ABLE National Resource Center PRESENTS Understanding ABLE Achieving A Better Life Experience Act

Public Law 113-295 (12-19-2014) March 26, 2015
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ABLE National Resource Center

- Collaboration of 23 National Disability Organizations
- Managed by National Disability Institute
- Provide a consistent disability voice to accelerate ABLE Act implementation at a federal and state level
Five Areas of Impact

1. Serve as a facilitator between the disability sector, government, and financial service companies to accelerate the effective design and availability of ABLE accounts nationwide.

2. Educate the disability community about the opportunities available to save and plan for a better economic future and quality of life experience through the establishment of ABLE accounts.

3. Educate government at a federal and state level about consumer needs and challenges in establishing and/or managing an ABLE account.
4. Educate and inform financial service companies about the needs and interests of the disability community to offer investment product choices to place ABLE account resources.

5. Educate the public, policy makers and other relevant stakeholders about the positive impact of ABLE accounts at an individual and systems level and any needed changes for further policy development.
To learn more about the ABLE National Resource Center or if you are a national disability non-profit organization and want to join the collaboration, please contact

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Monthly meetings are the first Friday of each month at 11:00am EST
Webinar Presenters

Presenters

- Michael Morris, National Disability Institute
- Marty Ford, The ARC
- Stuart Spielman, Autism Speaks
- Sara Weir, National Down Syndrome Society
- Mary Anne Busse, College Savings Plans Network
- Kathleen McGrath, College Savings Plans Network
Webinar Agenda

- Core Components
- Status of Federal and State Implementation
- Moderated Panel Discussion
- 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
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 are some important requirements of ABLE account?

- Each eligible individual may have only one ABLE 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 ABLE account.
- Aggregate contributions may not exceed the state limit for 529 savings accounts.
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
- 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 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:

- **SSI:** For SSI, only the first $100,000 in ABLE 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
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?

- Federal regulations need to be written. The Treasury Department is required to issue regulations or guidance within six months of enactment of the ABLE Act.
- 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.
- The timing of ABLE program availability will vary from state to state.
Federal Regulation Development

Five Critical Areas of Interest

1. Proof/Criteria for Eligibility and Re-Determination
2. Documentation and Definition of Qualified Disability Expenses
3. Applicable Programs to be Included when Disregarding ABLE Account Resources
4. Contribution, Distribution Rollovers, Treatment of Aggregate Funds
5. State Program and Administrative Responsibilities
Some states are moving quickly to pass authorizing legislation. Seems minimum state requirements would be:

- Authorization of 529A ABLE program
- Consistent with federal law, including definitions
- Designation of state agency
- Exemption of state means-tested programs
- Exemption of ABLE accounts from state taxes
- Authority to contract with other state programs
Bills that have passed: VA (signed into law); UT & WV (waiting to be signed by Governor); MN (funding mechanism in budget); LA & MA (passed prior to federal passage, need to be revised)

Active bills (30) : AL, AR, CA, CT, DE, FL, HI, IL, IA, KS, KY, MD, MA, MN, MT, NE, NV, NH, NJ, NM, NY, ND, OR, PA, RI, SC, TN, TX, VT, WA

Bills in drafting (7): AK, CO, LA, MI, NC, OH, WI
Structure of State ABLE Programs

- Must be a “Qualified ABLE Program”
- Most common setup is through State Treasurer’s Office
- Other government entities (e.g., Dept. of Health)
- Quasi-government entities (e.g., new private administrator subject to government oversight) – the Florida model
Memo from Treasury/IRS encouraging states to forge ahead to develop ABLE programs

“The Treasury Department and the IRS do not want the lack of guidance to discourage states from enacting their enabling legislation and creating their ABLE programs, which could delay the ability of the families of disabled individuals or others to fund ABLE accounts for those disabled individuals” – Notice 2015-18

Treasury intends to provide “transition relief” to states whose programs don’t comply with federal guidelines, including “sufficient time” to implement necessary changes.
Treatment of ABLE assets

- Account does not count towards establishing or maintaining eligibility for federal means-tested programs; many state bills extend this to state and local means-tested programs.
- Tax-exempt withdrawals
- Tax deduction for contributions in some states
Question 1: How soon will I be allowed to open an ABLE account?
Moderated Discussion Questions

Question 2: Where do I go?
What does a state need to do in order to offer an ABLE savings program?
Moderated Discussion Questions

**Question 3:** I’m not on Social Security benefits. Can I still be eligible?
Question 4: I am over age 26. Am I still eligible to open an ABLE account?
Moderated Discussion Questions

**Question 5:** Will I have to prove continued eligibility for ABLE?
Question 6: How will I know what qualifies to be a “qualified disability expense?” What are some examples? How will designated beneficiaries stay within the requirements of the law? How will they know what expenditures are allowed?
Question 7: What happens to an SSI beneficiary who ABLE account goes over $100,000?
Question 8: Can states move ahead with ABLE programs before federal regulations or guidance are available?
Question 9: Can I roll over funds from other accounts to an ABLE account?
Question 10: What will be the cost of opening an ABLE account?
Question 11: Can I start planning now to open an account? What do I need to do?
Question 12: I do not think my son/daughter is capable of managing the funds in an ABLE account. What choices do we have?
Question 13: Do you see any big obstacles to states’ offering programs?
Question 14: Will investment options and fees be similar to those in current 529 programs?
Question 15: What are the significant differences between ABLE and 529 requirements?
Moderated Discussion Questions

Question 16: Who can contribute to an ABLE account?
Question 17: Can I have a special needs trust and still open an ABLE account? What is the difference between the two? Is the ABLE Act intended to replace special needs trusts, including pooled trusts?
Question 18: What happens if my son/daughter dies and there are still funds in the account? Where can those funds go?
Moderated Discussion Questions

Question 19: Can you explain how the Medicaid payback will work regarding an ABLE account?
Question 20: Where can I find the status of the ABLE Act in my own state?
Question 21: What role do states believe the IRS will require them to play in determining or verifying whether an individual is eligible and whether a withdrawal is qualified?
Question 22: Since the law requires the beneficiary to be the account owner, will others be able to have signature authority for the account?
Question 23: Are there more than tax advantages to consider with the benefits of an ABLE account?
Questions from the Audience
Next Steps

- Learn the status of ABLE implementation in your state.
- Evaluate your personal situation and needs for whether an ABLE account is right for you.
- Stay informed on ABLE developments.
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