

DECEMBER 2016

NATIONAL POLICY MATTERS



**ABLE Accounts
for People
with Disabilities**

Table of Contents

3	Introduction	9	What can I do if my state doesn't enact ABLE Act legislation? Are ABLE accounts available nationwide?
3	What is the ABLE program?	10	What about a period of time when the beneficiary is not considered "disabled"?
3	What are ABLE accounts?	10	What about rollovers?
4	Who is eligible to use ABLE accounts?	10	What are the tax implications of using an ABLE account?
5	Who decides how the money is spent? Does it matter if the individual has a guardian?	11	Can ABLE accounts be used in conjunction with special needs trusts?
6	How can the ABLE account funds be spent?	11	Will withdrawals affect my SSI?
7	Where does the money come from? Who can make contributions?	13	When can I get an ABLE account? Which financial institutions plan to offer this service?
7	Are there limits on total funds in an ABLE account?	13	Do I need a lawyer to set up an ABLE account?
8	How do funds in ABLE accounts affect federal benefits?	14	Can you make deposits/withdrawals at any time? What should I think about when choosing an ABLE program?
9	What happens to the account when I am gone?	14	Are the rules for the program final?
9	Will funds in ABLE accounts affect state benefits programs?	16	Endnotes

Sources of law and policy:

Important note: The information in this National Policy Matters is based in large part on the language of the law, the proposed regulations and the policy guidance that have been issued from the Internal Revenue Service (IRS), and the instructions from the Social Security Administration (SSA), with additional information provided for context. Over time, there will likely be more guidance issued from these agencies and from other federal and state agencies, as well as court decisions that interpret the law. It is important that individuals and families using ABLE accounts remain in touch with organizations or other sources that can assist them in staying informed about the law.

This National Policy Matters does not provide legal advice or financial planning advice. Individuals and families are urged to consult appropriate professionals to ensure that decisions will achieve desired outcomes.

ABLE ACCOUNTS FOR PEOPLE WITH DISABILITIES

Introduction

This National Policy Matters issue on the ABLE Act, state ABLE programs, and ABLE accounts is designed to give the reader short, simple answers to common questions as well as more detailed answers to those same questions for people who want or need more information. In addition, for people who want actual references to the law, regulations, or other policy, endnotes and references are included. This review of the ABLE program does not go into detail on the tax treatment and implications of opening an ABLE account.

What is the ABLE program?

The ABLE program allows eligible individuals with disabilities to save money in dedicated ABLE accounts. The money in these accounts will not affect eligibility for federal benefits programs like Supplemental Security Income (SSI), Medicaid, and other important supports.

The Stephen Beck, Jr., Achieving a Better Life Experience¹ (ABLE) Act² was signed into law on December 19, 2014. This is a federal program, which is run by states which choose to participate. People with disabilities will be able to open an ABLE account wherever they find a program that meets their needs. They can choose a program in their own state or a program in another state if it accepts participants from out-of-state.

Since the program is new, it will take some time for states to develop their ABLE programs. People with disabilities and their families may decide to open an account in one state and decide later to move their account to another state when a new program becomes available that better suits their needs.

What are ABLE Accounts?

ABLE accounts are new accounts that allow eligible people with disabilities to save money without losing important federal benefits. They are similar to college savings plans but are not the same as those plans. ABLE accounts will allow individual choice and control over spending by people who are eligible for SSI, Medicaid, and other federal programs.

The law allows eligible individuals with disabilities to establish “ABLE accounts” that are similar to the qualified tuition programs, often called “529 accounts” (based on that section of the tax code). ***The new ABLE accounts will allow individual choice and control over spending on qualified disability expenses and investment options, while protecting eligibility for Medicaid, Supplemental Security Income (SSI), and other important federal benefits for people with disabilities. Account owners or “designated beneficiaries” are allowed to have only one ABLE account.***

In addition, designated beneficiaries are allowed no more than two changes in investment direction per year.

ABLE accounts are authorized in the tax code and established in the new Section 529A Qualified ABLE Programs. ABLE accounts are savings accounts established under a qualified state ABLE program that receive preferred federal tax treatment, similar to Section 529 college savings accounts. ABLE accounts enable eligible individuals to save for “qualified disability expenses” (QDEs).

In general, account assets and spending (distributions) for QDEs will be disregarded or given special treatment in determining eligibility for federal means-tested benefits, including Supplemental Security Income (SSI) and Medicaid (including Medicaid waiver services). In addition, spending (distributions) from ABLE accounts for QDEs will not count as income to the beneficiary.

Who is eligible to use ABLE accounts?

An “eligible individual” is someone who receives Supplemental Security Income (SSI) or Social Security disability benefits or who can show that s/he has a disability equal to the Social Security level of disability called the “listings” by filing a disability certification, which is based on a doctor’s diagnosis. Also, the individual’s disability must have occurred before age 26.

The proposed Internal Revenue Service (IRS) regulations³, and follow-up guidance⁴ to the states⁵, provide important detail regarding the requirements for eligibility. Eligible individuals

must meet two basic requirements:

1. Age: Individual must be disabled before age 26

2. Severity of disability: An individual -

- ▶ **Must have been determined to meet the disability requirements for Supplemental Security Income (SSI) or Social Security disability benefits, OR**
- ▶ **Must submit a “disability certification” that s/he meets statutory criteria, and must have a physician’s diagnosis and signature.**

A disability certification is signed under penalty of perjury by the individual, the person establishing the account, or the person with signature authority, that:

1. The individual:

A. Has a medically determinable physical or mental impairment that results in marked and severe functional limitations and that—

1. Can be expected to result in death; or
2. Has lasted or can be expected to last for a continuous period of not less than 12 months; or

B. Is blind within the meaning of the SSI program.

2. The blindness or disability occurred before the age of 26.

3. The individual will be expected to declare that s/he has a signed physician's diagnosis and that s/he will retain that diagnosis and provide it to the IRS upon request.

“Marked and severe functional limitations” means a level of severity of disability that meets, medically equals, or functionally equals the severity of any listing in SSA's listing of impairments.

In addition, conditions listed in the Social Security Administration's “List of Compassionate Allowance Conditions” are deemed to meet the requirements of the disability certification if the condition was present before the individual reached age 26.

The IRS follow-up guidance to states (Nov. 20, 2015) clarifies that the disability certification requires receipt of a signed physician's diagnosis if necessary, and that the beneficiary will retain that diagnosis and provide it to the program or the IRS upon request. This means that eligible individuals with disabilities will not need to provide the written diagnosis when opening the ABLÉ account, and ABLÉ programs will not need to receive, retain, or evaluate detailed medical records.⁶ [More details on this are expected in final IRS regulations.]

The proposed regulations also indicate that:

- ▶ Eligibility is determined for each taxable year, and that the determination applies for the entire year.
- ▶ A qualified state ABLÉ program may impose different periodic recertification requirements for different types of impairments. This will be determined by each state.

Who decides how the money is spent? Does it matter if the individual has a guardian?

The eligible individual with a disability is the owner of the account and is known as the designated beneficiary. The designated beneficiary controls the account and decides how the money should be spent. If the designated beneficiary is not able to “exercise signature authority” over the account, or chooses not to, the proposed regulations allow others to have signature authority: an agent under a power of attorney, or, if none, a parent or legal guardian of the designated beneficiary. State law will determine the role and duties of a person with power of attorney or a parent or guardian in these circumstances.

The ownership and control of the ABLÉ account by the designated beneficiary is a central feature of the ABLÉ program and a cornerstone of the original efforts to pass the legislation. With the growing numbers of young people finishing high school steeped in the principles of self-determination and person-centered planning, a significant purpose of the ABLÉ Act was to extend those principles into the financial realm even for people who would find a need to rely on means-tested federal programs for some time in their lives. A core belief embodied in the Act is that, despite the need for means-tested program supports for a period of time (even an

extended period of time), people should not be impoverished or forced to lose control over their financial lives.

In an ABLÉ account, the individual with a disability is the account owner and designated beneficiary. S/he establishes and controls the account and makes spending decisions regarding the funds. If an eligible individual is not able to “exercise signature authority” over the account, or chooses not to, the proposed regulations allow others to have signature authority: an agent under a power of attorney, or, if none, a parent or legal guardian of the designated beneficiary. If the individual is unable to establish the ABLÉ account on his/her own behalf, the agent, parent, or guardian may establish the account and manage the account for the benefit of the beneficiary. However, the agent, parent, or guardian may not have any beneficial interest in the account. Note that the language of the proposed rule appears to have established a preference for the agent under power of attorney and includes a parent or guardian if there is no agent under a power of attorney.

How can the ABLÉ account funds be spent?

ABLE funds can be spent on qualified disability expenses (QDEs) related to the designated beneficiary’s disability and for his/her benefit in maintaining or improving health, independence, or quality of life.

Funds from an ABLÉ account may be used for “qualified disability expenses” related to the individual’s disability or blindness and made for his/her benefit in maintaining or improving health,

independence, or quality of life, including:

- ▶ Education
- ▶ Housing
- ▶ Transportation
- ▶ Employment training and support
- ▶ Assistive technology and related services
- ▶ Personal support services
- ▶ Health, prevention, and wellness
- ▶ Financial management and administrative services
- ▶ Legal fees
- ▶ Expenses for oversight and monitoring
- ▶ Funeral and burial expenses
- ▶ Basic living expenses
- ▶ Other expenses approved by the Secretary of the Treasury under regulations consistent with the purpose of the program and/or published in future guidance published in the Internal Revenue Bulletin

The IRS noted in the preamble to the proposed regulations that qualified disability expenses include basic living expenses and are *not limited* to items:

- ▶ for which there is a medical necessity; or
- ▶ which solely benefit a disabled person.

All three of these points are important clarifications. It may be necessary at times for funds to be used to pay for basic food and shelter

and the IRS proposed regulations have added basic living expenses to the original statutory list.

In addition, the clarifications that items do not have to be purchased to meet a medical need or do not have to solely benefit the designated beneficiary are helpful in allowing the use of mainstream solutions. The IRS used the example of the purchase of a smart phone to assist an individual with severe limitations in communication and navigation, thereby helping her to remain more independent and improve her quality of life. The IRS indicated that the expense of buying, using, and maintaining the phone would be considered a qualified disability expense.

Where does the money come from?

Who can make contributions?

The ABLÉ program is a federal program, established by federal law, and run by the states; however, funding for the accounts does not come from government programs. Contributions are generally private funds or savings of the individual, his/her family, or gifts from other sources. Contributions can come from many sources but, together, they cannot exceed the gift tax exclusion limit. This annual limit is set by the IRS. For 2016 and 2017, the limit is \$14,000 total from all sources combined.

An individual, trust, estate, partnership, corporation, or other entity may make a contribution to an account. There are annual limits on contributions as well as aggregate limits on contributions in ABLÉ accounts. Total annual contributions are capped at the gift tax exclusion

limit (\$14,000 in 2016 and 2017). This amount is periodically adjusted for inflation, although not always annually adjusted. Contributions in excess of the limit must be returned to the contributor.

Except in the case of program-to-program transfers, ***contributions to an ABLÉ account may only be made in cash;*** the account may not accept real estate or other non-cash property. State programs may allow cash contributions in the form of a check, money-order, credit card, electronic transfer, or similar transfer.

Account contributions and withdrawals will be reported to the IRS annually by the state ABLÉ programs.

Are there limits on total funds in an ABLÉ account?

There are limits on the total amount that an ABLÉ account may hold, depending on the state in which the ABLÉ account is based. The limit is based on the state's Section 529 college savings plan aggregate limit. However, if the account reaches that limit and then is reduced by qualified disability expenditures, the account will be allowed to accept new contributions up to the limit again.

The total (aggregate/cumulative) account limit over time will be equal to a state's Section 529 college savings program maximum aggregate limit. Many states have set this limit at \$300,000 or more. Contributions in excess of the limit must be returned to the contributor.

The IRS proposed regulations describe a *Safe*

Harbor: When the account reaches the state’s aggregate limit, no more contributions can be made. However, if the account total is reduced by qualified disability expenditures, for example, the proposed regulations would allow the account to accept new contributions until it again reaches the maximum limit for the state.

How do funds in ABLÉ accounts affect federal benefits?

For designated beneficiaries of properly managed ABLÉ accounts, federal law disregards ABLÉ account funds when determining eligibility for any federal means-tested programs (those programs that consider the financial circumstances of the individual). While the law includes some special rules for addressing SSI and Medicaid, it is also expected to cover programs such as the Supplemental Nutrition Assistance Program (SNAP) (formerly food stamps) and housing programs, among others.

The federal ABLÉ statute explicitly states that, regardless of any other provision of federal law that requires consideration of the financial circumstances of an individual, for the purpose of determining eligibility to receive, or the amount of, any assistance or benefit of that program, funds in an ABLÉ account, contributions to the account, or distributions from the account for qualified disability expenses will be disregarded during any period when the individual maintains, makes contributions to, or receives distributions from the ABLÉ account.

Special Rules for Supplemental Security Income (SSI): For purposes of SSI eligibility, **only the first \$100,000 in ABLÉ account assets will be disregarded.** [The rules for Medicaid are different—see below.]

- ▶ SSI cash payments will be suspended if the beneficiary’s ABLÉ account balance goes over \$100,000, but SSI eligibility will not be terminated. **However:** Funds above \$100,000 will be treated as resources according to SSI’s normal rules for counting resources.
- ▶ Since ABLÉ accounts are owned by the designated beneficiary, housing expenses for the beneficiary will not be treated the same as housing costs paid by outside sources. New SSA instructions (POMS – see more information later) will treat housing expenses as resources only if distributed in one month and held until the following month.

Special Rules for Medicaid: ABLÉ assets are disregarded in determining Medicaid eligibility. Medicaid benefits are NOT suspended if the ABLÉ account balance goes over \$100,000.

- ▶ Medicaid Payback (Post-Death Payments): After outstanding qualified disability expenses are paid, any assets remaining in the ABLÉ account when a beneficiary dies will be used to reimburse a state that makes a claim for reimbursement of Medicaid payments

made for the beneficiary after the creation of the ABLE account. [This is the full extent of the payback obligation.] Similar Medicaid paybacks are also made in the case of properly managed first-party individual or pooled trusts allowed under the Medicaid program.

- ▶ The State is a creditor of the ABLE account, not a beneficiary. [From an advocacy perspective, since the State is not a “future beneficiary,” it should not get involved in decisions about account expenditures.]

In the circumstance that the beneficiary has received Medicaid benefits from multiple states, numerous pooled trusts offer relevant experience in apportioning post-death payments among several states.

What happens to the account when I am gone?

What happens to the funds remaining in an ABLE account at the beneficiary’s death depends on the Medicaid payback, the designated beneficiary’s personal estate planning, and state law.

After a beneficiary’s death, funds remaining in the ABLE account after obligations to the Medicaid program are satisfied will be paid to a remainder beneficiary named in the account documents, or, if none is named, to the beneficiary’s estate. If the beneficiary has left a will, any remaining funds in the ABLE account will pass under the terms of the will. If the beneficiary has not left a will, state law

determines how the remaining funds will be distributed.

Will funds in ABLE accounts affect state benefits programs?

Whether ABLE account funds affect state benefits programs depends on each state and how they establish their own state programs.

The federal law explicitly states that funds in an ABLE account, contributions to the account, or funds properly distributed from an ABLE account will not affect eligibility or the amount of any assistance or benefit from *federal* means-tested programs. However, it is up to the individual states to determine whether to extend similar protections to means-tested programs that are established and funded by the state with no federal funds.

What can I do if my state doesn’t enact ABLE Act legislation? Are ABLE accounts available nationwide?

Some, but not all, states will allow non-residents to open accounts in their programs. Federal law allows eligible individuals to open an account in their home state or in another state.

The original ABLE Act did require opening an ABLE account in the state where the beneficiary resides. However, the law was amended in December 2015⁷ to repeal the residency requirement.

An individual can open his/her ABLE account in the state in which s/he resides or in a

different state. There are a number of factors to consider in determining in which state program to open an ABLÉ account. These include any tax benefits offered by the state of residence, any difference on impact in state means-tested benefits, fees charged by the program, investment options offered by each program, and aggregate limits on the value of the account.

What about a period of time when the beneficiary is not considered “disabled”?

The ABLÉ account can retain its protected status if the person is no longer disabled and can be reinstated for use if the individual becomes disabled again.

If the designated beneficiary is no longer disabled, the ABLÉ account can retain its protected status and can be reinstated for later use if the individual becomes disabled again. This approach prevents the individual from having to become impoverished again to qualify for SSI or Medicaid and ensures that the funds s/he saved are still available for a future period of disability. However, during the period that the individual does not meet the disability criteria, no new contributions may be made and no expenditures will be treated as qualified disability expenditures. If the individual later meets the qualifications again, the account may again resume accepting contributions and making distributions for qualified disability expenses.

This policy is particularly important to individuals who may have disabilities with intermittent impact or whose medical conditions may go into remission for a period of time, such as mental illness.

Anyone wishing to withdraw funds from an account during this period should seek advice about potential tax implications and penalties.

What about rollovers?

Rollovers and program-to-program transfers are allowed, with limits, including to a “family member” (sibling, half-sibling, step-sibling) who is an eligible individual.

A rollover is a contribution to an ABLÉ account of a designated beneficiary (or of an eligible individual who is a member of the family) of all or part of an amount withdrawn from the designated beneficiary’s ABLÉ account, so long as the contribution is made within 60 days of the withdrawal, and, in the case of a rollover to the designated beneficiary’s ABLÉ account, no rollover has been made to an ABLÉ account of the beneficiary within the prior 12 months.

A program-to-program transfer means the direct transfer of the entire balance of an ABLÉ account into an ABLÉ account of the same designated beneficiary in which the transferor ABLÉ account is closed upon completion of the transfer. It also includes the transfer of part or all of the balance to an ABLÉ account of another individual who is a member of the family of the former designated beneficiary, without any intervening distribution or deemed distribution to the designated beneficiary.

What are the tax implications of using an ABLÉ account?

The ABLÉ Act was designed to provide some federal tax advantages similar to the college savings plans. It is unclear whether the states will provide similar incentives for ABLÉ accounts.

Without going in depth regarding the tax implications of the ABLE accounts, in general:

- ▶ Contributions to an ABLE account are made with after-tax dollars.
- ▶ Federal taxation: Distributions (withdrawals or spending) from ABLE accounts for qualified disability expenses are tax exempt. With certain exceptions, ABLE funds used for non-qualified disability expenses are taxable and subject to an additional 10% tax penalty.
- ▶ State taxation: State tax consequences will vary. Currently, some states provide tax incentives for contributions to Section 529 college savings plans and may provide similar incentives for contributions to ABLE accounts.

Can ABLE accounts be used in conjunction with special needs trusts?

Yes. There is nothing in the law to prevent using ABLE accounts along with special needs trusts, although there are a number of things to think about in making that decision.

There is nothing in the law to prohibit using ABLE accounts in conjunction with special needs trusts. Individuals and their families will likely want to examine the benefits and limitations of each and determine the right combination of features for the individual and his/her circumstances. It may be possible to establish

a trust to provide funds for some purposes and to establish an ABLE account to allow the beneficiary to handle the funds for other purposes.

There are numerous issues to consider, including the individual's ability and desire to manage funds and his/her potential need for support in managing funds; the sources of funds; the limits on contributions; and whether there are any gifts/inheritances which may not be in cash, among other factors.

Will withdrawals affect my SSI?

If handled properly, beneficiaries can avoid having their SSI cash benefits or eligibility negatively affected when they withdraw funds for qualified expenses. The rules for doing this are established by the Social Security Administration.

The Social Security Administration (SSA) sets out its rules for treatment of ABLE account withdrawals in its Program Operations Manual System (POMS)⁸, the instructions to staff for handling decisions regarding eligibility in various circumstances. The POMS has a section devoted to handling decisions regarding ABLE account fund withdrawals (distributions from the accounts). Generally, these decisions fall into three categories:

- ▶ Distributions for qualified disability expenses (QDE) (non-housing related)
- ▶ Distributions for housing-related QDE
- ▶ Distributions for non-qualified expenses

SSA is expected to produce fact sheets which

make this information easier to understand for beneficiaries.

In looking at funds that have been withdrawn from ABLE accounts for the categories described above and whether those withdrawals and any unspent funds will affect SSI eligibility, SSA will be looking at the new ABLE law and at how the funds fit into current rules for counting income or resources. In Social Security terms, for the funds to continue to be protected, withdrawals must be “excluded” from being counted as income or resources.

1. SSA excludes from calculations of the designated beneficiary’s income:

- ▶ Contributions to an ABLE account
 - ▶ Automatic contributions from the wages of the beneficiary are not counted as resources, but they are counted for purposes of determining the person’s wages
- ▶ ABLE account earnings
- ▶ ABLE account distributions (not income, but treated as conversion of a resource from one form to another)

2. SSA excludes from calculations of the designated beneficiary’s countable resources:

- ▶ Up to and including \$100,000 of balance in ABLE account.
- ▶ Distribution for non-housing related QDE, even if retained beyond one month (if the beneficiary maintains an active ABLE account; the distribution is unspent; the distribution is identifiable;

and the individual still intends to use it for a non-housing related QDE).

- ▶ Normal SSI resource counting and exclusion rules apply to assets or other items purchased.
- ▶ Distribution for housing-related QDE if spent for housing in the month in which it is withdrawn.

In general, it is significant that this policy allows the designated beneficiary to withdraw funds for a qualified purpose and hold those funds in a regular bank account (as long as the individual has an active ABLE account; the withdrawn funds are still unspent and identifiable; and the funds are still intended for the qualified non-housing purpose). This is significant in that it allows some planning for major expenditures; provides flexibility when major purchases are delayed; and allows withdrawals of larger amounts to address a number of smaller purchases.

Some flexibility applies to housing-related funds: a distribution for housing-related QDEs, if spent for housing in the month in which it is withdrawn, will not be treated as a resource. However, funds withdrawn for housing-related QDEs and held from one month to the next month (for example, withdrawing money in May to pay rent in June) will convert to a regular resource and be counted for SSI purposes. For SSA purposes, QDEs for housing are payments for: mortgage (including property insurance required by the mortgage holder); real property taxes; rent; heating fuel; gas; electricity; water; sewer; or garbage removal.

There are additional rules for handling excess resources (over \$100,000); handling distributions

used for non-qualified expenses; change of intent for use of a distribution; and ineligibility for reasons other than excess resources in an ABLE account. These also are laid out in the POMS.

When can I get an ABLE account? Which financial institutions plan to offer this service?

ABLE accounts are available now. Eligible individuals are cautioned to make sure they are opening accounts with ABLE account programs that are authorized under state and federal law.

Some states are offering ABLE programs now. Some allow only residents of that state to participate, while others are accepting enrollees nationwide. New state programs are expected to be available in coming months. Several are expected to accept nationwide enrollees.

When enrolling, it is important to ensure that the ABLE account program is an authorized program under state and federal law. The state must run the program or contract with another entity to run the ABLE program. Look for information about the state authorized program through the state Treasurer's Office or a similar resource. Placing funds into a bank account that is called an ABLE account, but not authorized under state and federal law, will put the individual's SSI, Medicaid, and other program eligibility at risk.

The Arc maintains two charts showing the laws passed and the decisions that states have made regarding implementation, including which agency or entity is authorized to run the state's program and links to the state program websites.⁹ This information can help you locate state authorized programs.

Do I need a lawyer to set up an ABLE account?

It is not necessary to consult an attorney to set up an ABLE account, but many people may want additional expert advice.

It is not necessary to consult a lawyer to establish an ABLE account. Some of the original goals of the ABLE program were to keep it simple and inexpensive to participate in and to avoid costly legal fees for those who could not afford them. In fact, some ABLE account websites report that the process of opening an account can take just a few minutes. However, many eligible individuals may want to consider establishing an overall financial plan that includes an ABLE account as one element and they may wish to seek advice from an attorney with expertise in special needs planning and/or a financial planner with expertise in special needs planning. Individuals and families may also wish to consider the need for some supports in decision making that might accompany an ABLE account for some individuals.

Can you make deposits/withdrawals at any time? What else should I think about when choosing an ABLÉ program?

Each participating state will design its own program and it is likely that they will differ in many ways. Deposits and withdrawal requirements, as well as fees, are some features that eligible individuals and their families might want to compare when deciding which program to join.

States will have to make many decisions including: requirements to set up the account; deposit/withdrawal requirements; how quickly withdrawals are available; on-line access; electronic withdrawals or transfers to another account or to a pre-loaded card/debit card and at whose choice; investment options; online or paper account statements; reporting requirements; and administrative fees. ***These variations in account policies are some of the factors eligible individuals and their families should consider when deciding which ABLÉ program to choose.*** Another factor to consider is the aggregate limit on the size of the accounts, which is equal to the aggregate limit established by the state for 529 college savings accounts.

In addition, if considering an out-of-state program, eligible individuals and their families might want to consider whether their home state offers tax advantages for the funds in out-of-state ABLÉ accounts; whether out-of-state accounts and funds will be disregarded for the state of residence state-only means-tested programs; and what the aggregate limits are for the out-of-state accounts.

Are the rules for the program final?

The IRS has not yet published final regulations for the ABLÉ program. Essentially, the IRS has given permission for the states to move forward on developing their ABLÉ programs and for people to open ABLÉ accounts. If a state's ABLÉ program does not comply with the final rules when the IRS publishes them, the IRS will give the state time to bring the program into compliance. Final regulations are expected.

The IRS has not yet published final regulations for the ABLÉ program. However, in March 2015, the IRS sent a notice to states¹⁰ which included information indicating:

“The Treasury Department and the IRS do not want the lack of guidance to discourage states from enacting their enabling legislation and creating their ABLÉ programs, which could delay the ability of the families of disabled individuals or others to begin to fund ABLÉ accounts for those disabled individuals. Therefore, the Treasury Department and the IRS are assuring states that enact legislation creating an ABLÉ program in accordance with section 529A, and those individuals establishing ABLÉ accounts in accordance with such legislation, that they will not fail to receive the benefits of section 529A merely because the legislation or the account documents do not fully comport with the guidance when it is issued. The Treasury Department and the IRS intend to provide

transition relief with regard to necessary changes to ensure that the state programs and accounts meet the requirements in the guidance, including providing sufficient time after issuance of the guidance in order for changes to be implemented.”

Essentially, the IRS has given permission for the states to move forward on developing their ABLE programs and for people to open ABLE accounts. If a state’s ABLE program does not comply with the final rules when the IRS publishes them, the IRS will give the state time to bring the program into compliance. Interested individuals and families may want to see the entire [Notice 2015-18](#) (March 10, 2015) which also covers other details.

Final regulations are expected.

Endnotes:

¹After 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.

²Tax Increase Prevention Amendments, Public Law 113-295, Division B, Title I, <https://www.congress.gov/113/plaws/publ295/PLAW-113publ295.pdf>

³Federal Register, June 22, 2015, REG-102837-15, Notice of Proposed Rulemaking and Notice of Public Hearing, Guidance under Section 529A: Qualified ABLE Programs, 80 FR 35602, <https://www.federalregister.gov/articles/2015/06/22/2015-15280/guidance-under-section-529a-qualified-able-programs>

⁴New IRS Guidance to Simplify ABLE Program Administration, IR-2015-130, Nov. 20, 2015, <https://www.irs.gov/uac/newsroom/new-irs-guidance-to-simplify-able-program-administration>

⁵See also: Tax Benefit for Individuals With Disabilities: IRC Section 529A, Jan. 29, 2016, <https://www.irs.gov/government-entities/federal-state-local-governments/tax-benefit-for-disability-irc-section-529a>

⁶New IRS Guidance, Nov. 20, 2015. (above)

⁷See link to and discussion of statutory change in: Tax Benefit for Individuals With Disabilities: IRC Section 529A, Jan. 29, 2016, <https://www.irs.gov/government-entities/federal-state-local-governments/tax-benefit-for-disability-irc-section-529a>. The IRS indicates that this change will be addressed in the final regulations.

⁸Social Security Administration, Program Operations Manual System (POMS), Effective Dates: 03/21/2016 – Present, SI 01130.740 Achieving a Better Life Experience (ABLE) Accounts, <https://secure.ssa.gov/poms.nsf/lnx/0501130740>

⁹The Arc maintains two charts on the development of ABLE programs at the state level. They include information on the development of the legislation at the state level (including state statutory language) and information on the implementation of the various ABLE programs in the states, including links to those programs. The charts may be accessed here:

- ▶ State laws: <http://www.thearc.org/what-we-do/public-policy/policy-issues/able-legislation-by-state>
- ▶ State implementation: <http://www.thearc.org/what-we-do/public-policy/issues/able-program-implementation>

¹⁰Internal Revenue Bulletin: 2015-12, March 23, 2015, Notice 2015-18, Qualified ABLE Programs, https://www.irs.gov/irb/2015-12_IRB/aro8.html

Hyperlinks to external sites are subject to change after the publishing of this document.



The Arc of the United States
1825 K Street, NW Suite 1200 | Washington, D.C. 20006
thearc.org