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Promoting Access and Inclusion in ABLE Programs:

New Opportunities for Saving, Financial Inclusion, and Economic Security for Individuals with Disabilities and their Families



NATIONAL RESOURCE CENTER
ACHIEVING A BETTER LIFE EXPERIENCE ACT



Implementing ABLE: 2016

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The ABLE Act is Law

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

- o became law on December 19, 2014
- o 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



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
 - The first programs are just now beginning to launch and several programs will be enrolling individuals in 2016 (Currently launched programs include Ohio, Tennessee, Nebraska, and Florida).
- 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).
- There is no longer a federal residency requirement related to establishing an ABLÉ account (unless otherwise established by a given program,).
- 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 Proposed 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

- Over 40 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. Four states have active programs, they include: Ohio, Tennessee, Nebraska, and Florida.
- 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).

ABLE National Resource Center

- **The ABLE National Resource Center** (ANRC) is a collaborative whose supporters share the goal of accelerating the design and availability of ABLE accounts for the benefit of individuals with disabilities and their families. We bring together the investment, support and resources of the country's largest and most influential national disability organizations.

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