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Special Report on Special Needs

An Update for Families and Their Loved Ones

by William C. Larson

Every parent's worst nightmare is to receive word their child has been involved in a serious accident and they need to come to the hospital immediately. That day happened to my grandparents when they learned their six-year-old daughter had been run over by a bus in a Tacoma crosswalk.

My mother, Clarice, was on her way to school one morning a short distance from her home. As she approached the crosswalk, a city bus stopped for her in the curbside lane and the driver waved for her to cross. Another bus in the adjoining lane did not see her, did not stop and hit her, resulting in one of its wheels running over her entire lower leg.

In the ensuing months of recovery, Mother became all too familiar with pain, immobility, skin grafts and an uncertain future of whether she would ever walk again. But walk she did on her profoundly scarred leg and managed to lead an active and productive life. Much of that life was spent volunteering, with our home an active center for United Good Neighbors (UGN), the Puget Sound Bloodbank, Girl Scouts, Special Olympics, and most actively, the creation of aquatics programs for special needs youth and adults. Mother believed that an active person with special needs would do well in aquatics where success was possible, their disabilities would be lessened by their buoyancy in the water and they could safely stretch muscles and themselves while hopefully having a measure of fun.

For over two years, I helped her with these programs in various pools in the Seattle area and got to know and love our many students who came for their lessons each week. My mother's injury probably provided the impetus for her life-long devotion to others, resulting in an extraordinary life of devotion freely given.

My regret is that the one time she mentioned the exact location of her accident, I did not write it down. I would have liked to go to see the place and think of her there and where she would ultimately go in life in spite of that day.

Larson Financial Group, LLC (LFG) serves a number of families with special needs children. It is an unexpected bonus for us to be able to help our clients (read: friends) strive to carry out their responsibilities and help these precious loved ones live quality lives.

It is time I write this article as new financial developments have occurred affecting families of special needs loved ones. I think Mother would smile to see our society striving to mainstream as much as possible these people and provide meaningful assistance to those caring for them.

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ABLE (Achieving a Better Life Experience Act of 2014) Accounts
Stephen Beck, Jr. was a tireless advocate for special needs people. His daughter Natalie was fifteen when he came up with an idea to help her save for her future and have more control over her life. Natalie happens to have Down Syndrome. Regrettably, her father passed away before seeing his idea become federal law in late 2014. Because of his efforts, this helpful legislation is now named after Stephen Beck, Jr.

Beck's ABLE legislation was enacted with the purpose of encouraging and assisting individuals and families to save their own funds in support of special needs loved ones without their ongoing governmental benefits being jeopardized. ABLE accounts supplement, but do not supplant, benefits provided through private insurance, Social Security, Medicaid, the beneficiary's employment and other sources.

Put another way, most families learn early on that to receive certain benefits from state or federal sources, a beneficiary must "spend down" to no more than $2,000. This limit has not changed in many years. ABLE accounts are one of three legitimate tools discussed here that we now have to address the needs of beneficiaries and provide alternatives to the spend-down of resources and impoverishment of the beneficiary.

Here are some key points to consider:

- ABLE accounts are established under section 529A of the tax code. Sound familiar? It could be because they have similarities to qualified state tuition plans (section 529) and Coverdell Education Savings Accounts (ESA) (section 530).

- The account is a tax-favored savings account that can accept funds for an eligible blind or disabled individual who is the designated beneficiary. The beneficiary is the owner of the account. They or their fiduciary has control over the funds. The funds and any accumulation or growth are tax-free if used to provide for qualified disability expenses. Therein lies the similarity to 529 plans used for educational purposes.

- ABLE accounts are not considered for purposes of determining eligibility for benefits under Supplemental Social Security (SSI) and certain other means-tested federal and state programs so long as the ABLE account balance remains below $100,000. This means people are not limited to the $2,000 amount so many frequently worry about.

- As with 529 plans, ABLE accounts are established by states, with 42 states so far establishing their own plans and servicing departments. Washington State joined the list in 2018. It is possible to shop other states in most instances and look for different features that might fit specific situations. Most accounts include checking or savings features with a debit or pre-paid card option.

- Only one ABLE account per person is allowed.

- Funds can be transferred from a 529 account to an ABLE account within the bloodline rules established for this purpose. However, once in the ABLE, it cannot be rolled back to a 529.

Eligibility for these accounts is limited to those with became disabled prior to age 26. But the account can be established at any age with no age restriction on contributions. There are proposals in Congress to broaden these age restrictions. Other qualifications for these accounts are clearly outlined in the Act and if someone can't establish one for themselves, a fiduciary such as a guardian or parent can establish it for them with proper documentation such as a durable power-of-attorney.

Annual contributions cannot exceed $15,000 with the total not to exceed $100,000. As a result of the 2017 tax overhaul, special needs ABLE account owners and beneficiaries who work may make contributions on top of the $15,000 limit for a total of about $27,000 per year. This earned contribution amount varies by state depending on the federal poverty level in each location.

ABLE accounts can be a helpful tool for some families desiring to help mainstream as much as possible their special needs child. The rules of the road to establish and keep these arrangements are relatively easy to follow as well.

But there is a catch that may limit the desire of some families to accumulate a large sum in the account. When the beneficiary passes away, the ABLE funds can be attached to help re-pay for benefits received from government programs. This is a poison pill for some families or a limiting factor for the eventual size of the account. This is why we have other tools at our disposal.

Special Needs Trusts
Most of us in the area of legal and financial planning are familiar with Special Needs Trusts. They are a beautiful tool to help families enhance the quality of life of their "special" loved ones. They can safeguard funds without impacting benefits, funds can be used for many purposes, funds left over can go to other heirs and if parents are gone, the responsibilities they have assumed for their child can be smoothly assumed by others.

The catch? Taxes.

Special Needs Trusts of much size can be subject to very high trust income tax rates which top out at the highest bracket at only $12,500 of income within the Trust.

Ouch. So perhaps some families can investigate both the Trust and ABLE account solutions at the same time to achieve even more objectives on behalf of the beneficiary. This tandem approach is well worth investigation.

A Third Resource
But is there a third possibility? Both the ABLE account strategy and the Special Needs Trust help alleviate the $2,000 limit to receive SSI and Medicaid benefits.

There is a third strategy that does this as well, thereby creating a possible triad of planning legs for a special needs plan to stand on. This is the *irrevocable burial trust.* We have helped several clients in our office to set up these trusts to address a variety of planning purposes.

One of the qualified expenses for ABLE accounts is for death and burial expenses. Planning for this awful eventuality is bad enough, but doing so at the time of need is even worse.

By creating an irrevocable burial plan in advance, many of these concerns can be met or somewhat alleviated for the grieving family. In most states, the amount that a person can put in an irrevocable final expense trust is $15,000. However, Washington State does not set a dollar limit. Washington State's policy is that the amount set aside be reasonable related to the anticipated expenses in order to be excluded as a resource above the $2,000 limit. According to David Martin of Purple Cross, the Department of Social and Health Services (DSHS) in Washington State will commonly approve burial plans of up to $25,000 of reasonable and ancillary expenses where an Estate Worksheet has been completed.

A few benefits of this approach are included below:

- The amounts included in irrevocable life insurance burial trusts are not counted in government benefit calculations or the $2,000 impoverishment limit, nor the $100,000 ABLE account balance limit.

- They can be used for a broad array of direct and indirect financial services and burial expenses.

- Funds remaining in these trust accounts are much less likely to be clawed back for repayment of prior government benefits.

- These can be in addition to the annual $15,000 contribution limit and the $100,000 account limit for ABLE accounts.

- They can be installed at any age with no age 26 limit for diagnosis.

- These trusts have the possibility of guaranteed benefits and annual benefit increases.

- Irrevocable funeral and burial trusts are fully portable between states and local funeral homes.

- Benefits are quickly available to pay expenses, often within 24 to 48 hours of a claim being submitted.

- Tax-free growth, dividends and interest within the ABLE account may be used to buy the coverage under the qualifying ABLE account expenses for funeral and burial. I called the Washington State ABLE Savings Plan office in late October about this. The ABLE program representative confirmed the funeral and burial coverage would be a qualified expense coming from an ABLE account.

- These arrangements are not taxed like Special Needs Trusts and have an advantage in that regard. Proceeds from an irrevocable burial trust are treated as insurance proceeds and are tax-free to the beneficiary.

- Funeral and burial planning can be completed and paid for in advance according to parent and family wishes. Should the parents pass before the beneficiary, they would still have influence over the final arrangements for their child who may live beyond their life spans. This is the full measure of good planning and peace of mind when Mom and Dad might not be there to say farewell.

Conclusion
As we and our society strive for increased quality of life for our special needs loved ones, additional tools have been made available to us. With the right combination of advisor, attorney and CPA, some of the millions of families dealing with these real-life challenges may have an easier time helping their special needs loved one enjoy their lives and opportunities in new and optimal ways.

For questions or help in these areas, you can reach Mr. Larson in Seattle at (206) 246-6110 or his assistant, Elizabeth Alkire, at elizabeth@larson-financialgroup.com.

Further information can be obtained from:

- **The National Disability Institute** on its ABLE National Resource Center website:
  https://www.nationaldisabilityinstitute.org/financial-wellness/able-accounts/

- **Washington State ABLE Savings Plan** https://www.washingtonstateable.com/
  They can be reached Monday through Friday at (844) 600-2253 from 9:00 am to 5:00 pm PT or (844) 888-2253 (TTY) from 6:00 am to 5:00 pm PT. *The Washington State ABLE Plan Disclosure booklet can be requested using these numbers.*

- **Special Needs Alliance** https://www.specialneedsalliance.org/

October 2019

Content in this material is for general information only and not intended to provide specific advice or recommendations for any individual.

Prior to investing in a 529 Plan, investors should consider whether the investors' or designated beneficiary's home state offers any state tax or other state benefits such as financial aid, scholarship funds, and protection from creditors that are only available for investments in such state's qualified tuition plan.

Withdrawals used for qualified expenses are federally tax-free. Tax treatment at the state level may vary. Please consult with your tax advisor before investing. Non-qualified withdrawals may result in federal income tax and a 10% federal tax penalty on earnings.