THE STEPHEN BECK, JR. ACHIEVING A BETTER LIFE EXPERIENCE (ABLE) ACT

HISTORY, MECHANICS AND IMPLEMENTATION

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NATIONAL DOWN SYNDROME SOCIETY
AGENDA

• HISTORY OF THE ABLE ACT PASSAGE
• ABLE ACT CORE COMPONENTS
  • BASIC MECHANICS OF ABLE
  • IMPACT ON FEDERAL BENEFITS
  • TAX IMPLICATIONS
• STATE OF THE STATES
• FUTURE OF ABLE
• QUESTIONS AND ANSWERS
AN HISTORICAL NINE YEAR JOURNEY...
WHAT TOOK US FROM HERE TO THERE!

A KITCHEN TABLE IDEA

PRESIDENT’S DESK
MASSIVE CROSS-DISABILITY GRASSROOTS CAMPAIGN LED TO PASSAGE
HTTPS://WWW.YOUTUBE.COM/WATCH?V=31UJALNN6WA
POWER OF THE ONLINE PETITION....

HTTPS://WWW.CHANGE.ORG/ABOUT/HAPPENINGS/THE-ABLE-ACT
THE “ABLE ACT” STORY – A LONG, WINDING ROAD!

• 85% of the entire US Congress supported the ABLE Act
  • 381 out of 435 in the US House of Representatives
  • 78 out of 100 in the US Senate

• ABLE is one of the most significant pieces of disability legislation since the Americans with Disabilities Act (ADA) was passed 25 years ago
THE STEPHEN BECK, JR. ABLE ACT BECOMES THE LAW OF THE LAND

— DECEMBER 19, 2014
WHAT IS ABLE?

A FEDERAL LAW WHICH AMENDS THE FEDERAL TAX CODE TO ADD SECTION 529A IN ORDER TO:

CREATE A NEW OPTION FOR ELIGIBLE PEOPLE 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 AUTHORIZES STATES TO CREATE THEIR OWN ABLE PROGRAMS BUT DOES NOT REQUIRE THEM TO DO SO. A STATE MAY CREATE ITS OWN ABLE PROGRAM, OR RESIDENTS OF THAT STATE MAY OPEN AN ABLE ACCOUNT IN ANOTHER STATE.
## WHY ABLE?

<table>
<thead>
<tr>
<th>Challenges in US System</th>
<th>Opportunities for PWD</th>
<th>Intent of ABLE</th>
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<tbody>
<tr>
<td>People with disabilities can only have $2,000 in assets at any given time to remain eligible for Medicaid (our national healthcare system for people with disabilities) and Social Security Insurance (SSI)</td>
<td>People with disabilities are going to college – we have 250 postsecondary programs in the US now</td>
<td>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</td>
</tr>
<tr>
<td>Medicaid &amp; SSI do not provide all the necessary supports and services</td>
<td>People with disabilities are pursuing employment opportunities, especially in competitive and integrated settings, like no other time</td>
<td>The legislative intent of ABLE Accounts is to provide secure funding for disability-related expenses on behalf of designated beneficiaries with disabilities</td>
</tr>
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<td>We disincentivize “employment” in the US</td>
<td>People with disabilities want to work and can work</td>
<td>To supplement, but not supplant, benefits provided through private insurances, the Medicaid program, the supplemental security income program, the beneficiary's employment, and other sources</td>
</tr>
<tr>
<td>Sheltered Workshops and sub-minimum wage is legal, unemployment rates are very high in the US</td>
<td>People with disabilities are living longer and have so much to contribute to society</td>
<td></td>
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ABLE ACCOUNT MECHANICS

• EACH ELIGIBLE INDIVIDUAL MAY HAVE **ONLY ONE** ABLE ACCOUNT
• THE “DESIGNATED BENEFICIARY” IS THE ACCOUNT OWNER
• 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
• BENEFICIARY CAN REMAIN ON MEDICAID AT ALL TIMES BUT SOCIAL SECURITY BENEFITS CAN BE SUSPENDED AT $100,000
• FUNDS CAN ONLY BEEN SPENT ON QUALIFIED DISABILITY EXPENSES
WHO IS ELIGIBLE TO BE AN ABLE ACCOUNT BENEFICIARY?

TO BE ELIGIBLE, INDIVIDUALS MUST MEET TWO REQUIREMENTS:

1) AGE REQUIREMENT: ONSET OF DISABILITY BEFORE AGE 26; AND

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

• OBTAIN 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 IS A DISABILITY CERTIFICATION?

- A FORM THAT WILL BE APPROVED BY THE U.S. DEPARTMENT OF TREASURY/INTERNAL REVENUE SERVICE AND THE ABLE PROGRAM YOU SELECT

- YOU WILL HAVE YOUR DOCTOR FILL-OUT THE FORM TO CERTIFY THAT YOU HAVE “MARKED AND SEVERE FUNCTIONAL LIMITATIONS” THAT WOULD QUALIFY FOR AN ABLE ACCOUNT

- YOU CERTIFY (UNDER PENALTY OF PERJURY) THAT YOU HAVE OBTAINED THIS SIGNED FORM AND YOU KEEP THE FORM IN YOUR FILES AND PRODUCE IT IF AUDITED

Interim Guidance by U.S. Treasury/IRS in November 2015: designated beneficiaries can open an ABLE account by certifying, under penalty of perjury, that they meet the qualification standards, including their receipt of a signed physician’s diagnosis if necessary, and that they will retain that diagnosis and provide it to the ABLE program or IRS upon request.
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
- BASIC LIVING EXPENSES (WIDELY INTERPRETED PER NPRM ISSUED BY TREASURY IN JUNE 2015)
HOW ARE QUALIFIED DISABILITY EXPENSES TRACKED?

• NO PRIOR APPROVALS NEEDED
• YOU KEEP YOUR OWN FILES AND PRODUCE THEM IF AUDITED
• NON-QUALIFIED EXPENDITURES WILL BE SUBJECT TO TAX PENALTIES AND COULD POTENTIALLY JEOPARDIZE SOCIAL SECURITY BENEFITS

Interim Guidance by U.S. Treasury/IRS in November 2015: categorization of distributions is not required. ABLE programs do not need to make determinations of whether expenses are qualified, but designated beneficiaries need to categorize distributions.

Keep good records and all receipts!!!
WHAT IS THE IMPACT ON SSI AND MEDICAID?

MONEY IN THE ACCOUNT

(UP TO $100,000) DOES NOT COUNT “AGAINST” YOU FOR THE PURPOSES OF ESTABLISHING OR MAINTAINING ELIGIBILITY FOR FEDERAL MEANS-TESTED PROGRAMS, E.G., MEDICAID AND SSI

WHAT DOES THIS MEAN?

INDIVIDUALS CAN ACCUMULATE MORE THAN $2,000 IN ASSETS WITHOUT LOSING SOCIAL SECURITY INCOME BENEFITS.
<table>
<thead>
<tr>
<th>TYPE OF ASSET/EXPENSE</th>
<th>TREATMENT BY SOCIAL SECURITY ADMINISTRATION [Note: SSA issued guidance on these issues in its Programs Operations Manual System (POMS) in December 2015]</th>
</tr>
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<tbody>
<tr>
<td>Assets in ABLE account up to $100,000</td>
<td>Not treated as a resource; no impact on SSI eligibility</td>
</tr>
<tr>
<td>Assets in ABLE account over $100,000</td>
<td>Amount over $100,000 will be treated as a countable resource and subject to the $2,000 cap; eligibility goes into an indefinite period of suspense (but is not terminated)</td>
</tr>
<tr>
<td>Items or services purchased from ABLE account distribution that are qualified disability expenses</td>
<td>Not treated as a resource so long as identifiable</td>
</tr>
<tr>
<td>Distribution of funds from ABLE account that are intended to be used for a qualified disability expense</td>
<td>Not treated as a resource so long as identifiable; can hold indefinitely (except for housing expenses*)</td>
</tr>
<tr>
<td>Distribution for nonqualified disability expense</td>
<td>Treated as a resource; may also be subject to tax penalties; may jeopardize eligibility for SSI</td>
</tr>
</tbody>
</table>

Note: SSA will not be making determinations as to whether expenses are qualified or nonqualified when funds are withdrawn. It is up to the account holder to keep records and be prepared to produce them if audited.

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<td>Distributions for housing expenses</td>
<td>If spent in the same month as the distribution then not treated as a resource toward $2,000 cap</td>
</tr>
<tr>
<td></td>
<td>If retained into the following calendar month, then distribution is considered to be a resource toward $2,000 cap</td>
</tr>
<tr>
<td></td>
<td><em>(SSA takes a “snapshot” of resources on the first day of the calendar month and not again until the following month)</em></td>
</tr>
<tr>
<td>Earned income</td>
<td>If deposited into ABLE account, the funds are counted against SS benefits for the month in which it was earned; funds that accumulate in the ABLE account will not be counted against eligibility in subsequent months.</td>
</tr>
<tr>
<td>Disbursement into 2&lt;sup&gt;nd&lt;/sup&gt; account</td>
<td>So long as the funds are identified as ABLE funds, disbursement into cash or into a checking account will not count against the individual’s eligibility for SSI</td>
</tr>
<tr>
<td>Cash Gift</td>
<td>If the contributor deposits it directly into the ABLE account, will not count as a resource or earned income. Gift directly to the beneficiary and then subsequent deposit into the account will count toward resource determination.</td>
</tr>
</tbody>
</table>
ABLE & MEDICAID

• ABLE ASSETS ARE DISREGARDED IN DETERMINING MEDICAID ELIGIBILITY
• MEDICAID BENEFITS ARE NOT SUSPENDED IF THE ABLE ACCOUNT BALANCE EXCEEDS $100,000
• FOR MEDICAID BUY-IN PLANS, CAN PAY PREMIUMS FROM ABLE ACCOUNT FUNDS
• MEDICAID PAYBACK: ANY ASSETS REMAINING IN THE ABLE ACCOUNT WHEN A BENEFICIARY DIES MAY BE USED TO REIMBURSE A STATE FOR MEDICAID PAYMENTS MADE ON BEHALF OF THE BENEFICIARY AFTER THE CREATION OF THE ABLE ACCOUNT
  • ALL OUTSTANDING QUALIFIED DISABILITY EXPENSES WILL BE PAID OUT OF THE ABLE ACCOUNT FIRST, BEFORE THE STATE GETS REIMBURSED
  • STATES MAY OR MAY NOT EXERCISE THIS RIGHT TO REIMBURSEMENT
  • FOR PURPOSES OF THIS SECTION, THE STATE IS CONSIDERED A CREDITOR OF THE ABLE ACCOUNT, NOT A BENEFICIARY

Note that we are waiting for the Center for Medicare & Medicaid Services (CMS) to issue its guidance on ABLE.
IMPACT ON STATE AND LOCAL BENEFITS

• NOTE THAT THE FEDERAL ABLE LAW ONLY APPLIES TO FEDERAL MEANS-TESTED BENEFITS, NOT STATE AND LOCAL

• MANY STATES ADDED LANGUAGE INTO THEIR BILLS TO EXTEND TO STATE AND LOCAL PROGRAMS OR ARE AMENDING THEIR BILLS NOW

• BE WARY OF POSSIBLE ELIGIBILITY DISQUALIFICATION IF STATE ABLE BILL DOES NOT HAVE THIS LANGUAGE
TAX IMPLICATIONS

• CONTRIBUTIONS TO AN ABLE ACCOUNT ARE MADE WITH POST-TAX DOLLARS.

• ABLE ACCOUNT EARNINGS GROW TAX-FREE

• FEDERAL TAXATION: IN GENERAL, ABLE PROGRAMS ARE EXEMPT FROM TAXATION. DISTRIBUTIONS FROM ABLE ACCOUNTS FOR QUALIFIED DISABILITY EXPENSES ARE EXEMPT FROM TAXATION.

• STATE TAXATION: STATE TAX CONSEQUENCES WILL VARY.
  • ALL STATES HAVE DESIGNATED ABLE ACCOUNTS AS EXEMPT FROM STATE INCOME TAX
  • SOME STATES PROVIDE SIGNIFICANT TAX INCENTIVES FOR CONTRIBUTIONS TO 529 ACCOUNTS AND MAY PROVIDE SIMILAR INCENTIVES FOR CONTRIBUTIONS TO ABLE ACCOUNTS, SUCH AS DEDUCTIONS.
38 STATES + DC HAVE ENACTED THEIR OWN VERSIONS OF THE ABLE ACT. THOSE STATES ARE:

ALABAMA, ARKANSAS, CALIFORNIA, COLORADO, CONNECTICUT, DELAWARE, DISTRICT OF COLUMBIA, FLORIDA, HAWAII, ILLINOIS, INDIANA, IOWA, KANSAS, LOUISIANA (PRE-FEDERAL AND POST-FEDERAL), MAINE, MARYLAND, MASSACHUSETTS (PRE-FEDERAL), MICHIGAN, MINNESOTA, MISSOURI, MONTANA, NEBRASKA, NEVADA, NEW JERSEY, NEW MEXICO, NEW YORK, NORTH CAROLINA, NORTH DAKOTA, OHIO, OREGON, RHODE ISLAND, TENNESSEE, TEXAS, UTAH, VERMONT, VIRGINIA, WASHINGTON, WEST VIRGINIA, WISCONSIN

THESE STATES HAVE ABLE BILLS THAT ARE ACTIVE: ALASKA, ARIZONA, GEORGIA (PASSED AND AWAITING GOVERNOR’S SIGNATURE), KENTUCKY (PASSED AND AWAITING GOVERNOR’S SIGNATURE), MASSACHUSETTS (REVISION OF PRE-FEDERAL LEGISLATION), OKLAHOMA, PENNSYLVANIA (PASSED AND AWAITING GOVERNOR’S SIGNATURE)
STRUCTURE OF STATE ABLE PROGRAMS

- MUST BE A “QUALIFIED ABLE PROGRAM” AS DEFINED BY FEDERAL LAW
- MOST COMMON SETUP IS THROUGH STATE TREASURER’S OFFICE/STATE 529 ADMINISTRATOR
- SOME STATE HAVE SET UP ABLE ADVISORY BOARDS THAT INCLUDE DISABILITY COMMUNITY REPRESENTATIVES
- PROGRAM ADMINISTRATOR CAN HIRE 3RD PARTY ENTITIES TO SUPPORT AND RUN THE ABLE PROGRAM
- DIFFERENT PLANS FOR DIFFERENT NEEDS
- OPENING OF ACCOUNTS AND TRANSACTIONS WILL BE DONE ELECTRONICALLY
  - DEBIT CARDS, LOADED CHECK CARD, CHECKING ACCOUNTS ARE SOME OPTIONS FOR FLEXIBILITY
CHANGING ABLE PROGRAM LANDSCAPE

• **STATE RESIDENCY REQUIREMENT ELIMINATED IN DECEMBER 2015 (H.R. 2029, SECTION 303)**
  • A QUALIFIED INDIVIDUAL MAY NOW OPEN AN ABLE ACCOUNT IN HIS/HER OWN STATE OR IN ANOTHER STATE.

• **NEW STATE LEGISLATION PENDING IN SOME STATES TO REMOVE MANDATE TO DEVELOP STATE ABLE PROGRAM, “CLEAN UP” PREVIOUS ABLE BILLS AND OFFER ADDITIONAL INCENTIVES TO OPEN AN IN-STATE ABLE ACCOUNT (E.G., STATE INCOME TAX DEDUCTION).**

• **THREE NEW ABLE IMPROVEMENT BILLS INTRODUCED MARCH 2016**
  • ABLE TO WORK ACT (HR 4795/S2702)
  • ABLE FINANCIAL PLANNING ACT (HR 4794/S. 2703)
  • ABLE AGE ADJUSTMENT ACT (S. 4813/S. 2704)
WHEN WILL ABLE ACCOUNTS BE AVAILABLE?

• A FEW STATES ARE ALREADY FAR ALONG IN THEIR ABLE PROGRAM DEVELOPMENT AND WILL OFFER ACCOUNTS STARTING LATE SPRING 2016
  • OHIO & NEBRASKA EXPECTED MAY 2016
  • OTHERS TARGETING 2016: ILLINOIS (CONSORTIUM OF AT LEAST 9 STATES), VIRGINIA, FLORIDA, TENNESSEE, OREGON

• LIST OF STATE ABLE PROGRAM WEBSITES:
  HTTP://WWW.NDSS.ORG/ADVOCACY/LEGISLATIVE-AGENDA/CREATING-AN-ECONOMIC-FUTURE-FOR-INDIVIDUALS-WITH-DOWN-SYNDROME/STATE-ABLE-PROGRAMS/
  • REGISTER AT EACH INDIVIDUAL WEBSITE FOR ALERTS ON THOSE PROGRAMS

ABLE programs will differ in terms and offerings. They will not all be the same!
ABLE – WHAT’S NEXT?

- US TREASURY NEEDS TO RELEASE FINAL REGULATIONS (EXPECTED IN 2016)
- CMS, DEPARTMENT OF EDUCATION, DEPARTMENT OF HOUSING & URBAN DEVELOPMENT NEED TO RELEASE THEIR OWN GUIDELINES
- STATES NEED TO DEVELOP ABLE PROGRAMS AND MAKE ACCOUNTS AVAILABLE
- CONSUMERS NEED TO LEARN RULES OF ABLE ACCOUNTS, SHOP AROUND, CONSIDER WHETHER AN ABLE ACCOUNT IS RIGHT FOR THEIR FINANCIAL SITUATION.
QUESTIONS?

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FOR MORE INFORMATION, CHECK OUT NDSS’ ABLE WEBPAGES

WWW.NDSS.ORG/ABLE AND WWW.NDSS.ORG/STATEABLE