



A series of webinars providing the tools, information, and ideas for people with developmental disabilities and families to improve quality of life and effect change!

- **September 24: Making Inclusive Child Care a Reality**
- **October 15: Post Secondary Options for Transitioning Youth: What's Next after High School?**
- **November 19: Achieving a Better Life Experience (ABLE):
*New Opportunities to Save for Disability-Related Expenses***

Meet the Speakers

- Anne Blackfield, Director of Interagency Affairs, MDOD
 - Staffer on Maryland ABLE Task Force
- Heather Sachs, Vice President of Advocacy and Public Policy, National Down Syndrome Society
 - Member of Maryland ABLE Task Force
 - Founding Member of Maryland Down Syndrome Advocacy Coalition
- Stuart Spielman, Senior Policy Adviser and Counsel, Autism Speaks
 - Member of Maryland ABLE Task Force

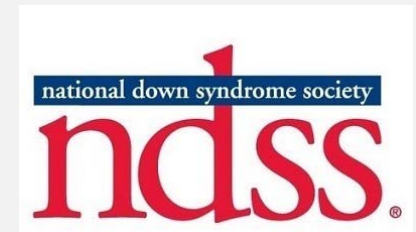


Achieving a Better Life Experience (ABLE): New Opportunities to Save for Disability-Related Expenses

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Maryland Department of Disabilities

Heather Sachs, Vice President of Advocacy and
Public Policy, National Down Syndrome Society

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Counsel, Autism Speaks



Agenda

- Who We Are
- History of the ABLE Act Passage
- ABLE Act Core Components
 - Basic mechanics of ABLE
 - How will beneficiaries/families use ABLE accounts
- State of the States
- Maryland ABLE
- Questions and Answers



An historical nine year journey...
What took us from here to there!

A kitchen table idea



President's desk



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



WHY ABLE?

Challenges in US System	Opportunities for PWD	Intent of ABLE
<p>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)</p> <p>Medicaid & SSI do not provide all the necessary supports and services</p> <p>We disincentivize “employment” in the US</p> <p>Sheltered Workshops and sub-minimum wage is legal, unemployment rates are very high in the US</p>	<p>People with disabilities are going to college – we have 250 postsecondary programs in the US now</p> <p>People with disabilities are pursuing employment opportunities, especially in competitive and integrated settings, like no other time</p> <p>People with disabilities want to work and can work</p> <p>People with disabilities are living longer and have so much to contribute to society</p>	<p>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</p> <p>The legislative intent of ABLE Accounts is to provide secure funding for disability-related expenses on behalf of designated beneficiaries with disabilities</p> <p>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</p>

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 must either create its own ABLE program or contract with another state in order for ABLE accounts to become available in that state.

ABLE Account Mechanics

- Each eligible individual may have **only one** ABLE account
- “Designated beneficiary” is the account owner
- Account must be established in the designated beneficiary’s state of residence, or in a contracting state
- 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, Social Security benefits can be suspended at \$100,000, but beneficiary can choose to save more
- 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
 - 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**
- Submit 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 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
- Basic Living Expenses (NPRM)
- Funeral and burial expenses
- Any other expenses to enhance quality of life



Expenditures for non-qualified expenditures will be penalized (tax and potential SSI penalties).

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 SSI benefits.

Mechanics: How do ABLE account assets impact eligibility for federal benefits?

ABLE assets will be disregarded or receive favorable treatment when determining eligibility for most federal means-tested benefits:

SOCIAL SECURITY BENEFITS* (*subject to SSA's final guidelines)

- SSI payments will be suspended if the beneficiary's account balance exceeds \$100,000 but SSI benefits (eligibility) will not be terminated. *Funds above \$100,000 will be treated as a resource.*
- Earned income: 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.
- Housing: Housing expenses (distributed from the ABLE account) will not be applicable with respect to the 1/3 SSI reduction, provided that the funds from the ABLE account are disbursed in the same calendar month as the housing expense was paid.
- Disbursement into 2nd account: so long as the funds are identified as ABLE funds, disbursement into cash or into a checking account will not be account against the individual's eligibility for social security related benefits.

Impact on Federal Benefits (cont.)

- Medicaid: ABLER assets are disregarded in determining Medicaid eligibility
 - Medicaid benefits are NOT suspended if the ABLER account balance exceeds \$100,000
 - Medicaid Payback: Any assets remaining in the ABLER account when a beneficiary dies, subject to outstanding qualified disability expenses, may be used to reimburse a state for Medicaid payments made on behalf of the beneficiary after the creation of the ABLER account
 - For purposes of this section, the state is considered a creditor of the ABLER account, not a beneficiary

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
- Be wary of possible eligibility disqualification if state ABLE bill does not have this language
- Maryland bill will have this language

Tax Implications

- Contributions to an ABLE account are made with post-tax dollars.
- *Federal taxation:* In general, ABLE programs are exempt from taxation. Distributions from ABLE accounts for qualified disability expenses are exempt from taxation. With certain exceptions, distributions not used for qualified disability expenses are taxable and subject to an additional 10% tax.
- *State taxation:* State tax consequences will vary. Some states provide significant tax incentives for contributions to 529 accounts and may provide similar incentives for contributions to ABLE accounts.

ABLE Accounts vs. Special Needs Trusts

ABLE ACCOUNT	SPECIAL NEEDS TRUST
Low cost to set-up	Cost \$2,000 - \$5,000 to set up
Tax-free growth	Earnings will be taxed
No effect on means-tested benefits up to \$100,000	No effect on means-tested benefits
Funds must be used for qualified disability expenses (or else subject to penalty)	Funds can be used for broader supplemental expenses
Account owner = beneficiary	Account owner is family member (not beneficiary)
May provide frequent disbursements	Long term investment
Remaining funds after death may go to Medicaid	Remaining funds go to estate/probate
Must be eligible individual with qualified disability prior to age 26	No restrictions on type of disability or age of onset

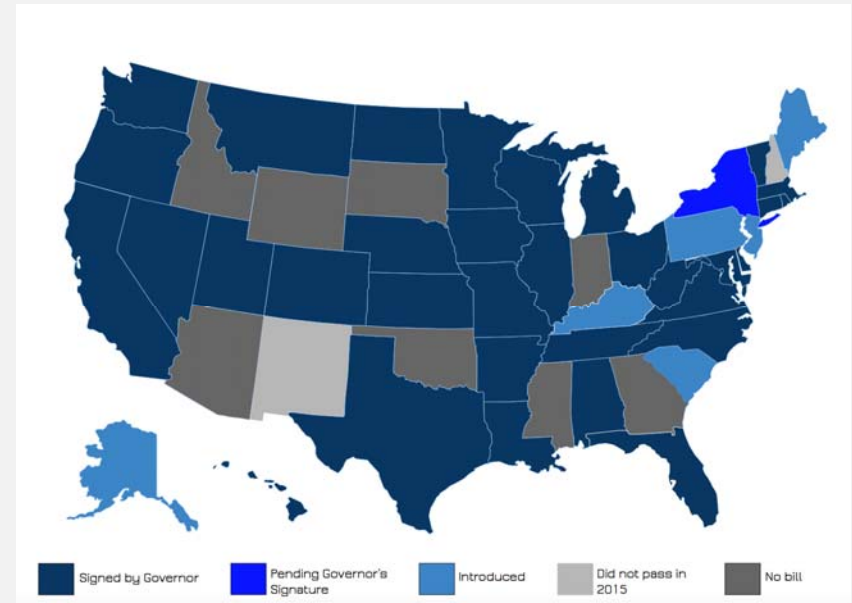
They are not mutually exclusive!!

State of the States

- 34 states have enacted their own versions of the ABLE Act and should be in the process of setting up state ABLE programs. Those states are:

Alabama, Arkansas, California, Colorado, Connecticut, Delaware, District of Columbia (enacted with expiration date of 1/13/16 - permanent legislation is pending), Florida, Hawaii, Illinois, Iowa, Kansas, Louisiana (pre-federal and post-federal), Maryland, Massachusetts (pre-federal), Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, North Carolina, North Dakota, Ohio, Oregon, Rhode Island, Tennessee, Texas, Utah, Vermont, Virginia, Washington, Wisconsin, and West Virginia.

- **New York** has passed an ABLE bill and is awaiting Governor's signature
- These states have ABLE bills filed that are still active: **Kentucky (prefiled), Maine, Massachusetts (revision of pre-federal legislation), New Jersey and Pennsylvania.**
- These states have coalitions actively working to introduce ABLE legislation: **Arizona, Georgia, Indiana, Oklahoma**



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
- Other government entities (e.g., Dept. of Health, Department of Disabilities)
- Program administrator can hire 3rd party entities to support and run the ABLE program



Federal ABLER Implementation – What's Next?

- US Treasury needs to release final regulations
- Social Security Administration and Center for Medicaid Services need to release their own guidelines
- Legislative/Technical Opportunities and Fixes (i.e., residency requirement)
- New legislation to increase assets in ABLER Accounts
- Each state needs to develop its ABLER program and make accounts available
 - NO STATE IS YET OFFERING ABLER ACCOUNTS; THEY ARE IN VARIOUS STAGES OF ABLER PROGRAM DEVELOPMENT
 - ABLER ACCOUNTS WILL LIKELY BECOME AVAILABLE IN A HANDFUL OF LEADING STATES BY MID-2016



MARYLAND ABLE

- During the 2015 legislative session, Maryland passed SB 761, which created the Task Force on Maryland's ABLE Program
- Task Force's Mission:
Develop a plan for implementing the Maryland ABLE program and study issues related to the Maryland ABLE program, including writing a report and making legislative recommendations about:
 - (1) Structure of the program
 - (2) Which agency is in charge of the program
 - (3) Staffing and funding needs (including how Maryland will pay for start-up)
 - (4) Membership of the Board that will provide oversight for the program
 - (5) State tax benefits



TASK FORCE TIMELINE

Recommendation Timeline	Implementation Timeline
<ul style="list-style-type: none">• The Task Force is not authorized to create or implement the ABLE program, just make legislative recommendations.• The Task Force's report and legislative recommendations are due on or before December 1, 2015 to the General Assembly	<ul style="list-style-type: none">• This means that the earliest any legislation creating an ABLE Act program in Maryland can be passed is between January to April 2016.• There may also need to be additional time to implement/set up the actual program.

TENTATIVE recommendations of the MD ABLE Task Force

- Place College Savings of Maryland “in charge” of the program, but involve Maryland Department of Disabilities for the disability certification, qualified expenses, and reporting piece
- Add Secretary of the Department of Disabilities to the College Savings Board
- Request general funds to provide additional staff to support this program within College Savings/MDOD
- Have tax breaks that mirror those offered to 529 college savings account holders



WHEN will ABLE accounts be available?

- A few states are already far along in their ABLE program development and may offer accounts starting Spring 2016
- Most states are still in early stages of development and will offer accounts in mid-late 2017
- Others may not be available until 2017 or later
- WHEN WILL MARYLAND OFFER ABLE ACCOUNTS????

Maryland ABLE Implementation: What's Next?

- Task Force Report will be submitted to General Assembly by December 1st deadline
- An ABLE bill to set up the MD ABLE Program will be introduced in 2016 legislative session
- After the bill is enacted, the MD College Savings Plan, MD Dept. of Disabilities and other stakeholders will meet to set up the ABLE program
- **ABLE ACCOUNTS WILL BECOME AVAILABLE!**
 - *Tentative Target Date: October 1, 2017*

Questions? Want More Information?

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