

## Able to Save

By: Bernadette Starzee February 11, 2015

People with disabilities and their families have a new, tax-advantaged savings alternative following the passage late last year of the Achieving a Better Life Experience Act.

With the federal legislation comes the 529-ABLE Plan, which – once all the details are ironed out at the state level – will allow up to \$14,000 per year to be saved in accounts for individuals with disabilities without causing the individuals to lose their government benefits. Previously, if individuals had more than \$2,000 in their name, their benefits would be reduced, according to Rick Cross, founder of Rightfinancialadvisor.com, a Holbrook-based service that matches individual investors to financial professionals.

The plan is housed under the 529 Education Savings Plan, a tax-deferred savings vehicle designed to help families set aside funds to cover college costs. Funds in the 529-ABLE Plan can be used for a broader array of expenses, including education, housing, transportation, health and wellness services, assistive technology and personal support, financial management and other administrative services. It also can assist with funeral and burial services.

“It will allow parents and grandparents of children or adults with special needs to put away money for them without causing the individuals to lose their government benefits,” Cross said, noting the individual must have become disabled before the age of 26 to qualify. “From a humanistic standpoint, if I’m a grandparent, and I am putting money into a 529 for my two granddaughters for college and I have a grandson with autism or Down syndrome, I can put something away for him, too – so I’m not slighting him.”

Parents can also protect the government benefits of a child with special needs by putting savings into a special needs trust. However, it costs about \$2,000 to \$5,000 to set one up, according to Charles Massimo, president and founder of CJM Wealth Management in Deer Park, and there are maintenance costs, as well.

“The 529-ABLE Plan is a wonderful welcome addition for middle-income, hardworking people,” Cross said.

Several years in the making, the new legislation has been well-received in the disability community. But the 529-Able Plan has a serious limitation about which very little has been said, according to Jericho attorney Sandra Gumerove, who concentrates her law practice on assisting individuals with special needs.

**“My problem with the act is this is a Medicaid-payback account,” she said. “At the death of the beneficiary, the money in the account goes back to Medicaid, to reimburse it for benefits paid to the individual.”**

**By contrast, funds in special needs trusts can be directed to another beneficiary upon the death of the individual.**

**Another limitation is that gifts to the 529-Able Plan are irrevocable – the money must be used for the benefit of the individual with special needs.**

**By contrast, “if I put money into my daughter’s 529 College Savings Plan, and then I realize I need it for something else, I can take it out,” Massimo said. “I may incur penalties, but it’s still my money.”**

**Despite the downsides, Gumerove said the 529-ABLE Plan is good for certain groups of people, particularly individuals with disabilities who earn a modest income from working or have other modest savings.**

**For people who fit the criteria, it’s a good product,” she said. “They can set up the account and access the funds themselves, and it’s tax-advantaged.” Assets, which are placed in the plan on an after-tax basis, grow and are distributed tax-free.**

**Funds of up to \$100,000 in the 529-Able Plan are excluded from income and asset tests used to determine the individual’s eligibility for federal benefits. If the plan’s funds exceed the limit, the individual’s Social Security benefits will be suspended until the fund total drops below the maximum amount again.**

Because of the dollar limits, wealthier families will likely use the 529-Able Plan in addition to a special needs trust, Massimo said.

“This alone will not do,” he said.

Funds in a special needs trust are less restricted in terms of what they can be used for, but this type of vehicle does not have the tax advantages of a 529-Able Plan.