

Understanding ABLE Achieving A Better Life Experience Act

Public Law 113-295 (12-19-2014)

July 22, 2015

Agenda

- ▶ Core Components
- ▶ Status of Federal and State Implementation
- ▶ Notice of Proposed Rule Making
- ▶ ABLE National Resource Center
- ▶ Hypothetical Beneficiary Profiles
- ▶ Questions and Answers

The ABLE 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.

*Presentation is based on what we know or presume now
– much is yet to be determined.*

What is an ABLE Account?

- ▶ ABLE accounts:
 - ▶ Are established in the new Section 529A Qualified ABLE Programs
 - ▶ Are qualified savings accounts that receive preferred federal tax treatment
 - ▶ Enable eligible individuals to save for disability related expenses
 - ▶ Are NOT yet available, and there are still some unknowns
- ▶ 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 account?

- ▶ Each eligible individual may have only one ABLÉ account.
- ▶ “Designated beneficiary” is the account owner.
- ▶ Account must be established in the designated beneficiary’s state of residence, or in a contracting state.
- ▶ Total annual contributions may not exceed the federal gift tax limit, which is currently \$14,000.
- ▶ Multiple individuals may make contributions to the one ABLÉ account.
- ▶ Aggregate contributions may not exceed the state limit for 529 savings accounts.

Who is eligible to be an ABLÉ account beneficiary?

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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),

OR

- ▶ Submit a “disability certification”, including a physician's diagnosis, that the individual meets criteria to be further established in regulations (essentially equal to Social Security level of disability).

What may funds from an ABLE account be used for?

Distributions from an ABLE account may be made for qualified disability expenses, related to the individual's disability or blindness and made for his/her benefit, including:

- ▶ 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

Expenditures for non-qualified expenditures will be penalized (tax and potential SSI penalties).

How do ABLÉ 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:

- ▶ SSI: For SSI, only the first \$100,000 in ABLÉ account assets will be disregarded.
 - ▶ SSI payments 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 are intended to receive the same treatment as all housing costs paid by outside sources (SSI benefits subject to reduction of 1/3 federal SSI payment, as applicable).

Impact on Federal Benefits (cont.)

- ▶ Medicaid: ABLE assets are disregarded in determining Medicaid eligibility
 - ▶ Medicaid benefits are NOT suspended if the ABLE account balance exceeds \$100,000
 - ▶ Medicaid Payback: Any assets remaining in the ABLE account when a beneficiary dies, subject to outstanding qualified disability expenses, will be used to reimburse a state for Medicaid payments made on behalf of the beneficiary after the creation of the ABLE account
 - ▶ For purposes of this section, the state is considered a creditor of the ABLE 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 ABLE accounts be available?

- ▶ Before ABLE accounts become available, States need to pass authorizing legislation.
- ▶ Each state must decide whether (and how) to offer a qualified ABLE program to residents – some considering authorizing legislation now.
- ▶ Analyze Notice of Proposed Rule Making
- ▶ The timing of ABLE program availability will vary from state to state.

State of the States

- ▶ 27 states have enacted their own versions of the ABLE Act and should be in the process of setting up state ABLE programs. Those states are:
 - ▶ Alabama, Arkansas, Colorado, Connecticut, Delaware, Florida, Hawaii, Iowa, Kansas, Louisiana (pre-federal and post-federal), Maryland, Massachusetts (pre-federal), Minnesota, Missouri, Montana, Nebraska, North Dakota, Nevada, Rhode Island, Tennessee, Texas, Utah, Vermont, Virginia, Washington, Wisconsin and West Virginia.

State of the States Con't

- ▶ The following states have passed ABLE related legislation and are currently awaiting the Governor's signature: Illinois, New York, Ohio, Oregon.
- ▶ The following states have ABLE bills filed that are still active: California, District of Columbia, Maine, Massachusetts (revision of pre-federal legislation), Michigan, New Jersey, North Carolina, and Pennsylvania. We expect most of these bills to become law.

Notice of Proposed Rule Making (NPRM)

On June 19th 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;
- give additional clarification to parts of the law which may benefit from further explanation and/or guidance;
- allow for a 90 day period for the public, including individuals with disabilities and their families, disability related advocacy groups, state administrators, and other stakeholders, to provide input on the various components of the NPRM

Major Areas of the NPRM

- ▶ Establishing an Account and Signature Authority
- ▶ Eligibility and Re-Certification
- ▶ Transfers, Rollovers, Residency Requirements
- ▶ Contributions
- ▶ Distributions
- ▶ Qualified Disability Expenses
- ▶ Community Development Financial Institutions (CDFIs)

Establishing an Account and Signature Authority

The proposed regulations provide that:

- ▶ The eligible individual is responsible for establishing the account
- ▶ The designated beneficiary is the owner of the account

Establishing an Account and Signature Authority Con't

HOWEVER

If an eligible individual is unable to establish an ABLE account on his or her own behalf, the ABLE account may be established by the eligible individual's agent under a power of attorney or, if none, by a parent or legal guardian of the eligible individual.

AND

If the designated beneficiary is not able to exercise signature authority over his or her ABLE account or chooses to establish an ABLE account but not exercise signature authority, the designated beneficiary's agent under a power of attorney or, if none, a parent or legal guardian of the designated beneficiary may be given signature authority.

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.
- ▶ A qualified ABLE program must specify the documentation that must be provided, both at the time an ABLE account is established and thereafter, to ensure that the designated beneficiary is, and continues to be, an eligible individual.

Loss of Qualification as an Eligible Beneficiary

The proposed regulations provide that:

- ▶ If the qualified beneficiary ceases to be an eligible beneficiary the account will still remain an ABLÉ account and the individual will continue to be a designated beneficiary

HOWEVER

beginning on the first day of the designated beneficiary's first taxable year for which the designated beneficiary does not satisfy the definition of an eligible individual, additional contributions to the designated beneficiary's ABLÉ account are no longer allowed and distributions will not be considered qualified disability expenses. If the individual regains eligibility the moratorium will be lifted.

Transfers, Rollovers, Residency Requirements

The proposed regulations provide that:

- ▶ A qualified ABLE program may continue to maintain the ABLE account after that designated beneficiary changes his or her residence to another State.
- ▶ Funds in a qualified tuition account (typical 529) will not be allowed to be rolled over to an ABLE account absent tax consequences and penalties.
- ▶ A qualified ABLE program is allowed a program-to-program transfers to effectuate a change of qualified ABLE 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).

Contributions

The proposed regulations provide that:

- ▶ A qualified ABLE program may accept cash contributions in the form of cash or a check, money order, credit card payment, or other similar method of payment
- ▶ The total annual contributions to an ABLE, other than amounts received in rollovers and program-to-program transfers, must not exceed the individual gift tax exclusion in effect for that calendar year (currently \$14,000) in which the designated beneficiary's taxable year begins
- ▶ 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

Contributions Con't

The proposed regulations provide that:

- ▶ A qualified ABLE program must return contributions in excess of the annual gift tax exclusion (excess contributions) to the contributor(s), including net income attributable to the excess contributions
- ▶ A qualified ABLE program must return all contributions, along with all net income attributable to those contributions, that caused an ABLE account to exceed the limit established by the State for its qualified tuition program (excess aggregate contributions)
- ▶ If an excess contribution or excess aggregate contribution is returned to a contributor, the qualified ABLE program must notify the designated beneficiary of such return at the time of the return
- ▶ In order to avoid penalties and tax consequences the fund must be returned on a last in, first out basis and no later than the due date of the beneficiary's tax return for the year in which the excess contributions were made

Distributions

The proposed regulations provide that:

- ▶ An ABLER 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.

Qualified Disability Expenses

The proposed regulations provide that:

- ▶ 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 Con't

- ▶ A qualified ABLE program must establish safeguards to distinguish between distributions used for the payment of qualified disability expenses and other distributions.
- ▶ A qualified ABLE program must permit the identification of the amounts distributed for housing expenses as that term is defined for purposes of the Supplemental Security Income program of the Social Security Administration.

Community Development Financial Institutions (CDFIs)

As a means to offset administrative burden, the proposed regulations expressly allow a qualified ABL program to contract with one or more Community Development Financial Institutions (CDFIs) that commonly serve disabled individuals and their families to provide one or more required services.

Next Steps

- ▶ The deadline for submitting public comment is September 21st, 2015
- ▶ The NPRM can be found at (including instructions on how to submit public comments):
<https://federalregister.gov/a/2015-15280>
- ▶ There will be a public hearing held in Washington DC on October, 14th at 10am
- ▶ Preliminary Summary of Highlights for Individuals with Disabilities and their Families:
<http://www.realeconomicimpact.org/news/?id=1514>

ABLE National Resource Center

ABLE National Resource Center

- ▶ Collaboration of over 28 National Disability Organizations
- ▶ Managed by National Disability Institute
- ▶ Provide a consistent disability voice to accelerate ABLE Act implementation at a federal and state level

Meet Brian

- ▶ Brian is a 26 year old man with Down Syndrome
- ▶ Brian works 20 hours a week at a community rehabilitation program making sub-minimum wage but has expressed his desire to work in an integrated environment making a competitive wage
- ▶ Brian lives at home with his parents who have partial guardianship over Brian, including support to oversee his finances
- ▶ Brian wishes to eventually live on his own with limited supports & become as financially independent as possible
- ▶ Brian is heavily dependent on the supports and services provided through Medicaid, Social Security & other federally funded programs
- ▶ Brian, with the support of his family, has just recently established an ABLE account to assist in his goals



Meet Molly

- ▶ Molly was injured in a car accident when she was 23 and has since been reliant on a wheelchair for mobility
- ▶ Molly is currently 34 & unemployed
- ▶ Molly wants to work
- ▶ Molly is afraid she will lose her federally funded benefits which are imperative in covering her living expenses & paying for her medical necessities related to her disability
- ▶ Molly recently established an ABLE account in her state



Questions from the Audience

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