

2018

## Creating a Solution for Financing Long-Term Care: Implementing an IRC §529E Long-term Care Savings Account Plan, 52 UIC J. Marshall L. Rev. 29 (2018)

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### Recommended Citation

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# CREATING A SOLUTION FOR FINANCING LONG-TERM CARE: IMPLEMENTING AN IRC §529E LONG-TERM CARE SAVINGS ACCOUNT PLAN

MARISSA E. MASSIMORE\*

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## I. INTRODUCTION

Janet, a healthy fifty-five-year-old single mother of two works at a television network provider.<sup>1</sup> She has been working at the same job for almost fourteen years and has a private pension plan through her employer that will be worth approximately \$400,000 when she reaches the age of sixty-five. Additionally, she has a small life-insurance policy worth \$100,000, should she die prior to her retirement. Her two sons are twenty-six and twenty-two and both have completed their college degrees and do not have any trusts set up by their mother. Once Janet reaches the age of sixty-five, she will be able to obtain the maximum amount of money from her pension plan and would like to retire. This particular plan has two different options: she can take out all of the pension plan benefits at once, reflecting a lump sum after taxes, or she may receive four payments throughout the calendar year until the money in the pension plan is completely dispersed. She does not want to set up an Individual Retirement Account (“IRA”) because not only can she not afford to contribute any money into the fund, she cannot afford

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1. The following paragraph is a hypothetical that I created to demonstrate issues facing many people across America regarding retirement and financing long-term care.

to pay the income taxes associated with such an account on top of both her sons' college tuition payments and her own living expenses. When she can finally retire, Janet plans to travel around Europe for three months and continue living independently in her home.

Fast-forward twenty years and Janet is now seventy-five years old. She has four grandchildren between the both of her sons. Although her physical health is fine, she has started to develop signs of dementia. Her sons are interested in placing her in a nursing home with a specialized Alzheimer's and dementia unit that will cost approximately \$10,000 per month. Because Janet has depleted the majority of her retirement funds that she obtained ten years ago, she will have to rely solely on her remaining savings and Medicare plan to fund her placement in this particular facility. Her assets may include any savings accounts, bonds in her name, and/or any property she may own. Therefore, she will have to decide which of her assets to use toward financing her stay at the nursing home. Janet may rely on Medicare for only limited nursing home benefits, otherwise Medicare may seek to liquidate some of her assets to help pay for the skilled care she will need.<sup>2</sup> If a person needs supervision or an environment with more safety precautions and monitoring, such as a nursing home or assisted living facility, that person must pay to live there. Often, people cannot afford the expenses associated with such facilities, so the facilities typically offer a variety of payment options available in order to finance such living expenses. If someone cannot afford to pay the facility directly or their family is unable to pay for it, the home may require the person(s) who are moving to their facility to liquidate all of their assets and transfer them to the facility, only if they do not have long term care insurance or their particular Medicare plan will not cover the nursing home expense.<sup>3</sup> This liquidation of assets is then payment for living in an assisted living facility or nursing home when the person is planning to live there indefinitely.

If Janet and her sons had been aware of additional long-term care financial planning options, they could have strategically planned more appropriately for her life care, should she be placed into an assisted living facility. Elder care is extremely expensive and must be diligently and thoughtfully planned throughout one's life in order to sustain financial independence. This article will argue that there should be other methods of financial planning for long-term care, such as a §529E savings plan. Part I examines financial planning strategies that are currently available to elders and for long-term care. Part II describes how qualified tuition

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2. Jeffrey Marshall, *When I Run out of Money Will the Nursing Home Take my Home?*, MARSHALL, PARKER & WEBER, LLC (Apr. 12, 2013), [www.paelderlaw.com/when-i-run-out-of-money-will-the-nursing-home-take-my-home/](http://www.paelderlaw.com/when-i-run-out-of-money-will-the-nursing-home-take-my-home/).

3. *Id.*; *Medicaid's Asset Transfer Rules*, ELDERLAWANSWERS (Feb. 12, 2018), [www.elderlawanswers.com/medicaids-asset-transfer-rules-12015](http://www.elderlawanswers.com/medicaids-asset-transfer-rules-12015).

programs under §529 of the Internal Revenue Code (“IRC”) function, and Part III reviews the ABLE Act and §529A savings plans available to persons with disabilities. Part IV of this paper discusses the cost of long-term life care and the proposal of a §529E plan. Finally, Part V discusses tax re-growth and how important it is to invest in one’s future.

## II. FINANCIAL PLANNING THAT IS AVAILABLE FOR LONG-TERM CARE

There are numerous options currently available to people in order to save for their individual long-term care. Many employers have various private pension plans, insurance policies, and IRAs that can be initiated through their respective companies. Some employers even offer long-term care insurance policies to their employees. There are also long-term care financial plans set up through the government. Beneficiary tax planning generally involves efforts to retain retirement funds tax-free. This means that the person who is receiving the retirement funds will do so without having to pay income tax on them. Some of the current retirement and long-term care plans include “IRAs, qualified retirement plans, or eligible state/local plans.”<sup>4</sup>

People generally view retirement funds as a means for paying for ordinary living expenses after they stop working. What people commonly disregard are hardships that may arise throughout time after retirement. Throughout someone’s life, their health deteriorates, their living situations may need to change, and they may become reliable on others for basic needs such as transportation, cooking, and cleaning. Financial planning for long-term care is extremely important, and lawmakers should revise state and federal laws to provide tax incentives for private, self-created funds dedicated solely to long-term care expenses. This would benefit millions of people across the country who are members of the middle class because while many people within the middle class have retirement options, none of these options are tax-free and self-created.

### *A. Social Security Benefits*

Social Security benefits are one of the main sources of income for people above the age of sixty-five, constituting more than half of their income. Over ninety percent of people over the age of sixty-five in the United States receive Social Security benefits.<sup>5</sup> These benefits provide monthly cash benefits to individuals who no longer

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4. VORRIS J. BLANKENSHIP, *TAX PLANNING FOR RETIREES* §1.03 (2018).

5. LAWRENCE A. FROLIK & ALISON BARNES, *ELDER LAW: CASES AND MATERIALS* 131 (6th ed. 2015).

work, essentially replacing their former paychecks with a much smaller amount.<sup>6</sup> However, Social Security never entirely replaces a person's income from work.

The funds for Social Security are collected through taxes imposed on employees' wages prior to receiving their paychecks.<sup>7</sup> If an employee has paid into the Social Security scheme, that person is entitled to receive benefits once they reach the age of sixty-five.<sup>8</sup> In addition to an employee paying into the Social Security scheme with every paycheck, there is also an equal employer contribution into the Social Security Trust Fund. As stated by Larry DeWitt, "[t]he concept of social insurance is that individuals contribute to a central fund managed by governments, and this fund is then used to provide income to individuals when they become unable to support themselves through their own labors."<sup>9</sup> Social Security benefits "are designed to provide a 'floor of protection,' and not a complete source of retirement income" for any individual.<sup>10</sup>

Social Security funds are based on how much one has contributed into the scheme.<sup>11</sup> Every time a person receives a paycheck, a percentage of that money goes into the Social Security scheme.<sup>12</sup> Although that particular person may not be receiving Social Security benefits now, they will be able to collect their appropriate portion once they have reached the age of sixty-five or decided to retire.<sup>13</sup> Because all paid Americans are continually contributing to Social Security,<sup>14</sup> it must be noted that it is not an individualized, segregated account that a working person is

6. *Id.*

7. *Topic No. 751 Social Security and Medicare Withholding Rates*, INTERNAL REVENUE SERV., [www.irs.gov/taxtopics/tc751](http://www.irs.gov/taxtopics/tc751) (last updated Jan. 4, 2018).

8. SSA, PUB. NO. 05-10024, UNDERSTANDING THE BENEFITS 1 (2018), [www.ssa.gov/pubs/EN-05-10024.pdf](http://www.ssa.gov/pubs/EN-05-10024.pdf) (describing how a person can receive their social security benefits when they reach the age of sixty-two, however they will only receive seventy-five percent of his benefits until they reach the age sixty-five).

9. Larry DeWitt, *The Development of Social Security in America*, 70 SOC. SEC. BULL. 1, 1-2 (2010).

10. FROLIK & BARNES, *supra* note 5, at 132.

11. SSA, PUB. NO. 05-10070, YOUR RETIREMENT BENEFIT: HOW IT'S FIGURED (2018), [www.ssa.gov/pubs/EN-05-10070.pdf](http://www.ssa.gov/pubs/EN-05-10070.pdf).

12. *Id.*; Ed Grabianowski, *How Social Security Works*, HOWSTUFFWORKS (June 7, 2005), <https://money.howstuffworks.com/personal-finance/financial-planning/social-security.htm>.

13. Grabianowski, *supra* note 12.

14. *See Social Security History*, SSA., [www.ssa.gov/history/InternetMyths.html](http://www.ssa.gov/history/InternetMyths.html) (last visited Dec. 22, 2018) (explaining how Social Security works by debunking common myths and misinformation about Social Security). President Roosevelt introduced his plan for Social Security in 1935 when he explained that contributions into the Social Security scheme by taxpayers would be placed into an independent trust fund, rather than into a general operating fund. *Id.* While this concept is generally true, the federal government does have access to the Fund. *Id.* The Social Security Trust Fund was created in 1939. *Id.*

contributing to. It is a common account in which all working Americans contribute.<sup>15</sup> This common account is known as the Social Security Trust Fund and is “used to finance current benefits and the operating expenses of the Social Security Administration.”<sup>16</sup> The scheme pays a higher dollar amount to people who have contributed more money to the central fund, thus the more income received, the higher the Social Security tax.<sup>17</sup> However, retirees with a history of lower wages receive proportionately greater funds out of the Social Security scheme.<sup>18</sup>

Another element of Social Security benefits is that some portion of yearly payments are included in gross income under §61 of the IRC and are taxed at regular rates.<sup>19</sup> Today, the taxable portion of Social Security benefits depends on the amount determined to be “augmented income.”<sup>20</sup> “Augmented income for a tax year is generally equal to a retiree’s adjusted gross income plus tax-exempt interest but may also include other adjustments.”<sup>21</sup> Thus, Social Security benefits may be taxable depending on the amount of a retiree’s income.<sup>22</sup>

Social Security has collected more money from the wage tax than it has paid out in benefits.<sup>23</sup> The “wage tax revenue and the interest earned on the accumulated surplus . . . results in total [Social Security] program revenue that exceeds benefits paid and is projected to do so until 2020.”<sup>24</sup> “From that year on, benefits paid out will exceed revenues collected,” thus depleting the funds within the Social Security Trust Fund.<sup>25</sup> Despite the large amount of reserve that is in the Social Security Trust Fund, it is estimated that the fund will be exhausted by 2037.<sup>26</sup> If there are no Social Security benefits available, the “floor of protection” for retirees will not be available to those Americans who have worked for most of

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15. SSA, *supra* note 8, at 2.

16. FROLIK & BARNES, *supra* note 5, at 139.

17. SSA, *supra* note 1111.

18. Dewitt, *supra* note 9, at 2.

19. I.R.C. §1 (2017) (giving a breakdown of various taxable incomes and the tax rates that will be imposed on that income and must be paid to the United States government). Tax rates are percentages that are imposed on taxable income that must be paid to the state government and federal government. *Id.* Tax rates vary based on the amount an individual has received as taxable income in a calendar year, and on their filing status (i.e. married, single, etc.) *Id.*

20. BLANKENSHIP, *supra* note 4, § 17.01.

21. *Id.*

22. *See also id.* at § 17.00 (describing the general concept behind taxation with Social Security funds, explaining that money, or payments, received through Social Security are considered income, thus taxable in one’s regular income taxes).

23. FROLIK & BARNES, *supra* note 5, at 140.

24. *Id.*

25. *Id.*

26. Stephen C. Goss, *The Future Financial Status of the Social Security Program*, 70 SOC. SEC. BULL. 111, 113 (2010).

their lives, continually paying into government regulated scheme. It must be made clear that people who receive Social Security benefits cannot live off of those benefits; Social Security benefits will never amount to enough in order to pay for long-term care.

It is clear that as time progresses, financial planning must progress as well. While there are many programs available for elders and persons who are planning for long-term life care, many of these programs are associated with social welfare, rather than encouraging individual savings for elders. Therefore, in addition to Individual Retirement Funds and pension plans, people should be able to create an individualized savings plan that is completely tax free in order to save sufficient funds to finance their own or a loved one's long-term care.

As previously described, Janet is now seventy-five years old and has been retired for approximately ten years. When she reached retirement age at sixty-five, she received her pension plan as a lump sum and decided to travel for a few months. She then continued to live on her own with ordinary living expenses. Now that she is showing signs of dementia, her sons are exploring the option of continued care in an assisted living facility, with a specialization in Alzheimer's and dementia. Even if Janet still had \$300,000, she would only be able to afford thirty months in that particular facility, which is not enough to independently finance long-term care for the rest of her life.

### *B. Government & Private Pensions*

Pension plans, or retirement plans, are often, but not always, offered by a person's employer.<sup>27</sup> These plans typically take part in a specific investment pool, earning interest from the time an employee decides to enroll in it until they begin receiving payments from the plan.<sup>28</sup> Additionally, there are similar plans for a person to begin collecting interest on plans, even if they are not employed. A Section 401(k) plan ("401(k) plan" or "401(k)") or a Section 403(b) plan ("403(b) plan" or "403(b)") may not distribute amounts attributable to elective deferrals before the earlier of the date a retiree reaches age fifty-nine and a half, leaves employment, suffers hardship, becomes disabled, or dies.<sup>29</sup> Thus, an older person cannot easily access the funds until one of the former takes place.

401(k) plans are retirement savings plans that are typically sponsored by an employer, allowing someone to save and invest in a portion of their paycheck before taxes are taken out.<sup>30</sup> However, a

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27. Julia Kagan, *Pension Plan*, INVESTOPEDIA, [www.investopedia.com/terms/p/pensionplan.asp](http://www.investopedia.com/terms/p/pensionplan.asp) (updated June 28, 2018).

28. *Id.*; Dana Anspach, *What Is a 401(k) Plan and How Do They Work?*, THE BALANCE (Dec. 22, 2018), [www.thebalance.com/how-401k-plans-work-4135451](http://www.thebalance.com/how-401k-plans-work-4135451).

29. BLANKENSHIP, *supra* note 4, § 1.01(2)(i)(ii).

30. Anspach, *supra* note 28.

person must pay income tax from their 401(k) when the money is withdrawn from the account.<sup>31</sup> The longer one can allow their pension plan to mature, the better because money is continually added to the plan with every paycheck. A person may access their pension plan prior to reaching retirement age (typically age sixty-five), however, their monthly payout will be less than if they waited for their plan to fully mature.<sup>32</sup> Additionally, if one decides to take the lump sum, rather than receiving monthly installments, their employer may be required to withhold up to twenty percent of the payout for federal income taxes, plus an additional ten percent in early-withdrawal penalties if the employee is below the age of fifty-five.<sup>33</sup>

Ideally, retirement plans are meant to be put into place prior to approaching the age of retirement, so they are able to mature and collect as much money as possible. When creating these plans, a portion of every paycheck is placed into the retirement plan, and that amount of money gathers interest until it is used.<sup>34</sup> Once the person is able to receive payments out of the retirement plan, they may elect to either take a lump sum, or receive multiple payments throughout time.<sup>35</sup> The money that is then distributed to the retiree is either partially or wholly taxed as gross income, except for the payment that represents a return of his or her investment in the retirement plan or program.<sup>36</sup> However, “if the retiree does not have an immediate need for the funds [within the retirement plan], the retiree will likely want to avoid paying tax on the funds by transferring them to an IRA.”<sup>37</sup>

A qualified governmental retirement plan is a retirement plan that has been established by the federal or state government.<sup>38</sup> Section 403(b) plans are known as tax-sheltered annuities that are established under the IRC.<sup>39</sup> A 403(b) account is often used by nonprofit organizations, religious groups, school districts and universities, and governmental organizations.<sup>40</sup> It is favorable for these organizations because the administrative costs for 403(b) accounts are lower than that of a 401(k) because they are exempt

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31. *Id.*

32. *Ultimate Guide to Retirement*, CNN MONEY, [www.money.cnn.com/retirement/guide/pensions\\_pensions.money.com/index5.htm](http://www.money.cnn.com/retirement/guide/pensions_pensions.money.com/index5.htm) (last visited Jan. 18, 2019).

33. Mary Beth Franklin, *Pensions: Take a Lump Sum or Not?*, KIPLINGER (Sept. 1, 2011), [www.kiplinger.com/article/retirement/T037-C000-S002-pensions-take-a-lump-sum-or-not.html](http://www.kiplinger.com/article/retirement/T037-C000-S002-pensions-take-a-lump-sum-or-not.html).

34. Kagan, *supra* note 27.

35. Franklin, *supra* note 33.

36. BLANKENSHIP, *supra* note 4, § 1.01(2)(f).

37. *Id.* § 1.01(3)(a).

38. *Id.* § 2.03(1).

39. *Id.* § 2.03(3).

40. *Id.*



from various administrative processes.<sup>41</sup> There are three benefits that contribute to a 403(b) plan.<sup>42</sup> The first benefit is that a person does not “pay income tax on allowable contributions until [they] begin making withdrawals” on the plan.<sup>43</sup> “The second benefit is that earnings and gains on amounts” in the account are not taxed until they are withdrawn.<sup>44</sup> The third benefit is that a person may be able to “take a credit for elective deferrals contributed to [the] 403(b) account.”<sup>45</sup> Additionally, when participating in a 403(b) plan, in general, only an employer can make contributions to the account.<sup>46</sup>

The 401(k) and 403(b) plans are contribution plans where both the employee and employer make contributions into them, and the contributions are taxed.<sup>47</sup> In the previously discussed hypothetical, Janet has a pension plan through her employer, however it is not labeled as a 401(k) or 403(b) and she will still have to pay taxes on the moneys received from the plan. Although she probably had the option to enroll in a 401(k) plan, she chose not to because of her individual financial situation; she could not afford to put portions of her paycheck into a 401(k).

### C. Individual Retirement Accounts

An IRA allows funds to accumulate tax-free and gives the retiree the opportunity to choose the custodian of the IRA.<sup>48</sup> IRAs give the retiree more latitude and more personal responsibility for the funds within the IRA because of the ability to control how it is invested.<sup>49</sup> There are two general types of IRAs: the Traditional IRA and the Roth IRA. Roth IRAs have income-eligibility restrictions.<sup>50</sup> In 2018, single tax filers, for example, must have an adjusted gross income of less than \$135,000 to contribute to a Roth IRA.<sup>51</sup> However, there are no income restrictions imposed on contributions to a traditional IRA.<sup>52</sup> Traditionally, “anyone with earned income

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41. *Retirement Plans FAQs regarding 403(b) Tax-Sheltered Annuity Plans*, INTERNAL REVENUE SERV. (Nov. 9, 2018), [www.irs.gov/retirement-plans/retirement-plans-faqs-regarding-403b-tax-sheltered-annuity-plans](http://www.irs.gov/retirement-plans/retirement-plans-faqs-regarding-403b-tax-sheltered-annuity-plans).

42. DEP'T OF TREASURY, INTERNAL REVENUE SERV., PUBLICATION 571, TAX-SHELTERED ANNUITY PLANS (403(B) PLANS) 2 (2018).

43. *Id.* at 2-3.

44. *Id.* at 3.

45. *Id.*

46. *Id.*

47. Mark P. Cussen, *The Basics of a 401(k) Retirement*, INVESTOPEDIA (Nov. 2, 2018), [www.investopedia.com/articles/retirement/08/401k-info.asp](http://www.investopedia.com/articles/retirement/08/401k-info.asp).

48. *What is an IRA?*, FIDELITY, [www.fidelity.com/building-savings/learn-about-iras/what-is-an-ira](http://www.fidelity.com/building-savings/learn-about-iras/what-is-an-ira) (last visited Dec. 22, 2018).

49. Blankenship, *supra* note 4, at § 1.01(3)(a).

50. Kelly Spors, *Traditional IRA vs. Roth IRA*, ROTHIRA.COM, [www.rothira.com/traditional-ira-vs-roth-ira](http://www.rothira.com/traditional-ira-vs-roth-ira) (last visited Jan. 13, 2019).

51. *Id.*

52. *Id.*

who is younger than [seventy and a half] can contribute to a Traditional IRA.”<sup>53</sup> Roth IRAs, however, do not impose any age restrictions on contributions, but they do have income-eligibility restrictions.<sup>54</sup> In other words, if a person’s income exceeds a specified dollar amount, they cannot contribute to a Roth IRA.<sup>55</sup> Thus, a Traditional IRA may be more suitable depending on an individual’s income.

There are various tax incentives associated with both Traditional and Roth IRAs. Traditional IRA contributions “are tax-deductible on both state and federal tax returns” for the year that a contribution has been made, and “withdrawals in retirement are taxed at ordinary . . . tax rates.”<sup>56</sup> Roth IRAs do not provide any tax breaks for contributions, but earnings and withdrawals (also known as a “qualified” distribution to the retiree) are not taxable.<sup>57</sup> Another feature to be noted about Traditional IRAs and Roth IRAs is that “a retiree may make a ‘qualified rollover contribution’ to a Roth IRA from an IRA . . . or qualified retirement plan.”<sup>58</sup> Traditional IRAs and Roth IRAs can be categorized as a tax-preferred retirement plan.<sup>59</sup> However, with either type of account (Traditional IRA or Roth IRA) there will be an associated tax consequence.<sup>60</sup> Both accounts, however, allow one to save money in a separate, designated account for retirement.

In addition to financial planning for long-term care, there are options to obtain long-term care insurance.<sup>61</sup> Because of the high cost of long-term care insurance, it is not a popular option for most people in the United States.<sup>62</sup> Policies are usually sold by private insurance companies and increase in cost as the purchaser’s age increases.<sup>63</sup> Although there are tax deductions available for long-term care policies, they remain an unfavorable option for most Americans.<sup>64</sup>

Implementing a long-term care savings account with multiple tax incentives will be very attractive to Americans all across the country. Today, there are many tools available to individuals who work for a living to invest in their own retirement and long-term care. However, none of the previously mentioned plans are completely income-tax free. Most of the plans require the beneficiary to pay income taxes on the funds received from their

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53. *Id.*

54. *Id.*

55. Spors, *supra* note 50.

56. *Id.*

57. BLANKENSHIP, *supra* note 4, at § 6.01.

58. *Id.*

59. Spors, *supra* note 50.

60. *Id.*

61. FROLIK & BARNES, *supra* note 5, at 231.

62. *Id.*

63. *Id.* at 232.

64. *Id.* at 231.

respective plans or pay taxes on the funds contributed to such plan. Because long-term care is so expensive, and government-provided funding only covers approximately eighty-five percent of nursing home costs, lawmakers should consider using the IRC to provide incentives to private savings for long-term care. This should take the form of a tax-free savings account similar to that of a §529 qualified tuition program. A tax-free savings account for long-term care should offer tax incentives for the beneficiary of the account, and to those who contribute to the account.

### III. SECTION 529 QUALIFIED TUITION PROGRAMS

Section 529 of the IRC authorizes a tax-advantaged savings plan for future college expenses.<sup>65</sup> These are plans that meet the definition under IRC §529 as “qualified tuition programs” and are maintained by a State or agency or by an educational institution.<sup>66</sup> Anyone can open a §529 plan for a beneficiary who will be seeking higher education, such as a degree from a college or university.<sup>67</sup> The account holder (the person who opens the §529 account) must designate a person who will benefit from the account, known as the “designated beneficiary.”<sup>68</sup>

The term “designated beneficiary” means (A) the individual designated at the commencement of participation in the qualified tuition program as the beneficiary of amounts paid (or to be paid) to the program, (B) in the case of a change in beneficiaries described in subsection (c)(3)(C), the individual who is the new beneficiary....<sup>69</sup>

There are typically no age restrictions for the beneficiary, but the beneficiary is usually the student or future student for whom the plan is intended to provide benefits.<sup>70</sup> However, the funds available in the §529 account must be used for qualified higher education expenses.<sup>71</sup> Qualified higher education expenses include “tuition, fees, books, supplies, and equipment required for the

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65. I.R.C. § 529 (2018) (describing “higher education savings entities” such as “qualified tuition programs”).

66. I.R.C. § 529(b)(1) (stating that a “qualified tuition program” can be categorized into two programs, both of which are monitored by the State in which the plan is created).

67. I.R.C. § 529.

68. I.R.C. § 529(e)(1) (explaining what qualifies a person to be the “designated beneficiary”). The beneficiary may be any person, so long as they are named as the “designated beneficiary.” *Id.* In other words, one can set up a §529 plan and name themselves as the beneficiary. Additionally, whomever creates the account may change the beneficiary to another person if they choose to. *Id.*

69. *Id.*

70. *529 Plans: Questions and Answers*, INTERNAL REVENUE SERV., [www.irs.gov/newsroom/529-plans-questions-and-answers](http://www.irs.gov/newsroom/529-plans-questions-and-answers) (last updated Feb. 20, 2018).

71. I.R.C. § 529(e)(3).

enrollment or attendance of a designated beneficiary at an eligible educational institution.<sup>72</sup> Moreover, higher education expenses also include room and board for students who are at least part-time students.<sup>73</sup>

The §529 qualified tuition program plan is fairly flexible, allowing multiple people to contribute to a beneficiary's account; however there are limits on how much money can be put into an account yearly.<sup>74</sup> Contributions by anyone independently may not exceed the annual gift tax exemption, which is \$15,000 for a single tax payer in 2018-19, in one calendar year.<sup>75</sup> This restriction places a cap on the account, or a limit to how much money can be contributed to the §529 plan in a calendar year.<sup>76</sup>

There are two types of qualified tuition programs recognized in the United States: prepaid tuition plans and college savings plans.<sup>77</sup> The former is a program that allows the account holder to purchase credits at participating colleges and universities that go toward future tuition and fees.<sup>78</sup> A prepaid tuition program under §529 of the IRC allows the account holder to purchase college credits at in-state public colleges at current prices, guaranteeing that particular price when the beneficiary is ready to use the plan.<sup>79</sup> These plans are usually regulated and guaranteed by the state in which the credits are purchased.<sup>80</sup> Additionally, there is a second qualified tuition savings option where one can contribute to a §529 account without restricting where the beneficiary can attend college.<sup>81</sup> For

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72. *Id.*

73. *Id.*

74. I.R.C. § 529(b)(6) (explaining that there are safeguards for qualified tuition programs and savings accounts that prevent certain contributions that are in excess of those necessary to provide for the qualified higher education expenses of the beneficiary).

75. I.R.C. § 529(c)(2)(B) (explaining that the aggregate amount of contributions during a calendar year by a donor may not exceed the limitation for such year under I.R.C. §2503(b)); *Frequently Asked Questions on Gift Taxes*, INTERNAL REVENUE SERV., [www.irs.gov/businesses/small-businesses-self-employed/frequently-asked-questions-on-gift-taxes](http://www.irs.gov/businesses/small-businesses-self-employed/frequently-asked-questions-on-gift-taxes) (last updated Nov. 28, 2018).

76. I.R.C. § 2503(b).

77. I.R.C. § 529(b)(1)(A); *An Introduction to 529 Plans*, U.S. SEC. & EXCH. COMM'N (May 29, 2018), [www.sec.gov/reportspubs/investor-publications/investorpubsintro529htm.html](http://www.sec.gov/reportspubs/investor-publications/investorpubsintro529htm.html).

78. I.R.C. § 529(b)(1)(A)(i) (stating that a contributor to a §529 Plan may purchase tuition credits or certificates for qualified higher educational institutions for the designated beneficiary).

79. *Id.*; *An Introduction to 529 Plans*, *supra* note 77.

80. *An Introduction to 529 Plans*, *supra* note 77.

81. I.R.C. § 529(b)(1)(A)(ii) (stating that a contributor to a §529 Plan may make contributions into a designated §529 savings account, rather than purchasing individual credits, that must also be used specifically for qualified higher educational expenses). Thus, this part of the code states that there are essentially two different kinds of §529 Plans: one that allows the purchase of credits, or one that allows contributions to be made into a savings account. *Id.*

example, a parent may set up §529 college savings plans for their two kids. Because the parents are not certain where their kids will be attending college in the future, a college savings plan is best option for the parents to access the plan and pay for the beneficiary's college expenses. Both of these plans are to be used strictly for college or higher education expenses.<sup>82</sup>

Section 529 qualified tuition programs are appealing to people because as the account progresses over time, the principal generates interest. Interest is not treated as income in the year it is economically received or in the year when funds are used, provided they are used for higher education expenses.<sup>83</sup> In general, any contribution made to the account will be treated as a completed gift to the beneficiary, and no gift taxes will be imposed on the contributor.<sup>84</sup> In turn, the principal income will not be includible in gross income of the beneficiary when paid out if used for higher education expenses.<sup>85</sup> Thus, it is a way for someone to save and earn interest, tax free, along with a short-term reward by giving contributors a deduction or credit on their state income taxes.<sup>86</sup>

Additionally, investing in someone's §529 plan lowers the investing party's tax return. Many states offer benefits to people who invest in a §529 plan by allowing them to deduct their contribution from their state income tax, thus lowering their taxes.<sup>87</sup> The §529 qualified tuition plan is unique because it allows someone to invest in another's education, while receiving tax benefits from doing so. Should one decide to open a §529 plan with prepaid tuition credits for a beneficiary, the beneficiary will be saving a tremendous amount of money when they decide to go to a college or university. Similarly, if a person decides to open a §529 college savings account for a beneficiary, they too will save money since they are investing in future education essentially tax-free. In contrast, if the beneficiary decides to not pursue a degree from a qualified institutional program, the account holder may designate a new beneficiary who can use the funds towards financing a higher education degree.<sup>88</sup>

A new §529A savings plan was enacted through the ABLE Act to encourage savings for people with qualified disabilities.<sup>89</sup> The

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82. I.R.C. § 529.

83. *Id.*

84. I.R.C. §529(c)(2).

85. I.R.C. § 529(c).

86. Cory Turner, *Congress Changed 529 College Savings Plans, and Now States are Nervous*, WBUR (Jan. 08, 2018), [www.wbur.org/npr/575167214/congress-changed-529-college-savings-plans-and-now-states-are-nervous](http://www.wbur.org/npr/575167214/congress-changed-529-college-savings-plans-and-now-states-are-nervous).

87. *An Introduction to 529 Plans*, *supra* note 77.

88. I.R.C. § 529(c)(3)(C); I.R.C. § 529(e)(1)(B).

89. I.R.C. § 529A (introducing the §529A qualified ABLE programs that are similar in structure to §529 qualified tuition savings programs). This section allows contributions to be made into an account for a disabled person, so they

United States government thought that §529 qualified tuition programs created a perfect model for a similar savings plan and has been largely replicated to encourage savings for persons with disabilities, discussed in the following section.

#### IV. THE ABLE ACT AND SECTION 529A

The Achieving a Better Life Experience (“ABLE”) Act was signed into law by President Barack Obama on December 19, 2014.<sup>90</sup> It amends §529 of the IRC to create a tax-preferred savings account for individuals with disabilities.<sup>91</sup> These tax-advantaged savings accounts are similar to qualified tuition program plans under §529, allowing people to create a tax-advantaged savings account for the benefit of someone who is disabled.<sup>92</sup> In sum, the tax-advantaged savings account under §529A can be used to cover qualified disability expenses by the holder of the account for the beneficiary, or the beneficiary may access the account if they have sufficient mental capacity.<sup>93</sup>

Similar to that of a regular §529 plan, these savings accounts under the ABLE Act may be created by the beneficiary, or by someone else, so long as the beneficiary has a qualifying disability, and the creator of the account has proper mental capacity.<sup>94</sup> Each beneficiary may have only one ABLE account, and contributions to this account are capped at \$15,000 per taxpayer per year pursuant to tax laws.<sup>95</sup> Additionally, there may be many contributors to an ABLE account and all contributions must be made in cash, except in the case of contributions from the rollover from ABLE accounts or a change in the designated beneficiary.<sup>96</sup>

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are able to use the funds in a code-appropriate manner. *Id.*

90. *ABLE Act*, NAT’L DISABILITY INST., [www.realeconomicimpact.org/public-policy/able-act](http://www.realeconomicimpact.org/public-policy/able-act) (last visited Nov. 22, 2018).

91. *Id.*

92. I.R.C. § 529A.

93. *Id.*

94. I.R.C. § 529A(e) (stating that an individual is eligible to be a beneficiary if “(A) the individual is entitled to benefits based on blindness or disability under title II or XVI of the Social Security Act...and such disability occurred before the date on which the individual attained age 26, or (B) a disability certification with respect to such individual is filed with the Secretary for such taxable year”).

95. *Annual Contributions to ABLE Accounts Increased to \$15,000 in 2018*, ABLE NAT’L RES. CTR. (Oct. 31, 2017), [www.ablenrc.org/news/annual-contributions-able-accounts-increased-15000-2018](http://www.ablenrc.org/news/annual-contributions-able-accounts-increased-15000-2018).

96. I.R.C. § 529A(b)(2) (explaining what types of contributions are allowed under this code section). In addition to cash contributions, ABLE accounts may gain contributions through the change in designated beneficiaries or programs. *Id.* The rollover of another ABLE account into the account at bar is allowed via IRC § 529(b)(2)(ii) or the account may gain contributions through the change of beneficiary. *Id.* If the new beneficiary is an eligible individual and a family member of the former beneficiary, the interest in a qualified ABLE program may be transferred to the new beneficiary. *Id.*

Money within an ABLE account may be used for “qualified disability expenses” without endangering a beneficiary’s Medicaid eligibility.<sup>97</sup> The IRC gives a broad definition of “qualified disability expenses,” including many everyday expenses such as housing; personal support services; transportation; and health, prevention, and wellness.<sup>98</sup> With an ABLE account, the beneficiary can pay for many qualified expenses using funds within the account.<sup>99</sup> While there are many potential improvements in the ABLE account provisions of §529A of the IRC, such as removing the cap on contributions to the account, there are many benefits associated with the account. In addition to ABLE accounts, Congress has created the Supplemental Security Income program which provides cash assistance to eligible aged, blind, and disabled individuals.<sup>100</sup> This is a source of income for persons with disabilities.<sup>101</sup>

Tax-preferred savings accounts, similar to those under §529 and §529A should be available to people who are interested in investing in long-term life care. The implementation of a §529E plan would allow people to begin investing in their own individual long-term life care or open an account with a specified beneficiary. Similar to ABLE accounts and qualified tuition programs, a §529E account would allow elders to have access to tax-advantaged savings.

## V. THE PROPOSED §529E PROGRAM

Many people “cannot afford to pay for long-term care for an extended period of time, whether provided . . . in an assisted living facility, in a nursing home,” or within their own family home.<sup>102</sup> A nursing home can cost anywhere from approximately \$5,000-\$12,000 per month and an assisted living facility can range from approximately \$2,700-\$5,000 per month.<sup>103</sup> In 2017, Forbes reported that nursing home care exceeded \$97,000 per year, an increase of 5.5 percent from just one year prior, and nearly 50

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97. Stephanie R. Hoffer, *Making the Law More ABLE: Reforming Medicaid for Disability*, 76 OHIO ST. L.J. 1255, 1295 (2015).

98. I.R.C. § 529A(e)(5) (defining “qualified disability expenses,” and what the beneficiary of the ABLE account is able to use the funds for). This is a broad range of expenses, even allowing the beneficiary to use funds for transportation, and funeral expenses. *Id.*

99. *Id.*

100. Joan Loeff, Judith Bretz & Wilmer L. Kerns, *Social Security Programs in the United States*, 52 SOC. SEC. BULL. 62-65 (1989).

101. *Id.* (describing what Supplemental Security Income (“SSI”) is and what factors affect individuals or couples from receiving benefits). Basic SSI payments are determined based off of other income and support that is available to the recipient and can help deem an individual eligible for Medicaid. *Id.* If the recipient of SSI benefits only receives \$1 per month of SSI, they are still eligible for Medicaid, which is very important for individuals with disabilities. *Id.*

102. FROLIK & BARNES, *supra* note 5, at 231.

103. *Id.*

percent higher than prices in 2004.<sup>104</sup> And further, if there are any additional needs for the elder, such as a specialized unit or facility for a particular illness they have, the prices can be astronomical. The Alzheimer's Association reported that the approximate lifetime cost of care for an individual living with dementia in 2018 was \$341,840.<sup>105</sup> These prices are so large that many people cannot afford it, even when they do have a variety of financial plans set in place.

Consider the hypothetical situation with Janet: she has depleted some of her long-term savings by traveling and by using it for basic living expenses. She is now looking to move indefinitely into an assisted living facility in the section for persons with dementia. If she has remaining savings and assets that total \$500,000, she will only be able to live in the facility for fifty months, or a little over four years. Someone who has a life expectancy upwards of ninety years will confront a financial crisis when faced with a situation like Janet's.

### A. Long-term Life Care Planning: §529E

There is no policy reason preventing another amendment of §529 to add a plan for long-term life care (§529E Long-term Care Savings Account). Lawmakers should implement a tax-advantaged savings program following the format and structure of both §529 qualified tuition programs and §529A ABLE accounts. Today, many people across the United States do not begin thinking about retirement and long-term life care, until they are approaching the age of retirement. While there are various programs provided through employers and the government to begin saving for retirement upon employment, there should also be an option for an individual to create a tax-preferred savings plan for an elder, or themselves, in order to finance long-term life care. Although 1.5 million elders live in nursing homes in the United States, “the majority of the elderly who need long-term care reside at home with relatives, in board-and-care homes, or in assisted living facilities.”<sup>106</sup> Thus, it is imperative that a tax-advantaged savings plan is implemented in the United States to help elders and their families finance proper care. The following sections will explain what §529E will do for elders, along with how it will operate with the IRC.

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104. Emily Gurnon, *The Staggering Prices of Long-Term Care 2017*, FORBES (Sept. 26, 2017, 2:34 PM), [www.forbes.com/sites/nextavenue/2017/09/26/the-staggering-prices-of-long-term-care-2017/#24247c882ee2](http://www.forbes.com/sites/nextavenue/2017/09/26/the-staggering-prices-of-long-term-care-2017/#24247c882ee2).

105. ALZHEIMER'S ASS'N, 2018 ALZHEIMER'S DISEASE FACTS AND FIGURES 31 (2018), [alz.org/media/HomeOffice/Facts%20and%20Figures/facts-and-figures.pdf](http://alz.org/media/HomeOffice/Facts%20and%20Figures/facts-and-figures.pdf).

106. FROLIK & BARNES, *supra* note 5, at 227.



### B. Proposed §529-E Plan

A §529E plan can be structured very similar to qualified tuition programs and ABLE accounts, but the monies accumulated in the plan would be specifically for long-term care. This plan would be structured as the §529E savings account for qualified long-term care, and in general, the savings account is for an elder, or the elder's family, to be able to save money in a tax-preferred savings account and use the funds within the account for long-term care for the elder. Thus, the savings account must be structured so the beneficiary may designate themselves and another party to have access to the funds within the account.

In general, the term "qualified long-term care" will mean any program established and maintained by a State or agency or instrumentality thereof under which a person may make contributions to an account which is established for the purpose of meeting long-term care expenses of the designated beneficiary of the account. This provision is similar to qualified programs under §529 and §529A accounts in that the program that the savings account is qualified for must be regulated somehow and fall within designated categories. Here, a qualified long-term care program would be a program established by a regulated assisted living facility or nursing home, or a health care program that has been established by the elder's primary care physician. As noted above, the majority of elders are living at home independently, under the supervision of family members, or receiving care from an agency or other program for in-home care. Thus, a §529E savings account must be able to be used for at-home care for elders. This is especially important because home health care has increased 6.2 percent from 2016.<sup>107</sup> The median cost of home health care is approximately \$49,192 per year just for a health care aid for 44 hours per week.<sup>108</sup>

The §529E account can be created by any person, at any age, and will be available to beneficiary elders over the age of forty who are seeking long-term care in a "qualified facility" or seeking at-home care in their own residential home or that of a family member, and who have "qualified long-term care expenses." Qualified long-term care expenses will mean any expenses incurred at a nursing home or assisted living facility, including any additional supplies and equipment required for the best quality of life while the beneficiary is under the care and supervision of the facility. Additionally, qualified long-term care expenses can be expenses for payment of an at-home care provider, transportation to and from physician's offices, and expenses incurred at a hospital for the beneficiary. This plan can even be self-funded by a person of any age so long as they are legally an adult and expect a future need for

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107. Gurnon, *supra* note 104.

108. *Id.*

long-term care. Alternatively, this plan can be set up by any other person to benefit any beneficiary, so long as the beneficiary will not have access to the account until they attain the age of forty. The designated age that will trigger the beneficiary to be able to access the §529E account is forty because that is also the age which can trigger a prima facie age discrimination lawsuit, when accompanied with additional discriminatory factors.<sup>109</sup>

Like qualified tuition programs and ABLE accounts, anyone can contribute to a §529E long-term care savings account, so long as the contributions are made in cash or a cash equivalent.<sup>110</sup> However, a key difference that must be implemented with a §529E account is that the contribution cap be significantly raised from \$14,000 per tax payer per year, to at least \$50,000 per taxpayer per year. This is because long-term care is exponentially growing in cost, and people are living longer. Therefore, there needs to be a higher cap – or no cap at all – so people can contribute as much as possible to their own or their family member’s §529E savings account. For example, if a person can no longer work due to a health-related issue and is forty-five years old, they will be forced to rely on health insurance, any savings they may have, and/or any pension plans or IRAs they have and are able to access. This significantly limits that particular person and/or their family on health care options, or potential life plan options. By increasing the cap for a §529E savings account, hopefully people will be able to contribute a significant amount of their income into the account and do so as a tax incentive. They would then be able to utilize the funds within the account should they surpass the triggering age, and a “qualified long-term care expense” occurs.

Similarly, there must be a higher cap on these §529E savings plans because a family member may create funds for many of the older people they are related to. For example, a son may create two separate accounts for each parent, so there should be a very high dollar limit so that he can contribute a significant amount to each parent in their respective accounts. Furthermore, an individual §529E savings account may only have one elder as the beneficiary and a designated person to make financial decisions regarding the account should the elder become incapacitated, or unable to make decisions regarding their long-term care. Finally, an elder who is also the beneficiary may only have one §529E savings account in their name, allowing multiple people may make contributions to that account, similar to an ABLE account under §529A.<sup>111</sup> Thus, each individual beneficiary may only have one corresponding §529E account.

Section 529E savings accounts shall be treated the same as

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109. FROLIK & BARNES, *supra* note 5, at 73-75.

110. I.R.C. §§ 529(b)(2), 529A(b)(2).

111. *See* I.R.C. § 529A(b)(1)(a) (explaining that a person may make contributions to an individual’s qualified ABLE account).

§529 qualified tuition programs and §529A ABLE accounts in regard to taxes. Therefore, the beneficiary shall not have to pay income tax on the interest earned by the account, or any sum of money withdrawn from the account. Moreover, there shall also be a tax incentive for those contributing to the §529E savings account because whomever the contributing party is, can include their contribution to the account as a deductible for that particular calendar year's tax return. However, when including this contribution as a deduction, it must be noted that state income tax deductions are capped at various amounts.<sup>112</sup> This replicates the idea behind qualified tuition programs under §529 of the IRC. Any contribution to a §529E savings account "on behalf of any designated beneficiary shall be treated as a completed gift to such beneficiary which is not a future interest in property," and this contribution "shall not be treated as a qualified transfer under §2503(e)" of the IRC.<sup>113</sup>

A unique issue that surrounds elder care is that the majority of Americans who qualify as an elder are living at home, or under the supervision of a family member, thus incurring costs that potentially blur the line of what is "qualified" and what is not. If a family member is caring for the beneficiary in their own home, or at the beneficiary's home, that person's care must qualify as a long-term care expense under the proposed savings plan, §529E. Having a broader definition for qualified long-term care expenses will allow funds from a §529E account to be used more easily in order to adapt to each individual's needs.

Under IRC §529A, the law provides several categories of qualified expenses for persons with disabilities that include: "housing, transportation, . . . health, prevention and wellness, financial management and administrative services, legal fees, expenses for oversight and monitoring, [and] funeral and burial expenses."<sup>114</sup> Under the law for ABLE accounts, "there is a tax penalty on disbursements made for nonqualified expenses, and nonqualified expenditures will count against the income and asset limitations of Medicaid, but enactment of the tax penalty makes it clear that a beneficiary may use the funds for non-qualifying expenditures."<sup>115</sup> This rule imposed on ABLE accounts should also be imposed on §529E accounts to ensure that funds from the account are directed towards qualifying long-term care expenses. However, if the beneficiary, owner of the account, or a designated family member misuses the funds, that dollar amount spent will be counted as income for Medicare and Medicaid purposes.

It should be noted that sometimes, a family member may have

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112. William Perez, *Making Itemized Deductions on 1040 Schedule A*, THE BALANCE (Dec. 10, 2018), [www.thebalance.com/itemized-deductions-3192880](http://www.thebalance.com/itemized-deductions-3192880).

113. I.R.C. § 529(c)(2).

114. I.R.C. § 529A(e)(5).

115. Hoffer, *supra* note 97, at 1296.

to quit their paying job to care for the elder. In this particular scenario, it may be cheaper for a family member to care for the elder rather than placing the elder in a nursing home or assisted living facility. Thus, that family member shall be allowed to take a monthly stipend designated by the State to constitute as income for caring for the elder. This sum of money will, of course, be taxed as regular income, and a portion of the taxes removed from the income will go towards Social Security. The proposed §529E plan, however, is not intended to encourage working people to quit their jobs in order to become a home health aide. Rather, the proposed §529 savings account program should encourage individuals to invest in their own long-term care savings accounts as early as possible, and to create and/or invest in family members' §529E accounts as well.

As long-term care progresses for an individual over time, it is inevitable that the beneficiary of the §529E savings account will perish, leaving money remaining in their long-term care savings account. In the event of the death of the beneficiary, there will be an exception in the proposed plan that will ensure that money remaining in the beneficiary's §529E account will not have a tax imposed if the funds are distributed to the designated beneficiary's estate. In contrast, if the designated beneficiary never needs long-term care, or doesn't use all of the money and wants to use it for something other than a "qualified long-term care expense," then there will be a tax imposed for any taxable year on any taxpayer who receives a distribution from a §529E savings account, which will be includable as gross income. Thus, whomever receives a distribution from a §529E savings account and does not use it for long-term care will have to pay a ten percent penalty on the earnings of the account. This mirrors the tax for distributions not used for disability expenses for an ABLE account under §529A(c)(3).<sup>116</sup>

Another important aspect of the proposed §529E plan is that the beneficiary's eligibility for Medicare and Medicaid will be preserved, similar to how Medicaid and ABLE accounts function with each other.<sup>117</sup> Medicare is health insurance that is provided to qualifying persons by the United States Government.<sup>118</sup> In the United States, a person is eligible for Medicare when the person turns sixty-five years old.<sup>119</sup> However, one may apply for Medicaid at any age if they qualify.<sup>120</sup> Income and resources play an important role in determining if someone below the age of sixty-five

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116. I.R.C. § 529A(c)(3).

117. Hoffer, *supra* note 97, at 1261.

118. *What's Medicare?*, MEDICARE.GOV, [www.medicare.gov/what-medicare-covers/your-medicare-coverage-choices/whats-medicare](http://www.medicare.gov/what-medicare-covers/your-medicare-coverage-choices/whats-medicare) (last visited Dec. 22, 2018).

119. *Id.*

120. *Eligibility*, MEDICAID.GOV, [www.medicaid.gov/medicaid/eligibility/index.html](http://www.medicaid.gov/medicaid/eligibility/index.html) (last visited Dec. 22, 2018).

is eligible for Medicaid.<sup>121</sup> There is a certain limit on how much income and additional resources one person or qualifying couple are allowed to have, or they will not be afforded Medicaid.<sup>122</sup> The proposed §529E account, and money within the account, like an ABLÉ account, will not impact the beneficiary's income or resources that are evaluated in order to receive Medicaid benefits. This is a crucial benefit to implementing a §529E plan. Retirement savings plans that are currently in place in America are included as income when the beneficiary of such plans decide to withdrawal from the account. Thus, those particular funds are evaluated when someone under the age of sixty-five is applying for Medicaid. The proposed §529E savings account will resemble ABLÉ Act in that it will allow a great degree of flexibility for the beneficiary and allow the beneficiary to seek the proper healthcare insurance, should they need it.

## VI. TAX RE-GROWTH

The proposed §529E long-term care savings plan can work. It has a precedent. There will be a continuing need for savings plans and strategies for people to responsibly finance long-term life care for not only themselves, but also their family members. The proposed §529E plan is consistent with current savings plans such as §529 qualified tuition savings programs and §529A ABLÉ savings accounts for persons with disabilities. It can therefore be inferred that because similar savings plans work for other demographics, it will also work for elders and saving for long-term life care. Moreover, the proposed long-term care savings plan will mirror the format of already established §529 qualified tuition programs in that they are run by the states or outsourced to private investment funds. The state or mutual fund will then take a portion of the growth on the account as payment for facilitating the functioning savings account, essentially self-financing.

Along with the many benefits imposed by a §529E plan, there are possible objections that can be made. First, there are many different vehicles for financing one's long-term care that already exist and that are already greatly utilized by working and non-working Americans. Thus, one can argue that there is no need for a new plan. Second, there could be an argument against creating a long-term savings plan such as the proposed §529E savings account that has many tax-advantages. The government could argue that there should be an income tax imposed on funds received and/or used by the beneficiary, or that they could recycle the tax imposed on such plan back into the Social Security scheme that will inevitably disappear in the future. Or, the government could argue

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121. *Id.*

122. *Id.*

that implementing such a savings program would cost them more money if they allowed taxpayers to take a higher deduction on their contributions to such accounts. The larger the contribution, the larger the deduction, therefore resulting in less tax revenue for the state.<sup>123</sup>

However, implementing such program is extremely necessary and will not cost the government more than the already effected §529 qualified tuition program, meaning each long-term savings account is essentially self-funded. Lastly, because there is not much light shed on the crucial issue of elder care, there is an argument that a savings plan for elders is not important and that it could potentially be a waste of resources to implement such plan, since there are already savings plans available.

## VII. CONCLUSION

Overall, the proposed §529E plan would provide older individuals with the opportunity to start saving money at any age, access it once they are forty years old, and avoid paying income tax on the interest incurred on the funds within the savings account. Additionally, the proposed plan provides tax incentives for people to participate in such plan since any contribution into a long-term care savings account may be deducted on one's tax return for that particular year. A §529E savings account provides an alternative for people to save for care surrounding elders, other than plans that are currently in place. Pension plans and IRAs help people save for retirement, however, there are no great tax incentives to invest in such programs. Also, as previously discussed, Social Security provides a basic floor for retirees, but does not pay enough to the retiree to survive on for the rest of their life. As stated by president and CEO of Genworth's US Life division, "Our population is aging, living longer, and not prepared," and he hopes that people start planning for their long-term care needs.<sup>124</sup> In order to shed light on issues surrounding elder care and long-term care for individuals, there must be more discussion about properly saving for retirement and long-term life care. The proposed §529E savings account for long-term life care does just that.

Consider the hypothetical found in the introduction. Janet is a fifty-five-year-old single mother of two who has had the same job for

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123. Since the tax reform at the end of December 2017, the list of items that are considered income for State purposes is now larger. I.R.C. § 61; Tonya Moreno, *A Guide to New York Personal Income Tax*, THE BALANCE (Jan. 12, 2019), [www.thebalance.com/new-york-personal-income-tax-3193284](http://www.thebalance.com/new-york-personal-income-tax-3193284). Would that completely offset loss of tax revenue because of bigger or unlimited deductions for long-term savings accounts as proposed in this paper? This question merits more sophisticated estimations and revenue projections than are within the scope of this paper.

124. Gurnon, *supra* note 104.

almost fourteen years. Although she has a pension plan with her current employer, she has been saving for retirement since getting her first job at the age of eighteen with a §529E savings account. Every three months, she has been able to contribute some money to the savings account, which has continued to accrue interest over time. She has been able to contribute more money in her account within the last few years because her kids have graduated college and she is no longer footing that expense. By the time she is ready to retire, she will have plenty of funds to finance her personal life, and she has been able to appropriately plan for long-term care, should she need any additional help other than from her family, including living in an assisted living facility or a nursing home, or having a home health care aide. Additionally, because she has properly invested in her individual long-term care, she may have some money left over in the account after she is done using it, thus leaving the left-over money to her estate. Having access to a long-term care savings plan that offers tax incentives to the beneficiary and those who contribute to the account has changed her future by allowing Janet to pay for her own long-term care.