**Making a Good Thing Better**

How many of us really think that that plain slice bread really ***is*** the greatest thing?  For most of us, adding meat, cheese, creamy spreads or, hey, even edible flowers can make a significant improvement.  The Achieving a Better Life Experience (ABLE) account is a great thing for people with disabilities as has been since its release in 2014, but a few additions could make it much better still.

Frequently, I give talks at high schools about benefits and special-needs planning. The audience often comprises primarily of transition-age students in special education along with their parents. These students are likely to fit the ABLE demographic. Since they are receiving-special education supports, it is likely (though not assured) that they will meet the Social Security definition of having a disability. Since they are age 14-21, their disability clearly started before age 26. At the same time, while helping these students to open an ABLE account may be good preparation for the future, it is mostly their parents who will be contributing, since the students, being in school, hardly work and don’t earn or save much just yet.

Over the past few weeks, though, I gave two workshops on ABLE accounts to audiences that comprised primarily working-age adults who live more independently and whose disabilities were more physical than developmental. Such adults are often the ones who are most in need of a vehicle like ABLE. Frequently, they make use of personal support and homecare services that are funded through Medicaid waivers and need to maintain eligibility for these waivers in order to keep their support. They also have the skill and education to qualify for higher-than-minimum-wage jobs, so they have more disposable income to save; and they have had more years and more ways to accumulate assets.

The Tax Cuts and Jobs Act made several changes to ABLE accounts that already do benefit working adults. First, adults with disabilities who have an ABLE account and earned income may be eligible for the same Saver’s Tax Credit that formerly applied only to IRAs and other retirement-plan contributions. Now, single adults with earned income below $63,000/year will be eligible for a credit, ranging from 10% to 50% of their ABLE account contributions up to $2,000 or a maximum credit of $1,000. Second, adults with earned income, who do not contribute to their employer-sponsored retirement plan, will be able to contribute up to $12,000 from their earned income beyond the basic $15,000 limit that they or anyone else may contribute to ABLE from any source.

While these changes are laudable, a key drawback to ABLE for adults is the “age-of-onset” restriction, which has not changed. For some people, the disability starts***after*** age 26 due to an accident, military service or a new medical or behavioral health condition. They clearly meet the ABLE definition of having a disability, but they are “too old” to open an ABLE account. If they do not work, they may need to retain SSI eligibility and whether they work or not, it is likely that they may need to retain Medicaid eligibility for either health care or waiver supports, but they cannot use ABLE To protect their eligibility. Raising the “age-of-onset” eligibility criterion to a higher age or eliminating the criterion altogether will significantly improve the efficacy and adoption rate for ABLE accounts.

An increase in the basic-annual-contribution limit of $15,000 would also improve ABLE and make it more attractive. A person with a disability who receives a large sum of money from a malpractice or divorce settlement or as an inheritance or gift cannot use an ABLE account to house those assets. Additionally, people, who become disabled as adults, may have accumulated their own assets but cannot use ABLE to house those assets unless they contribute them over several years and delay Medicaid access in the meantime. Some retirement assets may be excluded from Medicaid calculations under some conditions in some states; but the rules are complicated, and it would be a much cleaner solution if such assets could be rolled or transferred to an ABLE account, even if a tax adjustment was required. Of course, a first-party special-needs trust can house all of the above assets and protect benefit eligibility, but the person with the disability must cede control and ownership of the assets to the trust in order for that to work.

Currently, many states offer a tax deduction for contributions to 529 College Savings Plans. Providing a tax deduction for contributing to an ABLE (529 A) account might provide an additional incentive to contribute to ABLE for either people for whom the Saver’s credit is minimal or those who are contributing to an account for another.

There has been some talk about eliminating the payback provision from ABLE. This provision allows the option of recouping from a person’s ABLE after s/he has died an amount equivalent to the Medicaid funds spent on that person while s/he was alive. For other arrangements that hold assets and protect eligibility to benefits, namely special-needs trusts, Medicaid payback applies only to trusts funded by assets that belong to the Medicaid beneficiary and not to trusts funded by assets contributed by parents or others. This approach is not possible for ABLE, since a person can only have one ABLE account, which may receive funds both from the person with a disability, who owns the account and accesses Medicaid and also from family or friend. Because ABLE preserves eligibility to Medicaid and Medicaid waiver-funded support services, and because these services are often quite costly for states to provide, it is unlikely that the Medicaid payback provision will change.

There are many sandwich options that enhance the appeal of sliced bread. Some ABLE enhancements have already made it through the legislature, but the above-mentioned ones will generate a heartier appetite for ABLE.

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