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Achieving a Better Life Experience (ABLE) Act

ABLE Act Overview

The Achieving a Better Life Experience (ABLE) Act of 2013 (S 313/HR 647) was introduced in the 113th Congress on February 13, 2013, by a bipartisan, bicameral set of Congressional champions including Senators Robert Casey, Jr., (D-PA) and Richard Burr (R-NC), and Representatives Ander Crenshaw (R-FL), Chris Van Hollen (D-MD), Cathy McMorris Rodgers (R-WA), and Pete Sessions (R-TX). On December 3, 2014, the ABLE Act passed in the US House of Representatives (404-17). Two weeks later, on December 16, the US Senate voted to pass the ABLE Act as a part of the [Tax Extenders package](#). On Friday, December 19, 2014, President Obama signed the Tax Extenders package, making the ABLE Act the law of the land.

The ABLE Act amends Section 529 of the Internal Revenue Service Code of 1986 to create tax-free savings accounts for individuals with disabilities. The bill aims to ease financial strains faced by individuals with disabilities by making tax-free savings accounts available to cover qualified expenses such as education, housing and transportation. The bill supplements, but does not supplant, benefits provided through private insurances, the Medicaid program, the supplemental security income program, the beneficiary's employment and other sources.

An ABLE account may fund a variety of essential expenses for individuals including medical and dental care, education, community based supports, employment training, assistive technology, housing and transportation. The ABLE Act provides individuals with disabilities the same types of flexible savings tools that all other Americans have through college savings accounts, health savings accounts and individual retirement accounts. The legislation also contains a Medicaid pay-back

provision when the beneficiary passes away. It eliminates barriers to work and saving by preventing dollars saved through ABLE accounts from counting against an individual's eligibility for any federal benefits program.

Following the passage of ABLE at the federal level, many states moved quickly to pass their own ABLE bills authorizing establishment of state ABLE programs. To learn more about implementation of ABLE in the states, visit the [NDSS State ABLE webpage](#).

In addition, on March 17, 2016, [three bills](#) were introduced at the federal level to make improvements to the federal ABLE Act.

Informational Video about ABLE Act

More details about the ABLE Act are provided in this 17-minute video, [ABLE Questions Answered](#). The video was made in January 2016 and features NDSS President Sara Weir, Vice President of Advocacy & Public Policy Heather Sachs and JP Kennedy Fellow David Egan.

The ABLE Act: Frequently Asked Questions

[Click here for a pdf version of these questions and answers.](#)

What is the ABLE Act?

The Stephen Beck, Jr. Achieving a Better Life Experience (ABLE) Act (P.L. 113-295) added Section 529A to the federal tax code to enable eligible individuals with disabilities to save money in a tax-exempt account that may be used for qualified disability expenses while still keeping their eligibility for federal public benefits. This law has been heralded as one of the most significant pieces of disability legislation since the Americans with Disabilities Act. It was the result of nearly a decade-long cross-disability grassroots effort. The ABLE Act was supported by 381 out of 435 U.S. Representatives and 78 out of 100 U.S. Senators – 85% of the entire U.S. Congress.

What is an ABLE account?

An ABLE account is a tax-advantaged savings account that qualified individuals with disabilities will be able to open as a result of the passage of the ABLE Act of 2014 and subsequent enactment of state ABLE laws. Contributions to ABLE accounts are made on an after-tax basis. Earnings from ABLE funds grow tax-deferred and are tax-free if used for qualified disability expenses. Contributions to the account may be made by any person (the account beneficiary, family and friends) and may or may not be tax deductible depending on the specifics of the state ABLE law. Funds in the account may be used for many different types of expenses. The beneficiary is the owner of the account.

Why the need for ABLE accounts?

Individuals with disabilities can only have \$2,000 in assets at any given time in order to remain eligible for many federal means-tested benefits programs which provide much-needed supports. Under ABLE, eligible individuals and families will be allowed to establish ABLE savings accounts that will not affect their eligibility for SSI (up to \$100,000), Medicaid and other public benefits. The legislation explains that an ABLE account will, with private savings, "secure funding for disability-related expenses on behalf of designated beneficiaries with disabilities that will supplement, but not supplant, benefits provided through private insurance, Medicaid, SSI, the beneficiary's employment and other sources." ABLE accounts provide a mechanism to essentially increase this \$2,000 asset limitation.

Who is eligible to open an ABLE account?

An individual must meet two requirements to be eligible for an ABLE account: an age requirement and a severity of disability determination. The onset of symptoms of the person's disability must have occurred before age 26. Additionally, the disabled individual must have "marked and severe functional limitations" (essentially, a Social Security definition of disability). An individual whose disability occurred prior to age 26 and is already receiving SSI and/or SSDI is automatically eligible to establish an ABLE account. Those who are not recipients of SSI and/or SSDI but still meet the age of onset disability requirement will be eligible to open an ABLE account upon obtaining a disability certification from their physician.

What is a disability certification and how do you get one?

Depending upon the state ABLE program's procedures, the disability certification may be a form that a physician fills out or the ABLE program may simply require a letter from the physician providing certain information (such as the nature of the disability and date of onset). The potential ABLE beneficiary will then need to certify (under penalty of perjury) that she has obtained this certification prior to opening the ABLE account. The US Treasury has issued guidance clarifying that this certification may be kept privately by the beneficiary and will only need to be produced if requested (it will not need to be submitted to the ABLE program).

Are there limits to how much money can be put in an ABLE account?

Yes. The total annual contributions by all participating individuals, including the beneficiary himself, family and friends, is \$14,000 (the federal gift tax exclusion – this will be adjusted annually for inflation). The total limit of contributions that could be made to an ABLE account over time is tied to the individual state's maximum amount for regular 529 accounts (typically around \$350,000). The first \$100,000 in ABLE accounts will be exempted from the SSI \$2,000 individual resource limit. After \$100,000, the beneficiary's SSI will be suspended (but not terminated).

How do assets in ABLE accounts affect eligibility for SSI/SSDI and Medicaid?

Up to \$100,000 in ABLE account funds, these benefits are not affected. When an ABLE account exceeds \$100,000, the beneficiary will be suspended from eligibility for SSI benefits and no longer receive that monthly income. This suspension will be indefinite and the SSI benefits will be reactivated after the beneficiary spends down the account to under \$100,000. Medicaid eligibility will remain intact, even if the ABLE account exceeds \$100,000.

What happens to funds in an ABLE account when the beneficiary dies?

The federal law authorizes state Medicaid agencies to become a creditor and seek reimbursement for the Medicaid services a beneficiary has received since he opened the ABLE account. All outstanding qualified disability expenses (e.g., burial costs) will be given priority over the Medicaid claims. The remainder of assets in an ABLE account will go to the beneficiary's estate.

What can money in an ABLE account be used for?

Funds in ABLE accounts must be used for "qualified disability expenses". A qualified disability expense means any expense related to the designated beneficiary as a result of living a life with a disability. These include education, housing, transportation, employment training and support, assistive technology, personal support services, health care expenses, financial management and administrative services and other expenses to enhance the beneficiary's quality of life.

Will ABLE account beneficiaries need approval before spending the money in their accounts?

No. In November 2015, the Treasury Department issued guidance indicating that states do not have to scrutinize expenses. However, beneficiaries will be required to maintain documentation to prove that their expenses are qualified.

How will ABLE account beneficiaries access the funds in their ABLE accounts?

This will vary from program to program. Options will likely include using debit cards, setting up direct pay to service providers and/or having ABLE funds direct deposited into another bank account.

Do individuals have to open ABLE accounts in their state of residence?

No. The original federal ABLE law required individuals to open ABLE accounts in their home state, which meant that each state legislature was required to pass a state ABLE law in order to make ABLE accounts available to residents of all 50 states. However, the US Congress amended ABLE in December 2015 and eliminated this state residency requirement. Therefore, an individual will be able to open an ABLE account in any state. As a result of this change, some states may opt not to establish their own ABLE programs or may choose to create joint ABLE programs with other states.

When will ABLE accounts become available?

While most states will not launch their programs until 2017 or later, a few states are expected to open their programs in the spring and summer of 2016.

Where do I get information about various state ABLE programs?

Several states have already created websites to provide information about their ABLE program development. [Click here](#) for a list of these states with links to their ABLE webpages.

Where do you go to open an ABLE account?

Most states will provide online applications for ABLE accounts, or families may work with a financial advisor to open an account.

Can an individual have more than one ABLE account?

No. The ABLE Act limits the opportunity to one ABLE account per eligible individual.

Will states offer options to invest the savings contributed to an ABLE account?

Like state 529 college savings plans, states are likely to offer qualified individuals and families multiple options to establish ABLE accounts with varied investment strategies. Each individual and family will need to project possible future needs and costs over time, and to assess their risk tolerance for possible future investment strategies to grow their savings. According to the ABLE Act, account contributors or designated beneficiaries may change the way their money is invested in the account up to two times per year.

How is an ABLE account different than a special needs or pooled trust?

An ABLE Account will provide more choice and control for the beneficiary and family. The cost of establishing an account will be considerably less than either a Special Needs Trust (SNT) or Pooled Income Trust. With an ABLE account, account owners will have the ability to control their funds and, if circumstances change, still have other options available to them. Determining which option is the most appropriate will depend upon individual circumstances. For many families, the ABLE account will be a significant and viable option in addition to, rather than instead of, establishing a trust.

How is an ABLE account different than a 529 savings account?

ABLE accounts and 529 savings accounts both provide a tax-advantaged way to save for future expenses, but the funds in the accounts are for different purposes. ABLE accounts must be used for qualified disability expenses. Funds in regular 529 accounts must be used for qualified higher education expenses. Unlike funds in 529 accounts, funds in ABLE accounts up to \$100,000 do not affect an individual's eligibility for SSI, Medicaid and other public benefits programs.

Take Action

Help get the ABLE Act passed in your state. Click [here](#) to see the status of ABLE in the states. Contact NDSS Vice President of Advocacy & Public Policy, Heather Sachs, at hsachs@ndss.org for more information.

NDSS RESOURCES

- [NDSS ABLE Anniversary Report \(December 2015\) - Stephen Beck, Jr. Achieving a Better Life Experience \(ABLE\) Act: One Year Later](#)
- [NDSS Comments on IRS Proposed ABLE Act Regulations \(September 2015\)](#)

EXTERNAL RESOURCES

- [IRS Interim Guidance on ABLE Program Implementation \(November 2015\)](#)
- [IRS Proposed ABLE Act Regulations \(June 2015\)](#)

Page last updated: March 17, 2016