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## The ABLE Act: Is it all that it's cracked up to be?

The Achieving a Better Life Experience Act of 2014 (the "ABLE Act") was signed into law by President Obama in December 2014 and effective in New York as of April 1, 2016. The law is designed to help certain individuals with disabilities pay for qualified expenses without adversely affecting benefits from Supplemental Security Income ("SSI"), Medicaid, private insurance, and employment. An ABLE account is similar to that of a 529 plan in that, as long as funds are spent on qualified expenses, the account grows tax free.

However, the law places several restrictions on who may utilize these accounts and the manner in which funds can be used. For example, the owner of the account must have a disability, the onset of which occurred before age twenty-six (26). There is also a cap on yearly contributions to the account and on the total amount the account can hold. At the death of the owner's life, the balance remaining in the account is paid to the State as reimbursement

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## "A Step Ahead" Goes Paperless



Berwitz & DiTata LLP is pleased to announce that it is now offering our quarterly newsletter, "A Step Ahead," to our friends and family by e-mail. This paperless version will allow you the continued convenience of accessing and sharing the material with others. If you prefer to have "A Step Ahead" e-mailed to you, please contact our office and ask to be added our e-mail list. We recognize that many of you still wish to receive the paper version of "A Step Ahead" and we will continue to make it available to you. Additionally, if you have recently moved to a new home or changed your phone number or e-mail address, please contact us so that we can keep our records current and keep you informed.

## Does A "Medigap" Health Insurance Plan Make Sense?

If you or a loved one are on Medicare and are considering the purchase of a Medicare Supplement plan, you probably have some questions. Often our clients want to know: What do these plans cover? Do we really need this? How do we choose? Should we still pay for it if we begin to receive Medicaid benefits? While we do not guide our clients in their selection and always offer to refer them to experts who are qualified in this area, we thought a brief explanation of the importance of Medicare Supplement plans might help.

**What is a Medigap plan?**  
Medicare pays for many health

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## Elder Abuse — Myths and Misconceptions

Our perceptions about elder abuse are often misguided. Unfortunately, our misconceptions affect our ability to recognize the signs of abuse and our sense of urgency about stopping it. Here are some of the myths:

- 1. Elder abuse only occurs in nursing homes.** Even though elder abuse does occur in nursing homes, most of the time it happens at home, behind closed doors. It affects every community and crosses all religions, races and socioeconomic strata.
- 2. Strangers and paid caregivers prey on the elderly.** Most vulnerable adults are abused by someone they know and trust, often a family member. Because it happens behind closed doors and is kept secret, detection is very difficult.

- 3. If there are no physical signs of abuse, there is nothing to worry about.** Bruises and broken bones are not the only indicators of abuse. Neglect, emotional abuse and financial abuse are quite prevalent and just as devastating for the victim, if not more so.

- 4. Caregiver stress causes elder abuse.** Caregiving can be stressful – but stress doesn't cause elder abuse. Most stressed caregivers do not harm the person for whom they are caring. Caregiver stress does not justify inexcusable behavior.

- 5. Elder abuse happens to men and women equally.** More women are victims of elder abuse than men. However, those with cognitive impairment bear the greatest risk, regardless of gender.

- 6. It's not a big problem.** Elder abuse is one of the most overlooked public health hazards in the United States. Victims are more likely to die prematurely than those who aren't mistreated. The National Center on Elder Abuse estimates that between two and five million elderly Americans experience some form of abuse each year. For every case of elder abuse, neglect or exploitation reported to authorities, many more go unreported.

**Observing signs of abuse.** Since a victim may not be able to report abuse, it's up to others to observe the signs and intervene. Look for physical indicators, such as injuries that are inconsistent with the explanation for their cause. If a loved one is suddenly sporting bruises, welts, cuts, burns or is dehydrated or losing weight without illness, investigate why. Behavioral signs may also indicate abuse. While unexplained fear, anxiety, agitation, anger, depression, or a hesitation to speak openly or in the presence of a particular individual may be consistent with your loved one's diagnosis of dementia, do not ignore these behaviors if they seem to have arisen suddenly.

**Be wary of caretakers.** It goes without saying that caretakers who have a history of substance abuse, mental illness, criminal behavior or family violence are more likely to abuse elderly loved ones. But there are other behaviors that may signal problems: if the caretaker prevents the victim from speaking to or seeing visitors, if he or she exhibits indifference or aggressive behavior toward the victim, if conflicting



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for Medicaid benefits paid during the lifetime of the owner (“Medicaid pay back”). Also, while the ABLE account gives the owner greater autonomy to manage his or her funds, the individual must be very careful that funds are spent only on allowable expenses. The penalty for improper expenditures is the potential loss of benefits and that the income in the account will be taxed.

Given the restrictions imposed on an ABLE account, an alternative that may be more beneficial for a disabled individual is a supplemental needs

trust (“SNT”). There are different types of SNTs that may be established by or for a disabled individual to supplement but not supplant government benefits available to the beneficiary. A trust established with the disabled individual’s own assets is known as a First Party SNT, whereas a trust funded with the assets of another for the benefit of the disabled individual is a Third Party SNT. First Party SNTs require the individual to be under age sixty-five (65), and like the ABLE account, there is a Medicaid pay back requirement. Third Party SNTs do not have an age limit or pay back requirement. An advantage to utilizing an SNT is that the creator of the trust appoints a trustee to manage the funds and to assure that they are being properly utilized for the benefit of the disabled individual.



While, as of this publication, no financial institutions in New York are offering ABLE accounts, we expect that they will soon be available. If you or a loved one need assistance implementing an ABLE account or establishing the trusts discussed above, please call Berwitz & DiTata LLP.

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related expenses, but not all of them. Unlike government-run Medicare, Medicare Supplement plans, also called “Medigap” plans, are offered and serviced by private insurance companies. These companies charge a monthly premium above and beyond the cost of Medicare Part B. To be eligible for a Medigap plan, you must already be enrolled in Medicare parts A and B. Medigap plans cover a single person. Thus, if spouses both want coverage, each must buy a policy. Medigap plans do *not* cover vision or dental care, hearing aids, the cost of nursing home care, home care attendants or private-duty nursing.

**Is Medigap coverage important for me or my loved one?** Medigap coverage effectively helps you “close the gap” between the health related

expenses Medicare pays for and the costs for which you are responsible. It is likely a good idea for seniors who will be undergoing surgery or have a chronic condition that requires regular hospitalizations. The deductibles, coinsurance, and co-payments associated with hospital admissions add up quickly. Seniors who frequently travel out of the country may also benefit from the purchase of a Medigap plan. Medicare plans provide service only within the United States; *some* Medigap plans offer emergency coverage for medical expenses incurred in a foreign country. For the rest of us, the older we get, the greater the likelihood that we will experience unforeseen health issues. A stroke, heart attack, neurological illness or cancer diagnosis can quickly derail

both personal and financial plans. Medigap coverage helps defray these costs and effectively plan for life’s contingencies.

**How do we choose the right Medigap plan?** Medigap plans – which range from “Medigap A” through “Medigap N” – offer varying levels of benefits and coverage, though all plans of a certain type offer the same basic benefits. Because insurance companies sell the same or similar Medigap plans for radically different prices, it’s important to get proper advice. The plan you select will ultimately depend on your budget and health care requirements and a trusted insurance agent or broker can explain the similarities and differences and help you make a selection.

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accounts of incidents or injuries are given, investigation is appropriate.

### **Signs of financial exploitation.**

Unusual activity in bank accounts or sudden changes in spending patterns might be the first indication of a problem. Frequent or unexplained checks made out to “cash” or the addition of the caretaker’s name to the account are signs of a potential problem. A “new best friend” who seems to be ever-present or one who receives expensive gifts from the victim should trigger inquiry. And, of course, if the victim is suddenly drafting new legal documents,

such as a new will or power of attorney, it may be appropriate to intervene.

**What if you identify someone at risk?** If you are concerned about a vulnerable adult to whom you are not related or with whom you have no special relationship, call 911 or your local adult protective services agency and report what you have seen or suspect. If your concern is about a family member or loved one, call Berwitz & DiTata LLP. We can help develop a safe plan of care or act as an advocate for the victim.

## Would You Like To Read About It Here?

We at Berwitz & DiTata LLP are proud of our newsletter and hope that each issue brings our clients and friends insightful and timely information. We endeavor to write articles geared to your interests and concerns. We would be happy to receive your feedback. More importantly, if you have a question or would like us to address a particular topic, please call and let us know. We will try to include it in one of our next issues. Just call or drop us a line.

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