

Should You Transfer 529 College Savings to an ABLE Account?

By Robert B. Fleming, CELA

ABLE accounts are relatively new savings options open to certain individuals with disabilities. As long as the funds are used “to improve the beneficiary’s health, independence of quality of life,” earnings aren’t taxed and eligibility for means-tested government programs won’t be affected.

Now, families who previously established 529 college savings accounts, which can also grow tax-free, are wondering if they should transfer that money to one of the ABLE programs offered by a growing list of state governments. While recently passed tax legislation makes it possible to directly roll over funds from a 529 into ABLE, the answer is probably “no,” unless there’s a compelling need to make those college savings directly accessible by the beneficiary.

The new law, part of the major tax cut legislation of 2017, does permit limited transfers from 529 accounts into ABLE accounts. The total amount that can be contributed to any beneficiary’s ABLE account in 2018 is \$15,000; a 529 account transfer eats into that limit. Much greater annual contributions are permitted for 529 accounts, and they are not limited to individuals whose disability appears before age 26 (as ABLE accounts are).

Furthermore, Medicaid has rights to any funds that remain upon the ABLE beneficiary’s death, as reimbursement for services performed since the account was set up. That might not be important for an ABLE beneficiary who has never received Medicaid, but none of those rules even apply to a 529.

Perhaps most important of all, the penalties for using 529 savings for purposes other than college expenses are negligible for individuals with disabilities—far less than for “non-qualified” uses of ABLE funds. In general, with both types of account, the *earnings* portion of improper distributions would be subject to income tax and a 10 percent penalty. In states where *contributions* are tax deductible, the original contributor would be liable for that tax, as well. However, 529s *drop the 10 percent penalty* if the beneficiary has a disability that prevents them from performing “substantial gainful activity”!

In addition, the money held in 529s usually won’t affect the beneficiary’s eligibility for means-tested government benefits, since such accounts tend to be in parents’ names. For that reason, they need not be reported when the child applies for such programs. If you want your loved one to manage their own money, you can funnel relatively small amounts of cash to ABLE, while retaining greater flexibility for the bulk of your savings.

So don’t rush to move money out of that 529. If the beneficiary has a disability, those funds can be put to far more uses, with far fewer negative consequences, than with an ABLE account—and still protect government benefits.

Does this mean you should *set up* a 529 education account for your ABLE-eligible child? Probably not, but talk with a Special Needs Alliance attorney about your particular circumstances before acting.

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