

# Achieving a Better Life Experience (ABLE) Act Division B of Public Law 113-295, December 19, 2014



## OVERVIEW

The Stephen Beck, Jr., Achieving a Better Life Experience Act<sup>1</sup> (ABLE) Act was signed into law on December 19, 2014 after many years of advocacy and bipartisan work in both the House and Senate. The law allows eligible individuals with disabilities the ability to establish “ABLE accounts” for qualified beneficiaries that resemble the qualified tuition programs, often called “529 accounts”, that have been established under that section of the tax code since 1996. The new ABLE accounts will allow more individual choice and control over spending on qualified disability expenses and limited investment decisions, while protecting eligibility for Medicaid, Supplemental Security Income, and other important federal benefits for people with disabilities. Without these accounts, many people with disabilities have very limited avenues to save and allow for further independence.

**A Form of 529 Account:** The ABLE Act creates a new Section 529A establishing new tax-favored Qualified ABLE Programs in the Internal Revenue Code. The ABLE Program accounts are intended to be easy to open and available in any state, although each state will need to take action to make the accounts available to its residents. Assets in an ABLE account and distributions from the account for qualifying expenses would be disregarded or receive special treatment when determining the beneficiary’s eligibility for most federal means-tested benefits.

### Key Characteristics of ABLE Accounts:

- An eligible individual may have **one ABLE account**, which must be established in the state in which he resides (or in a state that provides ABLE account services for his home state).
- Any person, such as a family member, friend, or the person with a disability, may contribute to an ABLE account for an eligible beneficiary.
- An ABLE account may not receive **annual contributions** exceeding the annual gift-tax exemption (\$14,000 in 2015). A state must also ensure that aggregate contributions to an ABLE account do not exceed the state-based limits for 529 accounts.
- **Eligibility** - An eligible individual is a person (1) who is entitled to benefits on the basis of disability or blindness under the Supplemental Security Income (SSI) program or under the Social Security disability, retirement, and survivors program OR (2) who submits certification that meets the criteria for a disability certification (to be further defined in regulations). An eligible individual’s disability must have occurred before the age 26.
- **Designated Beneficiary** - The eligible individual who established the ABLE account and who is the owner of the account is the “designated beneficiary”.
- **Qualified disability expenses** are any expenses made for the benefit of the designated beneficiary and related to his/her disability, including: education, housing,

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<sup>1</sup> After Stephen Beck’s death in December 2014, the law was named to honor him, a parent from northern Virginia who helped conceive and develop the ABLE Act and who worked tirelessly for its passage.

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, funeral and burial expenses, and other expenses, which are approved by the Secretary of the Treasury under regulations.

- **Tax treatment** - Earnings on an ABLE account and distributions from the account for qualified disability expenses do not count as taxable income of the contributor or the eligible beneficiary. Contributions to an ABLE account must be made in cash from the contributor's after-tax income.
- **Roll-Overs** - Assets in an ABLE account may be rolled over without penalty into another ABLE account for either the designated beneficiary (for instance, when moving to another state) or any of the beneficiary's qualifying family members.

### **Federal Treatment of ABLE Account Under Means-Tested Programs, Including Supplemental Security Income & Medicaid:**

- **Means-Tested Programs generally** - Assets in an ABLE account and distributions from the account for qualified disability expenses would be disregarded when determining the designated beneficiary's eligibility for most federal means-tested benefits.
- **Supplemental Security Income (SSI):** For SSI, only the first \$100,000 in an ABLE account will be disregarded. Assets above \$100,000 will count as resources under SSI. In addition, if the designated beneficiary's ABLE account balance exceeds \$100,000, the individual's SSI benefits will not be terminated, but instead will be suspended until such time as the individual's resources fall below \$100,000. Further, it is intended that distributions expended for housing purposes will receive the same treatment which all housing costs paid by outside sources receive.
- **Medicaid Eligibility:** A beneficiary will not lose eligibility for Medicaid based on the assets held in their ABLE account, even during the time that SSI benefits are suspended (as described above for an account with over \$100,000).
- **Medicaid Payback Provision:** Subject to certain limits and upon the state's filing of a claim for payment, any assets remaining in an ABLE account upon the death of the qualified beneficiary must be used to reimburse the state for Medicaid payments it made on behalf of the beneficiary. The amount of any Medicaid payback is calculated based on amounts paid by Medicaid after the creation of the ABLE Account and shall exclude amounts paid by the beneficiary as premiums to a Medicaid buy-in program.

### **How Soon Will ABLE Accounts Be Available?**

- **Federal Regulations:** The Secretary of the Treasury is required to issue regulations or other necessary guidance within six months of enactment of the law, which would require such regulations and/or guidance to be available by mid-June 2015.
- **State Decisions:** Each state will need to decide whether to offer a qualified ABLE program to its residents, and, if so, the state will need to decide whether the program will be state-run; whether to select another entity, such as a financial services firm, to run the program; or whether to contract with another state to allow its own residents to use the qualified ABLE program of another state.