THE ABLE ACT: FREQUENTLY ASKED QUESTIONS

What is the ABLE Act?

The Stephen Beck Jr. Achieving a Better Life Experience (ABLE) Act (PL 113-295) added Section 529A to the federal tax code to enable eligible individuals with disabilities to save money in a tax-exempt account that may be used for qualified disability expenses while still keeping their eligibility for federal public benefits. This law has been heralded as one of the most significant pieces of disability legislation since the Americans with Disabilities Act. It was the result of nearly a decade-long cross-disability grassroots effort that originated with a group of parents of children with Down syndrome who recognized the unfairness of not being able to save funds in their child's name for fear of losing benefits. The ABLE Act was supported by 381 out of 435 US Representatives and 78 out of 100 US Senators – 85% of the entire US Congress.

What is an ABLE account?

An ABLE account is a tax-advantaged savings account that qualified individuals with disabilities may open as a result of the passage of the ABLE Act of 2014 and subsequent enactment of state ABLE laws. Contributions to ABLE accounts are made on an after-tax basis. Earnings from ABLE funds grow tax-deferred and are tax-free if used for qualified disability expenses. Contributions to the account may be made by any person (the account beneficiary, an employer, family and friends) and may or may not be tax deductible depending on the specifics of the state ABLE law. Funds in the account may be used for many different types of expenses. The beneficiary is the owner of the account, but legal guardianship and powers of attorney will permit others to control ABLE funds in the event that the beneficiary is unwilling or unable to manage the account.

Why the need for ABLE accounts?

Individuals with disabilities can only have $2,000 in assets at any given time in order to remain eligible for many federal means-tested benefits programs which provide much-needed supports, such as Supplemental Security Income (SSI). Under ABLE, eligible individuals and families may establish ABLE savings accounts that will not affect their eligibility for SSI (up to $100,000), Medicaid and other public benefits. ABLE accounts provide a mechanism to essentially increase this $2,000 asset limitation so that individuals with disabilities and their families can save money for their future and to improve their quality of life.

Who is eligible to open an ABLE account?

An individual must meet two requirements to be eligible for an ABLE account: an age requirement and a severity of disability determination. The onset of symptoms of the person's disability must have occurred before age 26. Additionally, the disabled individual must have "marked and severe functional limitations" (essentially, a Social Security definition of disability). An individual whose disability occurred prior to age 26 and is already receiving SSI and/or SSDI is automatically eligible to establish an ABLE account. Those who are not recipients of SSI and/or SSDI but still meet the age of onset disability requirement will be eligible to open an ABLE account upon obtaining a disability certification from their physician.

What is a disability certification and how do you get one?

Depending upon the state ABLE program's procedures, the disability certification may be a form that a physician fills out or the ABLE program may simply require a letter from the physician providing certain information (such as the nature of the disability and date of onset). When a person opens an ABLE account, they do not need to submit a certification of eligibility at that time. Rather, they will certify (under penalty of perjury) that they are indeed eligible and have obtained some type of physician's note. The ABLE account owner keeps this certification in his or her own files and will only need to produce it if audited or eligibility is otherwise questioned.

Are there limits to how much money can be put in an ABLE account?

Yes. The total annual contributions by all participating individuals, including the beneficiary, family and friends, is $14,000 (the federal gift tax exclusion). The total limit of contributions that could be made to an ABLE account over time is tied to the individual state's maximum amount for regular 529 accounts (typically around $350,000). The first $100,000 in ABLE accounts will be exempted from the SSI $2,000 individual resource limit. After $100,000, the beneficiary's SSI will be suspended (but not terminated), though Medicaid benefits will continue regardless of ABLE funds.

How do assets in ABLE accounts affect eligibility for SSI and Medicaid?

Up to $100,000 in ABLE account funds, these benefits are not affected. When an ABLE account exceeds $100,000, the beneficiary will be suspended – but not terminated -- from eligibility for SSI benefits and will no longer receive that monthly income. This suspension will be indefinite and the SSI benefits will be reactivated after the beneficiary spends down the account to under $100,000. Medicaid eligibility will remain intact, even if the ABLE account exceeds $100,000.

How do assets in ABLE accounts affect eligibility for other means-tested benefits programs?

The US Treasury Department has issued interim guidance on some critical issues but has not yet issued its final guidance. The Social Security Administration has issued final guidance in the form of POMS. The Center for Medicaid & Medicare Services has not yet released guidance on ABLE. We are also still waiting for final guidance to be issued by the US Department of Housing and Urban Development (HUD) as ABLE relates to housing benefits, and the US Department of Education (ED) on how ABLE relates to financial aid. The Food and Nutrition Service of the US Department of Agriculture (USDA) has published a final rule that confirms that funds held in ABLE accounts may not be considered when determining eligibility for the Supplemental Nutrition Assistance Program (SNAP). Most states have included in their ABLE bills language to exclude ABLE assets from determinations of eligibility for state and local means-tested programs. While the intent of the federal ABLE law is to exclude ABLE accounts from eligibility determinations for means-tested benefits, individuals who depend upon these benefits are urged to proceed with caution until final guidance is issued by the relevant agencies.

What happens to funds in an ABLE account when the beneficiary dies?

The federal law authorizes state Medicaid agencies to become a creditor and seek reimbursement for the Medicaid services a beneficiary has received since she opened the ABLE account. It is up to the individual state Medicaid agencies whether or not to seek reimbursement from ABLE accounts. Even if they do pursue claims, all outstanding qualified disability expenses will be given priority over the Medicaid claims. The remainder of assets in an ABLE account will go to the beneficiary's estate.

For what expenditures can the money in an ABLE account be used?

Funds in ABLE accounts must be used for "qualified disability expenses". A qualified disability expense means any expense incurred by the beneficiary as a result of living with a disability. These include education, housing, transportation, employment training and support, assistive technology, personal support services, health care expenses, financial management and administrative services, daily living expenses and other expenses to enhance the beneficiary's quality of life.

Will ABLE account beneficiaries need approval before spending the money in their accounts?

No. In November 2015, the Treasury Department issued guidance indicating that states do not have to scrutinize or approve expenditures. However, beneficiaries will be required to maintain documentation to prove that their expenses are qualified if they are audited.

How will ABLE account beneficiaries access the funds in their ABLE accounts?

This will vary from program to program. Options will include using debit cards, setting up direct pay to service providers and/or having ABLE funds direct deposited into another related bank account.

Do individuals have to open ABLE accounts in their state of residence?

No. The original federal ABLE law required individuals to open ABLE accounts in their home state, which meant that each state legislature was required to pass a state ABLE law in order to make ABLE accounts available to residents of all 50 states. However, the US Congress amended ABLE in December 2015 as part of the Tax Extenders Package and eliminated this state residency requirement. Therefore, an individual will be able to open an ABLE account in any state that offers a nationwide ABLE program.

Are ABLE accounts currently available?

Yes. A list of state ABLE programs that have launched is available at www.ndss.org/ableprograms. You do not have to wait for your state to launch an ABLE program to open an ABLE account. Each individual state ABLE program will have different investment choices, costs and fee structures, and we encourage potential account holders to carefully consider which ABLE program will best meet their needs.

Where do I get information about various state ABLE programs?

Many states have already created websites to provide information about their ABLE programs or their ABLE program development (links to the programs can be found on our website at www.ndss.org/ableprograms). We recommend signing up for e-mail updates from the individual ABLE program websites so that you will receive notice when the accounts become available.

Where do you go to open an ABLE account?

Most states provide online applications for ABLE accounts through their ABLE program websites. Families may also work with a financial advisor to open an account under certain ABLE programs.

Can an individual have more than one ABLE account, and what happens if the beneficiary wants to switch to another state's ABLE program?

Under the federal ABLE Act, an eligible individual may only have one ABLE account at a time. However, it is possible to switch ABLE programs by transferring the account from one state to another (there may be some fees involved).

Can an ABLE account be transferred to another individual?

An ABLE account may only be transferred to a family member (sibling, half-sibling or step-sibling) who is also an eligible individual.

Can a regular 529 account be rolled over into an ABLE account?

No, not under current law. However, advocates are working to amend the federal ABLE Act to allow for these types of rollovers.

Will states offer options to invest the savings contributed to an ABLE account?

Like state 529 college savings plans, states are offering qualified individuals and families multiple options to establish ABLE accounts with varied investment strategies. Each individual and family should project possible future needs and costs over time, and to assess their risk tolerance for possible future investment strategies to grow their savings. An ABLE account beneficiary may re-direct these funds twice in a calendar year if her needs or preferences change.

How is an ABLE account different than a special needs or pooled trust?

An ABLE account may provide more choice and control for the beneficiary and family as the funds can be used for a broad list of expenses and can be withdrawn quickly without prior approval. The cost of establishing an ABLE account is considerably less than either a Special Needs Trust (SNT) or Pooled Income Trust because an attorney is not needed to open an ABLE account, no trustee is necessary and the administrative fees are relatively low. While funds in SNTs and ABLE accounts are both disregarded for means-tested benefits like Medicaid and SSI, income from ABLE accounts is tax-free while SNTs are taxed at high rates. ABLE accounts also have disadvantages, such as the annual contribution limit, which is currently only $14,000. Determining which option is the most appropriate will depend upon individual circumstances. For many families, the ABLE account will be a savings mechanism used in addition to, rather than instead of, establishing a trust.

How is an ABLE account different from a 529 savings account?

ABLE accounts and 529 savings accounts both provide a tax-advantaged way to save for future expenses, but the funds in the accounts are for different purposes. Funds in regular 529 accounts must be used for qualified higher education expenses. ABLE accounts must be used for qualified disability expenses, which broadly include items like transportation, job training, health care and anything else intended to enhance the disabled individual's quality of life. Unlike funds in 529 accounts, funds in ABLE accounts up to $100,000 do not affect an individual's eligibility for SSI, Medicaid and other public benefits programs.

What possible changes to ABLE are being considered by the US Congress?

ABLE is a game-changing law for many individuals with disabilities and their families, it can be improved upon in many ways. On March 17, 2016, three bills were introduced in the 114th Congress to amend ABLE. The bills did not pass during the 114th Congress but were reintroduced in the 115th Congress on April 4, 2017. The bills are: 1) the **ABLE to Work Act** (S 818/HR 1896) would enable ABLE beneficiaries who work and earn income to save additional funds in their 529A (ABLE) account above the current annual maximum contribution limit ($14,000); the **ABLE Financial Planning Act** (S 816/HR 1897) would enable ABLE beneficiaries to rollover regular 529 accounts to 529A (ABLE) accounts up to the annual maximum contribution; and the **ABLE Age Adjustment Act** (S 817/HR 1874) would raise the age of onset of disability from 26 to 46. NDSS and other disability advocates will continue to fight to broaden access to ABLE accounts and to increase the amount of funds that can be saved in these accounts.

***For more information*: Please visit our NDSS website: http://www.ndss.org/ABLE and www.ndss.org/stateABLE**

For further questions about ABLE, please contact Sara Hart Weir, NDSS President, at sweir@ndss.org

UPDATED: May 10, 2017