



ABLE Savings Program for the Disabled: Myths and Realities.

Congress passed the Achieving a Better Life Experience (ABLE) Act. President Obama signed it into law on December, 2014. Millions of children and adults who are disabled and their families depend on a wide variety of public benefits for income, healthcare, food, and housing assistance. Eligibility for these state and federal benefits (SSI, Medicaid) require meeting a means or resource test that limits eligibility to individuals to report more than \$2,000 in cash savings, retirement funds, and other items of significant value. To remain eligible for these public benefits, an individual must remain poor. **For the first time**, eligible individuals and their families will be allowed to establish ABLE savings accounts that will largely not affect their eligibility for SSI, Medicaid and other public benefits.

MYTH: All disabled individuals are eligible to open an ABLE savings account.

REALITY: To be eligible to open an ABLE savings account, an individual's disability **must** have occurred before age 26. If you meet this age criteria, an individual is eligible if they are entitled to, or are receiving, SSI or SSD.

MYTH: Only individuals who have been approved for SSI or SSD are eligible to open an ABLE savings account.

REALITY: If not eligible for these programs, a person may establish eligibility if they have a significant disability by submitting a Disability Certification from a medical doctor.

MYTH: ABLE qualified expenses are restricted to items that are medically necessary for the disabled individual.

REALITY: No, expenses are not limited to medically necessary supports and services and may include the following expenses:

- Housing
- Transportation
- Healthcare Expenses
- Assistive Technology/Personal Support Services
- Education
- Employment Training/Support
- Prevention/Wellness
- Funeral/Burial Expenses
- Expenses for Oversight/Monitoring
- Any other expenses which help improve health, independence, and/or quality of life

MYTH: Any person can open an ABLE savings account for a disabled adult.

REALITY: An adult individual who is competent and has legal capacity must open an ABLE savings account for themselves. If the adult does not have legal capacity, a court-appointed guardian has the power to open an ABLE account for the incapacitated adult. If a child is eligible for an ABLE savings account, a parent or court-appointed guardian can open an ABLE savings account.

MYTH: The only individual who can deposit money into the ABLE savings account is the disabled individual.

REALITY: Any individual, such as a family member, friend, or the person with a disability, may contribute to an ABLE savings account.

MYTH: An unlimited amount of money can be deposited into the ABLE savings account each year.

REALITY: The total annual contributions to an ABLE savings account, yearly, from all sources combined, may not exceed \$15,000 (federal gift limit). This federal limit may be adjusted each year based on inflation.

MYTH: If my ABLE savings account exceeds \$2,000 I lose my eligibility for SSI and Medicaid.

REALITY: The first \$100,000 in ABLE savings accounts would be exempt from the SSI individual resource limit of \$2,000. If the amount in the account is under \$100,000 the disabled individual will retain Medicaid and long term Medicaid waiver benefits.

MYTH: Individuals who live in a state that does not have the ABLE savings program will not be able to open an ABLE savings account.

REALITY: False. In 2015, Congress eliminated any residency requirement for opening an ABLE savings account. This means that regardless of where you live and whether or not your state has decided to establish an ABLE savings program, you are free to enroll in any state's ABLE savings program provided that the program is accepting is accepting out of state residents.

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MYTH: A disabled individual must open a bank account in order to set up an ABLE savings account.

REALITY: The procedures used to set up and manage an ABLE savings account are determined by each state. In order to keep the administrative costs low, states have great flexibility in determining how an individual opens an account. In many states, an individual can go to the ABLE savings program website, www.able-now.com, and open an account online. However, some states also offer the option to enroll via mail or fax.

MYTH: There is no state income tax or credit for contributions made to an ABLE savings account.

REALITY: In some states there is a tax deduction or credit. You should carefully review with the state coordinator, or your accountant, whether or not contributions in your state are tax deductible.

MYTH: Upon the death of the disabled individual, funds remaining in the ABLE savings account are always distributed to the heirs.

REALITY: If a disabled individual was receiving Medicaid benefits there would be Medicaid "payback". In this case, the funds that remain in the ABLE savings account would be used to reimburse the state for Medicaid payments it made on behalf of the beneficiary *since the ABLE savings account was opened*.

If you have any questions about opening an ABLE Savings Account, or any funding questions for the seriously ill and injured, please contact me at **800-331-4134**.

Reprints of this newsletter are available upon request.

If you would like Joseph L. Romano to give an in-service on ABLE, call **800-331-4134**.

Successfully Litigated Cases

Automobile Accident – Roll-over Spinal Cord Injury/Traumatic Brain Injury

Client was a passenger in an SUV that rolled over. The roof was crushed and he suffered quadriplegia/traumatic brain injury. Lawsuit was successfully pursued against the vehicle manufacturer because the SUV that was defectively designed rolled over and the roof strength did not meet safety standards.

Near Drowning – Apartment Complex – Anoxia

A child that I represented was swimming in the apartment complex pool. The child was found unconscious at the bottom of the pool. The child suffered anoxia and permanently requires ventilator support. An investigation revealed that the lifeguard was "sleeping and inattentive". A settlement of the lawsuit provided substantial funds which were placed in a special needs trust to pay future medical bills and lifetime care.

Construction Accident – Worker's Compensation Spinal Cord Injury/Traumatic Brain Injury

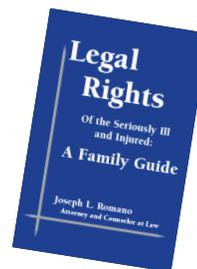
An electrician was hired as a sub-contractor for the construction of a new warehouse. He was employed by ABC electric company. The worker was standing on top of a scaffold installing overhead lighting when the scaffold collapsed. The client fell and suffered a spinal cord injury and a traumatic brain injury. The employee received his workers compensation benefits from his employer's insurance company. The scaffold which was erected by a company other than his employer was negligently installed. The lawsuit was successfully resolved against the company that erected the scaffold.

Tractor Trailer Accident – Faulty Brakes Spinal Cord Injury/Traumatic Brain Injury

The client was injured by the driver of a tractor trailer who failed to stop at a red light. My investigation revealed that the brakes on the tractor trailer were faulty and that this was known to the employer. Settlement includes cash and periodic payments to pay for future medical bills.

To receive a **free** copy of Joseph Romano's book: **Legal Rights of the Seriously Ill and Injured: A Family Guide**, in English or Spanish, please call **800-331-4134**.

This comprehensive resource guide was written to help families and medical professionals advocate for benefits and services for the seriously ill and injured.



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Mr. Romano, along with qualified co-counsel, represents clients throughout the United States.