

# CLIENT ALERTS

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## New Law Implementing ABLE Act in Michigan

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### **IRS Regulations and State Action Provide Financial Planning Opportunity for People with Disabilities and their Families**

On October 28, 2015, Michigan Lt. Gov. Brian Calley signed Michigan's new law implementing the federal ABLE Act ("Achieving a Better Life Experience"). This state law will implement accounts under the federal law passed by Congress in late 2014, designed to allow certain people with disabilities to save money and help cover certain disability-related expenses without risking eligibility for governmental benefits. Eligible individuals are those whose disability began before the age of 26. The disability only must have occurred before the age of 26; the person does not have to currently be under the age 26 to be eligible under the ABLE Act.

**Background.** Many people with disabilities depend on Medicaid for health insurance, and on the federal Supplemental Security Income program (SSI) and other programs for support. People with disabilities are more likely to be unemployed, unable to work, employed part-time, or work in jobs that do not provide health care benefits. Some changes in the Affordable Care Act that extend coverage to age 26 and that limit pre-existing condition exclusions help somewhat with families obtaining health insurance, but do not completely address the issue. Medicaid and SSI remain an important way for people with disabilities to live independently in the community and cover needed expenses.

But as valuable as these programs may be to someone with a disability, they are means-tested, and participants have to be careful of earning too much or accumulating too many assets and becoming ineligible. This makes it difficult for someone with a disability to save money to afford other supports and services they may need to learn, work, or live independently, but that are not covered by Medicaid or SSI. It also makes it practically impossible for someone with a disability who does work to save

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for retirement and still qualify for Medicaid and SSI. And it becomes very difficult for parents of a child with a disability to provide for the child in the long term without jeopardizing benefits eligibility. The result is that a person with a disability can be faced with an unpleasant choice—remain poor and remain eligible for benefits; or try to work, save, and plan for retirement but risk losing health insurance and SSI. There are estate and financial planning techniques, like special-needs trusts or pooled income trusts, that can help, but these can be complex and costly for some families to use.

**ABLE Act Section 529 Plans.** The ABLE Act as passed by Congress added a new provision to Internal Revenue Code Section 529, which governs college saving plans. The new ABLE Accounts operate similarly to existing 529 plans, allowing tax-deferred savings of funds that could be used for qualified plan expenses of the beneficiary. But with an ABLE Account, instead of the qualified expenses being for college, they would be for expenses that would support the person with a disability in obtaining education, working, and living independently in the community. The qualified expenses include education, housing, transportation, supports for employment, health and wellness expenses, and some other expenses. The plans would allow a family to accumulate and invest assets for the benefit of the person with a disability, and even plan for retirement, without disqualifying the person for Medicaid and SSI.

**IRS regs and Michigan implementation.** Back in June of 2015 the Internal Revenue Service issued proposed guidelines under the ABLE Act. But legislation implementing the ABLE Act also had to be passed in each state. With this new Michigan law, these plans may be useful as a relatively simple and low-cost way to assist qualifying individuals with disabilities and parents of a child with disabilities. The Michigan ABLE plans will also assist with providing financial competency training for people with disabilities and their families.

ABLE Accounts, like other 529 plans, are subject limits on size; rules for tax treatment of contributions, earnings, and withdrawals; rollover provisions; and other rules; along with detailed reporting and oversight requirements.

**Planning opportunity?** ABLE Accounts may not be for everyone. It's important to note that ABLE Accounts are subject to payback rules to Medicaid, and that SSI benefits may be suspended if the account grows too large. This, the limits governing maximum annual contribution, and consideration of flexibility in investment and control over use of assets, may mean that special needs trusts or other estate planning arrangements are still preferable for some families. But the ABLE Account can be another tool for estate and financial planning for people with disabilities and their families.

Do you have someone in your family with a disability who could benefit from an ABLE Account? Is it time to update your estate plan to best address the needs of the family member with a disability? For more information on ABLE Accounts, and other estate, tax, and financial planning techniques that can assist people with disabilities in achieving their goals, contact a member of Butzel Long's Estate and Succession Planning Group, the authors of this alert, or your regular Butzel Long attorney.

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