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SB-218 The Qualified ABLE Program: tax-advantaged savings accounts. (2017-2018)

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Senate Bill No. 218

CHAPTER 482

An act to add Section 4885 to the Welfare and Institutions Code, relating to the Qualified ABLE Program.

[Approved by Governor October 04, 2017. Filed with Secretary of State October 04, 2017.]

LEGISLATIVE COUNSEL'S DIGEST

SB 218, Dodd. The Qualified ABLE Program: tax-advantaged savings accounts.

Existing federal law, the Stephen Beck, Jr., Achieving a Better Life Experience Act of 2014 (ABLE Act), encourages and assists individuals and families to save private funds in a tax-advantaged savings account for the purpose of supporting persons with disabilities to maintain their health, independence, and quality of life by excluding from gross income distributions used for qualified disability expenses by a designated beneficiary of a qualified ABLE program established and maintained by a state, as specified. Existing state law authorizes a designated beneficiary, as defined, to have one ABLE account for these purposes. Existing state law creates the California ABLE Program Trust, the purposes, powers, and duties of which are vested in, and exercised by, the California ABLE Act Board, which is established under the Qualified ABLE Program.

Existing law establishes the Medi-Cal program, which is administered by the State Department of Health Care Services, under which qualified low-income persons receive health care benefits. The Medi-Cal program is, in part, governed and funded by federal Medicaid program provisions. Existing law, with certain exceptions, requires the department to seek recovery from a decedent's estate for specified health care services, including home and community-based services, if the individual was 55 years of age or older when he or she received those health care services or against the real property of a Medi-Cal member of any age who is a permanently institutionalized individual who is an inpatient in a nursing facility, intermediate care facility for the intellectually disabled, or other medical institution. Existing law limits any claims against the estate of a decedent to only the real and personal property or other assets included in the individual's probate estate that are required to be subject to a claim for recovery under federal law.

This bill would authorize, only to the extent permitted under federal law, the transfer of all amounts in the designated beneficiary's ABLE account to an ABLE account for another eligible individual specified by either the designated beneficiary or the estate of the designated beneficiary upon the death of the designated beneficiary. The bill would require the board, upon establishing a CalABLE account and prior to any transfer of funds from one ABLE account to another, to notify all designated beneficiaries or the estates of the designated beneficiaries, as applicable, of the potential tax consequences of transferring funds from one ABLE account to another pursuant to these provisions.

This bill, following the death of a designated beneficiary, and only after the department has received approval by the federal Centers for Medicare and Medicaid Services, would prohibit the state from seeking recovery under the Medi-Cal estate recovery provisions of any amount remaining in the designated beneficiary's ABLE account for any amount of medical assistance paid under the state's Medicaid plan, and would prohibit the state from filing a claim for the payment under the ABLE Act.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 4885 is added to the Welfare and Institutions Code, to read:

4885. (a) (1) Notwithstanding any other state law, and only to the extent permitted under federal law, all amounts in the designated beneficiary's ABLE account, upon the death of the designated beneficiary, may be transferred to an ABLE account for another eligible individual specified by either the designated beneficiary or the estate of the designated beneficiary.

(2) Upon establishing a CalABLE account and prior to any transfer of funds from one ABLE account to another pursuant to paragraph (1), the board shall notify all designated beneficiaries or the estates of the designated beneficiaries, as applicable, of the potential tax consequences of transferring funds from one ABLE account to another pursuant to paragraph (1).

(b) Following the death of a designated beneficiary, and only after the State Department of Health Care Services has received approval by the federal Centers for Medicare and Medicaid Services, both of the following shall apply:

(1) The state shall not seek recovery pursuant to Section 14009.5 of any amount remaining in the designated beneficiary's ABLE account for any amount of medical assistance paid for the designated beneficiary after the establishment of the account under the state's Medicaid plan established under Title XIX of the federal Social Security Act.

(2) The state shall not file a claim for the payment under subdivision (f) of Section 529A of the Internal Revenue Code.