sen. Hatch, Sen. Dodd, Sen. Burr, and Sen. Brownback and has gained a total of eleven co-sponsors (including Sen. Roger Wicker). House Resolution 1205 was introduced by Rep. Crenshaw, Rep. Meek, Rep. McMorris Rodgers, and Rep. Kennedy and has gained at least 133 co-sponsors (including Representatives Travis Childers and Gregg Harper). The bills are currently awaiting action in the Senate Finance Committee and the Committees on Ways and Means and in the Committee on Energy and Commerce in the House of Representatives.

FOR ADDITIONAL INFORMATION:

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For help with providing for the financial and healthcare security for your disabled child or spouse, contact us at 866-ELDERLAW or on the web at www.elderlawms.com.