



NATIONAL RESOURCE CENTER  
ACHIEVING A BETTER LIFE EXPERIENCE ACT



# Implementing ABLE: 2016

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National Disability Institute (NDI)



# Agenda

- ABLE Basics and Core Components
- Status of Federal and State Implementation
- Notice of Proposed Rule and IRS Notice
- Presentation from SSA on POMS
- State Perspective and Program Spotlight
- Questions and Answers



# The ABLÉ Act is Law

The Stephen Beck, Jr. Achieving a Better Life Experience (ABLE) Act

- became law on December 19, 2014
- creates a new option for *some* people with disabilities and their families to save for the future, while protecting eligibility for public benefits.



# What is an ABLER Account?

- ABLER accounts:
  - Are established in the new Section 529A Qualified ABLER Programs
  - Are qualified savings accounts that receive preferred federal tax treatment
  - Enable eligible individuals to save for disability related expenses
  - Are NOT yet available, but the first programs are expected in early-mid 2016
- Assets in and distributions for qualified disability expenses will be disregarded or given special treatment in determining eligibility for *most* federal means-tested benefits



# What are some important requirements of ABLÉ accounts?

- Each eligible individual may have only one ABLÉ account.
- “Designated beneficiary” is the account owner (although another person such as a parent or guardian may be allowed signature authority over the account).
- Originally accounts were required to be established in the designated beneficiary’s state of residence, or in a contracting state, **THIS IS NO LONGER THE CASE AS A RESULT OF A RECENT CONGRESSIONAL AMENDMENT TO THE LAW\***.
- Total annual contributions may not exceed the federal gift tax contribution, which is currently \$14,000 (this will periodically be adjusted for inflation).
- Multiple individuals may make contributions to an ABLÉ account.
- Aggregate contributions may not exceed the state limit for 529 savings accounts, typically set at over \$250,000.



# Who is eligible to be an ABLÉ account beneficiary?

To be eligible, individuals must meet two requirements:

- 1) Age requirement: must be disabled before age 26
  - 2) Severity of disability:
    - Have been determined to meet the disability requirements for Supplemental Security Income (SSI) or Social Security disability benefits (Title XVI or Title II of the Social Security Act) and are receiving those benefits,
- OR**
- Submit a “disability certification” assuring that the individual holds documentation of a physician’s diagnosis and signature, and confirming that the individual meets the functional disability criteria in the ABLÉ Act (related to the severity of disability described in Title XVI or Title II of the Social Security Act)\*.



# What may funds from an ABLER account be used for?

- Distributions from an ABLER account may be made for “qualified disability expenses”.
- “Qualified disability expenses” are expenses that relate to the designated beneficiary’s blindness or disability and are for the benefit of that designated beneficiary in maintaining or improving his or her health, independence, or quality of life.
- The term “qualified disability expenses” should be broadly construed to permit the inclusion of basic living expenses and should not be limited to:
  - expenses for items for which there is a medical necessity, or
  - which provide no benefits to others in addition to the benefit to the eligible individual.

# Qualified disability expenses may include the following:

- Education
- Housing
- Transportation
- Employment training and support
- Assistive technology and personal support services
- Health, prevention, and wellness
- Financial management and administrative services
- Legal fees
- Expenses for oversight and monitoring
- Basic Living Expenses (NPRM)
- Funeral and burial expenses
- Any other expenses approved by the Secretary of the Treasury under regulations consistent with the purpose of the program

Distributions for non-qualified expenditures will be subject to tax consequences and may affect eligibility for federal means tested benefits.



# How do ABLE account assets impact eligibility for federal benefits?

ABLE assets will be disregarded or receive favorable treatment when determining eligibility for *most* federal means-tested benefits:

- Supplemental Security Income (SSI): For SSI, only the first \$100,000 in ABLE account assets will be disregarded.
  - SSI payments (monthly cash benefit) will be suspended if the beneficiary's account balance exceeds \$100,000, but SSI benefits (eligibility) will not be terminated. *Funds above \$100,000 will be treated as resources.*
  - Housing expenses intended to receive the same treatment as all housing costs paid by outside sources. However, new SSA instructions (POMS) will treat housing expenses as resources only if distributed in one month and held until the following month. (more later)



# Impact on Federal Benefits (cont.)

- Medicaid: ABLÉ assets are disregarded in determining Medicaid eligibility
  - Medicaid benefits are NOT suspended if the ABLÉ account balance exceeds \$100,000 (that is **only** applicable to the SSI cash benefit)
  - Medicaid Payback: Any assets remaining in the ABLÉ account when a beneficiary dies, subject to outstanding qualified disability expenses, can be used to reimburse a state for Medicaid payments made on behalf of the beneficiary after the creation of the ABLÉ account (the state would have to file a claim for those funds)\*
  - For purposes of this section, the state is considered a creditor of the ABLÉ account, not a beneficiary

# Tax Implications

- Contributions to an ABLE account are made with post-tax dollars.
- *Federal taxation:* In general, ABLE programs are exempt from taxation. Distributions from ABLE accounts for qualified disability expenses are exempt from taxation. With certain exceptions, distributions not used for qualified disability expenses are taxable and subject to an additional 10% tax.
- *State taxation:* State tax consequences will vary. Some states provide significant tax incentives for contributions to 529 accounts and may provide similar incentives for contributions to ABLE accounts.



# When will ABLÉ accounts be available?

- Before ABLÉ accounts become available, a State must pass authorizing legislation to begin to establish a program.
- Each state must decide whether (and how) to offer a qualified ABLÉ program.
- The timing of ABLÉ program availability will vary from state to state, however due to the elimination of the residency requirement, qualified beneficiaries may be able to enroll in a program as soon as the first program is up and running\*.



# Federal Implementation

- The Department of Treasury, in conjunction with the IRS, has released a Notice of Purposed Rule Making (NPRM) and two other Advanced Notices. We expect final rules to be published in mid-late 2016 (states can begin to enroll qualified beneficiaries regardless of when the final rules are published).
- The Social Security Administration (SSA) has released a guidance on ABLE through its Program Operations Manual System (POMS) and their own NPRM regarding reporting requirements.
- We do expect further supplemental guidance from other federal agencies that administer various federal means tested programs (ex. CMS, Education, and HUD).

# State Implementation

- 35 states have enacted their own versions of the ABLE Act and should be in the process of setting up state ABLE programs.
- We expect there could be anywhere from 5-7 programs offering ABLE accounts in 2016, the first of which is expected to launch in March.
- While there will be a significant amount of consistency between programs, there will also be a certain level of variation from program to program. This variation should be taken into consideration when choosing a program that best meets the needs of the account owner (the beneficiary).

# Notice of Proposed Rule Making (NPRM)

On June 19<sup>th</sup> the Department of Treasury, in conjunction with the IRS, released a Notice of Proposed Rule Making (NPRM) regarding the Achieving a Better Life Experience (ABLE) Act. The NPRM acts to:

- assist states and program administrators in better understanding the guidelines on how to develop and maintain an ABLE program; and
- give additional clarification to parts of the law which may benefit from further explanation and/or guidance



# NPRM and Notice Highlights (that have not already been mentioned)

- Eligibility and Re-Certification
- Transfers and Rollovers
- Contributions
- Distributions
- Qualified Disability Expenses



# Eligibility and Re-Certification

The proposed regulations provide that:

- Eligibility should be determined for each taxable year, and that determination applies for the entire year
- A qualified ABLE program may impose different periodic recertification requirements for different types of impairments.



# Transfers and Rollovers

The proposed regulations provide that:

- Funds in a qualified tuition account (typical 529) will not be allowed to be rolled over to an ABLÉ account absent tax consequences and penalties.
- A qualified ABLÉ program is allowed a program-to-program transfer to effectuate a change of qualified ABLÉ program or a change of designated beneficiary to another eligible individual (provided that the successor is a sibling of the former beneficiary and the transfer is made prior to the death of the transferring account owner).



# Distributions

The proposed regulations provide that:

- An ABLE account may be used for long-term benefit and/or short-term needs of the designated beneficiary

It would be reasonable to expect distributions and frequency of distribution to reflect that.

# Contributions

- The proposed regulations provide that:
- A qualified ABLE program must provide adequate safeguards to ensure that total contributions to an ABLE account do not exceed that State's limit for aggregate contributions under its qualified tuition program

# Legal and Policy Questions for the Future

- Impact on services under a HCBS waiver
- Challenges to the Medicaid payback provision
- Informed consent and supported decision-making



# WEBINAR: ABLE Accounts, Trusts, Financial and Benefits Planning

March 29, 2016 -2:00pm to 3:30pm

The ABLE National Resource Center invites you to learn from a panel of experts about how ABLE accounts might interact, and compare to, special needs trust, pooled income trusts, and financial and benefits planning.

Questions to be addressed:

- What are critical factors to make informed decisions?
- What are the differences between various types of trusts?
- Would I want to open an ABLE account in addition to or instead of a trust?
- What is the range of costs involved in opening a trust or an ABLE account?
- What is benefits planning and how does it relate to financial planning?

# WEBINAR: ABLE Accounts, Trusts, Financial and Benefits Planning

March 29, 2016 -2:00pm to 3:30pm

**Moderator:** *Michael Morris*, Executive Director of National Disability Institute

**Panelists:**

- *Yolanda Mazyck*, Executive Director of Shared Horizons Pooled Special Needs Trust
- *Kelly Thompson*, Trust and Estate Attorney James Sheldon, Supervising Attorney at Neighborhood Legal Services Inc.
- *Mark Friese*, Vice President at Merrill Lynch, Menick-Friese Group
- *William Thompson*, Deputy Executive Director of Florida Prepaid College Board, Florida ABLE Program

Registration information can be found at: [www.ablenrc.org](http://www.ablenrc.org)

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