



The Elder & Disability Advocacy Firm

of Christine A. Alsop, LLC

ATTORNEYS AT LAW



The Advocacy Update

Our monthly firm newsletter

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FOCUS ON THE FACTS:

We review the basics of the ABLE Act.



MONTH OF NOVEMBER:

November is National Alzheimer's Disease Awareness Month and National Family Caregivers Month. Read about how you can get involved and share your stories with us.



LEGAL UPDATE:

The Senate Passes the Special Needs Trust Fairness Act; Focus Shifts to the House



Medicaid Resource Limits and Related Impoverishment Figures Likely to Remain Unchanged in 2016

Quick Update:

It was recently announced that the September 2015 Consumer Price Index for All Urban Consumers (CPI-U) was actually lower than the comparable figure in September 2014. Therefore, it is expected that next year's Medicaid spousal impoverishment figures and related numbers will remain the same as 2015. Robert Clofine, member of the National Academy of Elder Law Attorneys (NAELA), noted that the last time the CPI-U was lower than the previous year (in 2009), the Centers for Medicare and Medicaid Services (CMS) did not adjust the Medicaid numbers downward. CMS kept them level.

What does this mean?

The 2016 community spouse resource allowance (CSRA) should continue to be set at a maximum of \$119,220 and a minimum of \$23,844. Additionally, the maximum monthly maintenance needs allowance should remain at \$2,980.50 per month and the income cap should remain at \$2,199 per month. Medicaid's home equity limits should also be unchanged at a minimum of \$552,000 and a maximum of \$828,000.

Make sure to stay tuned for any unexpected changes in these figures. We will keep you posted.

Focus on the Facts:

Reviewing the basics of the ABLE Act

A New Tool for the Special Needs Community

On December 19, 2014, the ABLE (“Achieving a Better Life Experience”) Act was signed into law. The ABLE Act is aimed at achieving a manner in which those with special needs can save money without losing needs-based public benefits, such as SSI or Medicaid. This is an important issue and, perhaps, the greatest accomplishment of the Act is that it brings attention to this valuable community and addresses a serious struggle that they face. The fact that the ABLE Act had strong bi-partisan support is encouraging for the special needs community and those who serve the people within it.

While an ABLE account does not replace other tools, like special needs trusts, it is a useful option for those of us who serve clients who have special needs. We will be discussing the new law, when it is applicable, its limitations, its uses and when not to use it. We are hopeful this will give you a general understanding of the Act.

The ABLE Act Defined

The ABLE Act is a federal law that allows states to establish a savings program for people with disabilities. The program is modeled after the 529 savings accounts. ABLE accounts may

be used to accumulate savings, with certain restrictions, for use by a beneficiary with a disability.

An ABLE account may be established by any contributor (parent, family member, friend or the person with a disability) for the benefit of an eligible beneficiary of any age so long as the beneficiary can establish that he or she met the criteria prior to age 26. In other words, an eligible beneficiary is an individual who meets the standard for disability prior to turning the age of 26. A recipient of SSI or SSDI satisfies this requirement, while those who do not receive such benefits must be certified under the Act.

What are the Financial Limitations of the ABLE Act?

While the ABLE Act has made strides in bringing to light the issue of saving for those with disabilities, there are limits to the Act. For example, the Act imposes a limit as to the amount of savings that can be held in an ABLE account.

The first such limitation deals with the annual contribution amount, which may not exceed the annual gift-tax exclusion amount (currently \$14,000). In addition, ABLE accounts may only accumulate aggregate contributions up to the state’s limit on qualified tuition programs (i.e. 529 accounts),

which ranges between \$300,000 and \$400,000. Finally, SSI exempts only the first \$100,000 of an ABLE account.

Therefore, if an individual receives SSI, his or her ABLE account may not exceed \$100,000 and he/she may only have other assets up to \$2,000. Otherwise, the individual will become ineligible to continue receiving SSI, but can remain eligible for Medicaid.

Medicaid Payback Provision

It is important to note that ABLE accounts are “Medicaid Payback” accounts. This means that the Act requires a provision in the account that upon the death of the beneficiary of the account, Medicaid payments made on behalf of the beneficiary subsequent to the establishment of the ABLE account must be reimbursed with any remaining funds. The beneficiary’s priorities should be weighed carefully when determining the amount of savings to place in an ABLE account given this payback



provision. When the beneficiary of an ABLE account is receiving Medicaid, it is important to consider how much should be placed in the ABLE account to limit what may be recovered by Medicaid at the end of the beneficiary's life.

Tax Benefits

As discussed, ABLE accounts have tax benefits similar to 529 accounts. Qualified distributions from the account are not counted as taxable to either the contributor or to the beneficiary. Qualified distributions include expenses paid for the benefit of the beneficiary related to:

1. Education
2. Housing
3. Transportation
4. Employment training and support
5. Assistive technology and personal support services
6. Health, prevention and wellness
7. Financial management and administrative services
8. Legal fees
9. Expenses for oversight and monitoring
10. Funeral and burial expenses
11. Any other expenses approved by the Secretary of Treasury

In addition, earnings on ABLE accounts are not taxable to the contributor or to the beneficiary. Contributions are, however, made from post-tax income.

Finally, assets held in ABLE accounts may be rolled over to another ABLE account for the benefit of another qualified individual who is a brother, sister, stepbrother or stepsister of the beneficiary.

When to Use an ABLE Account

A person receiving needs-based government benefits often has a dilemma when it comes to saving, whether for education or for unexpected events, while maintaining public benefits, such as SSI. In order to receive SSI, a person with a disability must have assets under \$2,000. The ABLE Act makes saving possible... to an extent. Now, the individual can remain on SSI and save a modest amount in an ABLE account (up to \$14,000 per year).

Persons with disabilities

who are employed may want to utilize an ABLE account to save a portion of their income while remaining qualified for SSI. In addition, families may want to contribute to an ABLE account for their loved ones with disabilities in smaller increments. These same families may also desire to use other tools available, such as special needs trusts, which may be more flexible.

When Not to Use an ABLE Account

There are several instances in which ABLE accounts should not be used. For example, if a person has become disabled due to an accident and is receiving a judgment or settlement for a significant amount, an ABLE account would not be a useful tool. Similarly, it would not be a solution for a person with special needs who is receiving a large inheritance.

Please do not hesitate to contact our office should you have questions regarding this new legislation.



Governor Nixon passed the "Missouri Achieving a Better Life Experience Program" (SB 174), effective as of August 28, 2015 (166.600-166.645, RSMo.).

This program establishes the Missouri ABLE Board, in the State Treasurer's office, to administer accounts set-up by and for persons who have been

disabled prior to turning age 26.

The accounts are similar to the MO MOST Section 529 college savings plans (529A of the Internal Revenue Code).

Federal regulations have been proposed. Missouri should have this up and running by early in 2016.

Case Reviews

TRANSFERS MADE WHILE APPLICANT WAS HEALTHY WERE NOT MADE IN ORDER TO QUALIFY FOR MEDICAID

A New York appeals court holds that a Medicaid applicant, who transferred money when she was in good health and two years before entering a nursing home, presented enough evidence to rebut the presumption that she transferred the money in order to qualify for Medicaid. *Sandoval v. Shah* (N.Y. Sup. Ct., App. Div., 2nd Dept., No. 2014-11442, 2767/13, Sept. 30, 2015).

Between May 2007 and April 2008, Cecelia Sandoval made several transfers to her children

to help them pay bills. She had more than \$250,000 in assets remaining after these transfers. In 2010, Ms. Sandoval began exhibiting signs of dementia and entered into an assisted living facility and, eventually, a nursing home. After she depleted her assets, she applied for Medicaid. The state imposed an 11-month penalty period.

Ms. Sandoval appealed the penalty period, arguing that the transfers were not made in anticipation of the need to apply

for Medicaid benefits. The state affirmed the penalty period and Ms. Sandoval appealed.

The New York Supreme Court's Appellate Division granted Ms. Sandoval's benefits. The court ruled that the fact that, at the time of the transfers, Ms. Sandoval was in good health, living independently and still had \$250,000 in assets after making the transfers was evidence that the transfers were not motivated by a future need for Medicaid.

ATTORNEY DOES NOT OWE DUTY OF CARE TO BENEFICIARY OF CLIENT'S ESTATE

The Washington Court of Appeals holds that an estate planning attorney does not owe a duty of care to the beneficiary of a client's estate for improperly executed estate planning documents, so the beneficiary cannot sue the attorney for legal malpractice. *Linth v. Gay* (Wash. Ct. App., No. 45250-2-II, Sept. 22, 2015).

Evelyn Plant hired attorney Carl Gay to draft a living trust. The trust provided that Ms. Plant's property would go to a charity and that Jennifer Linth would have a life estate in a portion of the property. A month later, at Ms. Plant's direction, Mr. Gay amended the trust to convey the property to a foundation

created by Ms. Plant. The amendment also gave Ms. Linth the right to live on the property and referenced an attachment. However, the foundation was not created before Ms. Plant signed the amendment and there was no attachment to the amendment. After Ms. Plant died, the charity and Ms. Linth fought over the amendment, eventually reaching a settlement agreement.

Ms. Linth sued Mr. Gay for legal malpractice, arguing that Mr. Gay negligently failed to completely draft Ms. Plant's estate plan by failing to include the attachment. She also argued that Mr. Gay negligently represented the trustee after

Ms. Plant's death. The trial court ruled that Mr. Gay did not owe a duty to Ms. Linth, so she could not sue him for legal malpractice. Linth appealed.

The Washington Court of Appeals affirmed, holding that an attorney does not owe a duty of care to the beneficiary of a client's estate for improperly executed estate planning documents. The court notes that it does not matter that Ms. Linth was an actual beneficiary, not a prospective beneficiary. In addition, the court rules that Mr. Gay's duty to the trustee after Ms. Plant's death did not include a duty to a non-client beneficiary.

Senate Passes Special Needs Trust Fairness Act; Focus Shifts to House



The Senate has unanimously approved the Special Needs Trust Fairness Act, a bill that would allow people with disabilities to create their own first-party special needs trusts without having to rely on others. Currently, only a parent, grandparent, guardian or court can create a special needs trust on behalf of a beneficiary.

Now that the legislation has cleared the Senate, action moves to the House, where a

companion bill has been tied up in the Energy and Commerce Committee and its Health Subcommittee. Advocates say that bill is unlikely to move out of committee and onto a full House vote without additional support.

The Special Needs Trust Fairness Act fixes a drafting error in the Social Security Act, specifying that the parents or grandparents of a person with disabilities are the only ones with the right to create a special

needs trust to hold the funds of a person with disabilities. If the person with disabilities does not have a living or competent parent or grandparent, he or she must rely on a complicated court procedure to create this vital trust. The Special Needs Trust Fairness Act fixes this problem and gives the person with disabilities the ability to create his or her own trust.



Take a stand. Make a call. Send an email.



We encourage you to contact your congressional representative and urge him or her to support the Special Needs Trust Fairness Act.

Contact your representative:

<http://www.house.gov/representatives/find/>

Contact members of the House Energy and Commerce Committee:

<http://energycommerce.house.gov/about/membership>

Contact members of the House Energy and Commerce's Subcommittee on Health:

<http://energycommerce.house.gov/subcommittees/health#members>





NOVEMBER IS NATIONAL ALZHEIMER'S DISEASE AWARENESS MONTH AND NATIONAL FAMILY CAREGIVERS MONTH

Share your story. Help spread awareness.

Send us a personal story about how Alzheimer's disease has affected you or how family caregiving has played a role in your life. We will post your story on a special page on our website and on social media. You may want to share a loving memory of someone you have lost to Alzheimer's or a story about what being a family caregiver means to you or a tribute to a caregiver that you know and admire. You can share names if you would like, but that is certainly not required. Let the stories speak for themselves and let's all spread awareness together! Send your story to wpriebe@AlsopElderLaw.com.

Read about how you can get involved.

There are lots of ways that you can get involved this month! Honor a caregiver on the Alzheimer's Association website, donate or raise money for an organization that works to end Alzheimer's disease, bring dinner to someone that you know is a family caregiver, learn more about the progress of Alzheimer's research or volunteer at a local nursing facility. The opportunities are endless and each and every one is meaningful in its own way.

Our office is as warm as our chocolate chip cookies.



In addition to providing the finest in professional, timely and quality legal services, we make it our priority to ensure that our clients feel as comfortable and at-home as possible, so we bake fresh, warm chocolate chip cookies daily in our kitchen and provide complimentary car service to and from our office for those who do not have transportation. We host fun client events and bring everyone together to socialize and share stories. Many of our clients even request that our honorary therapy dogs sit with them during their meetings to keep them calm and bring them comfort while they discuss their issues. We believe that it's the little things that make a big difference for our clients who are going through some of the most difficult and trying times in their lives.

OUR FURRY TEAM OF HONORARY THERAPY DOGS HELP TO EASE THE ANXIETY OF MANY OF OUR CLIENTS.



Sweet Lily



Baby Zydeco



Wiley Riley



WE BAKE FRESH, **HOMEMADE COOKIES** DAILY FOR OUR CLIENTS.

WE OFFER **COMPLIMENTARY CAR SERVICE** FOR THOSE WHO DO NOT HAVE TRANSPORTATION TO OUR OFFICE.



In the maze of confusion, there IS a solution.

Our firm is dedicated to catering to and implementing solutions to the problems of those who are elderly, persons with disabilities and their families.



We provide a wide-range of solutions for people who are **facing crisis** and those who **wish to avoid crisis** through proper planning.

We focus on formulating **client-specific plans** that are **carefully designed** to accommodate the many different familial, financial and health-related circumstances of our clients.

Call us today to schedule your initial consultation with **Christine A. Alsop.**



Our Practice Areas:

Client Advocacy | Fiduciary Litigation | Estate Planning
(Durable Powers of Attorney, Wills, Trusts, etc.)
Special Needs Trusts | Probate & Trust Administration
Guardianships & Conservatorships
Asset Preservation Tactics | Long-Term Care Planning
Government Benefits Eligibility | Medicaid Planning
Veterans Benefits | Lien Resolution
Medicare Set-Aside Arrangements (MSAs)



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