The ABLE Act of 2014

Achieving A Better Life Experience
529-A Savings Plans for People with Disabilities

Presented by
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The ABLE Act of ~~2008~~
The ABLE Act of ~~2011~~
The ABLE Act of ~~2013~~
The ABLE Act of 2014

H.R. 647 – 113th Congress

It's been a long time coming.

Purpose of the Act

(1)To encourage and assist individuals and families in saving private funds for the purpose of supporting individuals with disabilities to maintain health, independence, and quality of life.

(2)To provide secure funding for disability-related expenses on behalf of designated beneficiaries with disabilities that will supplement, but not supplant, benefits provided through private insurance, the Medicaid program under title XIX of the Social Security Act, the supplemental security income program under title XVI of such Act, the beneficiary's employment, and other sources.

ABLE is Essentially A Tax Law

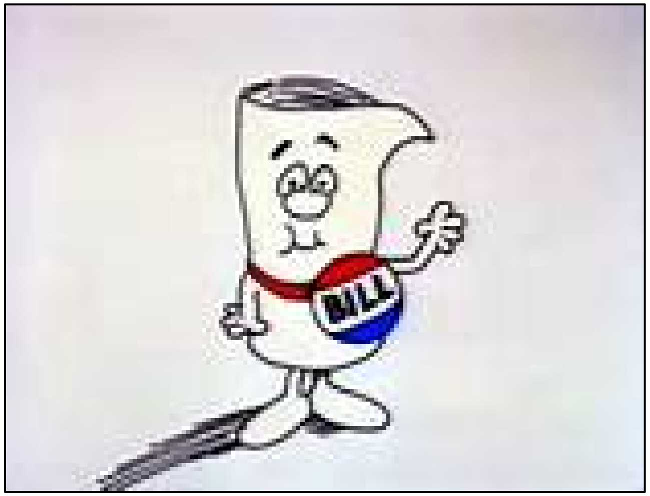
Amends the IRS code of 1986

Loosely based on existing 529 College Savings Plans.

Many of the Act's sections refer to existing definitions/guidelines from the Social Security Administration, but final regulations and other guidance will come from the U.S. Secretary of the Treasurer.

ABLE Language

What Is Spelled Out



Eligibility: *Disability must have occurred prior to age 26; "disability" definition is based Social Security's current definition.*

Practice note: *This is age of onset. There are no rules re: the age of the ABLE beneficiary at the time of establishing account. For example: individuals over 65 with an Intellectual/Developmental Disability could establish an ABLE Account.*

ABLE Language

What Is Spelled Out

Qualified Disability Expenditures (QDEs): *The Act's list is inclusive but not exhaustive. It lists:* "…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, and other expenses, which are approved by the Secretary … "

*Practice Note: SSA developed POMS (*SI 01130.740) *related to ABLE and QDE's. ttps://secure.ssa.gov/apps10/poms.nsf/lnx/0501130740*

- **Who Runs ABLE Accounts**
  - Existing 529 Plan Administrators
  - States may contract with other states

- **Portability**
  - Open in state of residence for beneficiary or any other state,
  - Can transfer accounts in other states
- **Contribution Limits**
  - Tied to Gift Exclusion amount ($15k in 2018)
  - Total lifetime contributions tied to states' 529 savings limits (about $400k in CO)
  - The contributions from ALL sources are limited to $15K/year total
  - Per the Tax Cuts and Jobs Act, individuals who are working can contribute additional funds, up to another $11,770, to the ABLE account
- **Ownership/Contributions**
  - Always owned by beneficiary
  - Parents, grandparents, guardians can start accounts
  - Anyone (Individual, family members) may contribute

- **Tax Benefits**
  - In Colorado: None at time of contribution; post-tax dollars
  - Some states allow tax benefits in their states
  - No tax on earnings when distributions are qualified
- **Benefit Protection**
  - Up to $100k accrual in account without SSI impact or Medicaid impact
  - State-run, income-based programs – Still unclear; not all have formed rules

- **Payback Provisions**
  - Funds remaining at the death of the beneficiary return to the state Medicaid
  - ALL contributors' funds are subject to payback

Housing Expenses

The Social Security Administration recently directed that distributions from an ABLE account for Housing will not count as either Income OR as In-Kind Support and Maintenance (a 1/3 deduction) for Supplemental Security Income (SSI) Beneficiaries..

Practice note: The distribution for housing MUST be spent within the month of receipt. If it carries over to the next month it will count towards the RESOURCE limit for SSI.

However, apply normal SSI resource counting rules and exclusions to assets or other items purchased with funds from an ABLE account.

Stephen Dale, Attorney, https://www.youtube.com/watch?v=tuvoN1g57QA, http://achievingindependence.com/

Odds and Ends

- **Type of Contribution**
  - "Cash" only *(cash, check, credit card, money order)*
  - No stocks, properties etc.
- **Rollovers**
  - Can go to another family member who is also ABLE-qualified
  - Member must meet 529-A eligibility requirements
  - Per the Tax Cuts and Jobs Act, roll-overs from a 529B (college) plan are permitted into ABLE up to the maximum contribution cap/year.
- **Reimbursements**
  - Allowable, even for beneficiary
- **Number of Accounts**
  - Only one allowed per beneficiary
  - All must contribute to same account
- **Surtax on Unqualified Expenses**
  - 10% surtax

Who Qualifies for 529-A

- If you meet the age criteria (onset by age 26) and are also receiving benefits already under SSI and/or SSDI, you are **automatically eligible** to establish an ABLE account.

- If you are not a recipient of SSI and/or SSDI, but still meet the age of onset disability requirement, you **could still be eligible** to open an ABLE account if you meet Social Security's definition and criteria regarding significant functional limitations and receive a letter of certification from a licensed physician.

- You need not be under the age of 26 to be eligible for an ABLE account. You could be over the age of 26, but must have had an age of onset before the individual's 26 birthday.

ABLE National Resource Center http://www.ablenrc.org/

Best Candidates for 529-A

- **Those with disabilities prior to age 26**
- **People who can manage day-to-day finances with little or no help**
  - ***Wages can be direct-deposited***
  - ***Freedom to access funds without intervention***
  - ***Self-determination is supported***
- **Families who want to contribute financially to a beneficiary who are comfortable with the potential payback provision**
- **Individuals with specific savings goals (vehicle, home repair)**
- **Families managing the expense of raising a child with a disability while maintaining benefits**
- **Individuals now over age 65 affected by lifetime disability**

Potential Pitfalls

- Payback provision includes funds from all contributors.
- A well-meaning relative may open a second account.
- Inappropriate withdrawals could be very costly – especially when benefit protection is important.
- Beneficiary and/or contributors may not have wide knowledge of benefit programs and eligibility requirements.
- The ABLE administrator has no discretion and little ability to guide distributions or aid in fixing errors.
- ABLE accounts could be ripe for financial exploitation.

Comparisons to Trusts

"For many families, the ABLE account will be a **significant** and **viable** option

in addition to, rather than instead of, a Trust program."

National Down Syndrome Society, ABLE Act Overview

SNT	ABLE
No maximum contribution limit	Contributions each year are at gift tax Exclusion and accrual tapped by state.
Contributions by 3rd parties not subject to payback provisions	Contributions by any Party must be Paid back at the time of death.
Any age	Limited to Disability onset by age 26
Housing distributions may be penalized for some benefits; but SNT can make distributions to ABLE Account for housing expenses	Housing distributions are not penalized so long as spent in month received.
All distributions are at the discretion Of the Trustee (Trustee also takes on liability)	There is no discretion by fund Administrator. All liability is taken on by ABLE beneficiary

David

David is 30 and was born with Cerebral Palsy. He has no cognitive deficits. A family member helps him with writing checks but he makes the decisions. His wages at work put him up against the $2,000 resource limit about once a quarter.

He sets up an ABLE account and a few months later his grandmother dies and leaves him $8,000 in her will. He puts that in his ABLE account as well.

Considerations:
If you're advising his parents, it will still likely be best for them to fund a deferred 3rd party trust.

If his parents or other people want to contribute on a regular basis, they will need to make sure they aren't reaching the maximum contribution limit.

Wendy

Wendy recently graduated from her high school special needs transition program and her parents are helping her to establish life in her own apartment. They are contributing to an ABLE account for her on a monthly basis. Wendy will be able to use this account to pay for housing and other household expenses without impacting her SSI.

Considerations:
Depending on Wendy's disability, her parents or a professional may need to look over the distributions from the account. ABLE accounts are ripe for financial exploitation due to their ease of use.

Johnson Family

Tom and Sherri have three children.

Their oldest son Max is entering kindergarten and the family decides it is time to set up a 529 plan for him. When they are setting up the 529 plan they decide it is the ideal time to set up a plan for their younger children, Sam and Zoe, as well. Since their three year old daughter Zoe has Down Syndrome, they put her funds into an ABLE account. They will contribute $200/mo towards each child's account but will not need to use Zoe's account for many years.

Considerations:

Parents will still want to consider a third party trust to protect the interests of their other children in the event of Zoe's death.

ABLE Resources

ABLE Alliance for Financial Empowerment http://www.theablealliance.org

Social Security POMS
https://secure.ssa.gov/apps10/poms.nsf/lnx/0501130740

IRS Regs https://www.irs.gov/government-entities/federal-state-local-governments/tax-benefit-for-disability-irc-section-529a

Colorado: CRS 23-3.1-311. Achieving **a better life experience** (ABLE) savings program

Arc updates: http://www.thearc.org/what-we-do/public-policy/issues/able-program-implementation

Every Decision Will Be as Unique as the Individual

Your Scenarios

Q & A

Contact Information

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cfpd
managing means protecting benefits