



# ***THE ABLE ACT: FREQUENTLY ASKED QUESTIONS***

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**For more information:** Please visit our NDSS website: <http://www.ndss.org/ABLE> and [www.ndss.org/stateABLE](http://www.ndss.org/stateABLE).

**For further questions about ABLE,** please contact Heather Sachs, NDSS Vice President of Advocacy & Public Policy, at [hsachs@ndss.org](mailto:hsachs@ndss.org).

## ***What is the ABLE Act?***

The Stephen Beck, Jr. Achieving a Better Life Experience (ABLE) Act ([P.L. 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 U.S. Representatives and 78 out of 100 U.S. Senators – 85% of the entire U.S. Congress.

## ***What is an ABLE account?***

An ABLE account is a tax-advantaged savings account that qualified individuals with disabilities will be able to 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 Social Security Income (SSI). Under ABLE, eligible individuals and families will be allowed to 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 ABLÉ 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 ABLÉ 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 ABLÉ account?***

Yes. The total annual contributions by all participating individuals, including the beneficiary himself, family and friends, is \$14,000 (the federal gift tax exclusion). The total limit of contributions that could be made to an ABLÉ 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 ABLÉ 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 ABLÉ funds.

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

Up to \$100,000 in ABLÉ account funds, these benefits are not affected. When an ABLÉ account exceeds \$100,000, the beneficiary will be suspended – but not terminated - - from eligibility for SSI benefits and 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 ABLÉ account exceeds \$100,000.

***What happens to funds in an ABLÉ 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 ABLÉ account. It is up to the individual state Medicaid agencies whether or not to seek reimbursement from ABLÉ 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 ABLÉ account will go to the beneficiary's estate.

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

Funds in ABLÉ 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 and other expenses to enhance the beneficiary's quality of life.

***Will ABLÉ 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 ABLÉ account beneficiaries access the funds in their ABLÉ accounts?***

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

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

No. The original federal ABLÉ law required individuals to open ABLÉ accounts in their home state, which meant that each state legislature was required to pass a state ABLÉ law in order to make ABLÉ accounts available to residents of all 50 states. However, the U.S. Congress amended ABLÉ 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 ABLÉ account in any state that offers a nationwide ABLÉ program.

***Are ABLÉ accounts currently available?***

Yes! To date, three states have launched nationwide ABLÉ programs: [Ohio](#), [Nebraska](#) and [Tennessee](#). Additionally, [Florida](#) has opened an ABLÉ program for Florida residents. At least 10 other states will be opening their ABLÉ programs soon.

***Where do I get information about various state ABLE programs?***

Many states have already created websites to provide information about their ABLE program development (the list can be found on our website at [www.ndss.org/stateable](http://www.ndss.org/stateable)). 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 will provide online applications for ABLE accounts, or families may work with a financial advisor to open an account.

***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).

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

Like state 529 college savings plans, states will offer qualified individuals and families multiple options to establish ABLE accounts with varied investment strategies. Each individual and family will need to 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 account will be considerably less than either a Special Needs Trust (SNT) or Pooled Income Trust because an attorney is not needed to open an ABLE account and the administrative fees will be low. 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 than 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 currently being considered by the U.S. Congress?***

There are currently three bills that have been introduced in the 114<sup>th</sup> Congress to amend ABLE: The **ABLE to Work Act** ([S. 2702/H.R. 4795](#)) 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** ([H.R. 4794/S. 2703](#)) will enable ABLE beneficiaries to rollover regular 529 accounts to 529A (ABLE) accounts up to the annual maximum contribution. The **ABLE Age Adjustment Act** ([H.R. 4813/S. 2704](#)) will raise the age of onset of disability from 26 to 46. Although ABLE is a game-changing law for many individuals with disabilities and their families, it can be improved upon in many ways. 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.