

What is the ABLE legislation?

ABLE is federal legislation that would allow families and individuals to save for the disability-related expenses of a disabled individual in a federal tax-advantaged account. The legislation is modeled after the 529 education savings program legislation and provides similar federal income tax advantages – contributions grow tax deferred and are tax exempt when used for “qualified disability expenses.” ABLE savings programs would need to be “established and maintained” by a state.

Significant provisions:

With the revision creating a new IRC section (529A) much of the confusion and concern of the 529 industry caused by the original bills has been eliminated.

The revised ABLE legislation still requires ABLE programs to be established and maintained by a state. States will need to pass their own enabling legislation to offer an ABLE program. For states that wish to offer such programs, the most effective and efficient way to do so is likely to be building on the infrastructure of the current 529 college savings program. While ABLE is modeled on the 529 structure, there are some significant differences that states should be aware of in considering whether and how to implement ABLE.

1. Eligible individual. An eligible individual is one who is:
 - a. disabled, defined as being entitled to benefits based on blindness or disability under Title II or XVI of the Social Security Act, or has a “disability certification” filed with the Treasury Secretary; and
 - b. became disabled before age 26.
2. Disability certification. A disability certification must state that “the individual has a medically determinable physical or mental impairment, which results in marked and severe functional limitations, and which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months,” or is blind. The certification must include the diagnosis and be signed by a physician
3. Yearly eligibility. The beneficiary must be disabled (including having a certification, if needed) in each year in which a contribution is made.
4. Account Owner. The beneficiary is the account owner.
5. One account. There may be only one account for a beneficiary. If there is a second account, only the one that is established first can be treated as an ABLE account.
6. Home state. The account must be opened in the beneficiary’s state of residence or a state contracting with the home state.
7. Change of beneficiary. The beneficiary can be changed to a disabled “member of the family” of the old beneficiary. But that is defined more narrowly than for 529 college savings program to be only siblings and step-siblings.
8. Contribution limit. Annual contributions per beneficiary (not per contributor) are limited to the federal gift tax limitation (currently \$14,000). The maximum contribution amount is the same as set by the state for its 529 college savings plan.

9. Investment direction. The beneficiary is allowed to change the investments twice in a calendar year. (NOTE: the legislation provides this same flexibility to 529 college savings accounts).
10. Distributions. Distributions are not taxed if used for “qualified disability expenses” which include expenses for:
 - a. Education
 - b. Housing
 - c. Transportation
 - d. Employment training and support
 - e. Assistive technology and personal support services
 - f. Health
 - g. Prevention and wellness
 - h. Financial management and administrative services
 - i. Legal fees
 - j. Expenses for oversight and monitoring
 - k. Funeral and burial expenses
 - l. Other expenses approved by the Treasury Secretary
11. Tax penalty. There is a 10% federal tax penalty for distributions not used for qualified disability expenses or if there is a change of beneficiary to an individual who is not disabled.
12. As with 529s, the penalty is not imposed for distributions made after the death of the beneficiary.
13. But in ABLE the penalty can be avoided even though the beneficiary does not have qualified expenses if contributions are distributed along with their earnings before the federal tax filing deadline for the year in which the contributions were made.
14. Exclusion from means-tested federal programs. ABLE accounts are excluded from being counted for means-tested federal programs except for supplemental security income programs: (1) distributions for housing expenses are not excluded; and (2) account values over \$100,000 are counted and could result in the suspension but not termination of benefits – but not Medicaid eligibility.
15. Medical assistance claim. Upon the death of the beneficiary, the state can make a claim for funds in the account up to the net amount the state paid in medical assistance.
16. Reporting. Programs must make reports, including reports
 - a. at the time an account is established, to the Treasury Secretary giving the name and state of residence of the beneficiary;
 - b. as specified by the Treasury Secretary, on contributions, distributions, return of excess contributions, and such other matters as requested; and
 - c. monthly, to the Commissioner of Social Security, giving information on distributions and account balances from all ABLE accounts.
17. Medicaid claw back. Funds remaining in the account after the death of the beneficiary can be claimed by Medicaid to reimburse it for benefits provided to the beneficiary.

The Achieving a Better Life Experience Act (ABLE Act)

Individuals with disabilities face enormous and unimaginable financial struggles, yet do not enjoy the same financial planning tools as other Americans who are planning for college and retirement.

The ABLE Act (H.R. 647/S. 313), introduced in the 113th Congress by Congressman Crenshaw and Senator Bob Casey (D-PA), is federal legislation that aims to ease financial strains faced by individuals with disabilities by making tax-free savings accounts available to cover qualified expenses such as education, housing, and transportation.

The U.S. House of Representatives approved Congressman Crenshaw's legislation on December 3, 2014 by a vote of 404-17 and sent the measure to the United States Senate for consideration. The bill's provisions were included in Tax Extenders legislation, which passed the Senate by a vote of 76 - 16 on December 16, 2014. President Barack Obama signed the legislation into law on December 19, 2014.

With ABLE in place, individuals with disabilities would no longer have to stand by and watch others use Internal Revenue Service-sanctioned tools to lay the groundwork for a brighter future. The ABLE Act would open the door to a brighter future for millions of Americans.

National Organizations Push for ABLE Passage

Urge House, Senate Leadership to Bring ABLE to a Vote

On behalf of 19 national organizations, the Collaboration to Promote Self-Determination (CPSD), has urged top House and Senate leadership to bring the ABLE Act to a vote in both chambers before the end of the 113th Congress.

Those organizations who have signed a November 20, 2014 CPSD letter to Senate Majority Leader Harry Reid, Senate Minority Leader Mitch McConnell, House Speaker John Boehner, House Minority Leader Nancy Pelosi, House Majority Leader Keving McCarthy, and House Minority Whip Steny Hoyer are:

- * Association of University Centers on Disabilities
- * Autistic Self-Advocacy Network
- * Autism Society
- * Autism Speaks
- * EveryLife Foundation for Rare Diseases
- * Jewish Federations of North America
- * Lutheran Services in America Disability Network
- * Muscular Dystrophy Association
- * National Association of State Directors On Developmental Disabilities Services
- * National Down Syndrome Congress

- * National Down Syndrome Society
- * National Federation of the Blind
- * National Fragile X Foundation
- * Sibling Leadership Network
- * National Organization of Nurses with Disabilities
- * Parent Project Muscular Dystrophy
- * Physician Parent Caregivers
- * TASH



House Co-Sponsors of ABLE Act



Senate Co-Sponsors of ABLE Act

What People Are Saying

What is the current thinking about the legislation?

Congressman Crenshaw on the positive impact the *ABLE Act*:

"No longer would individuals with disabilities have to stand aside and watch others use IRS-sanctioned tools to lay the groundwork for a brighter future. They would be able to as well, and that's an accomplishment we can all be proud of."

Senator Robert Casey, Jr. (D-PA) on how the bill will help Pennsylvanians and all Americans:

"Pennsylvanians with disabilities face incredible challenges every day. They shouldn't be penalized simply for trying to save for their future. Congress should use current programs to ensure America's most vulnerable have the same opportunities that are provided to all citizens."

Peter V. Berns, CEO of The Arc, on the improvements to the quality of life that would result from the *ABLE Act*:

"The *ABLE Act* is about giving people with intellectual and developmental disabilities the opportunity to achieve their dreams. Families are looking for ways to finance things like an apartment, or a ride to work, or additional educational opportunities after high school that don't jeopardize other necessary services provided by federal programs. This bill creates a tool for families that could lead to a more independent and fulfilling life."

Bob Wright, co-founder of Autism Speaks, on how the legislation will provide economic peace of mind to those impacted by disabilities:

"This is important, common-sense legislation that will provide an incredible financial boost to families affected by autism and other disabilities who are struggling to pay for critical services. If we allow families to save tax-free for college, it is only fair that they be permitted to save to meet the needs of all their children."

Jeffrey Leach on how the *ABLE Act* will help his young daughter Sydney, who was born with Down Syndrome:

"The *ABLE Act* will allow Sydney to earn a salary and put part of that money into an ABLE savings account. It will also allow her family to give her monetary gifts that may be used for future expenses. This account will have a tremendous effect on Sydney's future and we are so appreciative of Representative Crenshaw and all of the members of Congress who have signed on as co-sponsors of this bill."

Frequently Asked Questions About the ABLE Act

What is the purpose of this legislation?

American families currently enjoy tax incentives to save for significant future expenses such as college, retirement, and other life events. People with severe disabilities face significant challenges of their own, but they do not have an equivalent savings instrument to save for their future.

The ABLE Act aims to provide families of a severely disabled child with some peace of mind by allowing them to save for their child's long-term disability expenses in the same way that families of able bodied children can currently save for college through popular 529 investment plans.

The ABLE Act empowers disabled individuals and their families to save their own money in a 529A (or ABLE) account for the purpose of maintaining health and independence with a goal of allowing those individuals to transition away from government assistance and benefits.

What is a 529 Education Savings Account?

A 529 Education Savings Plan is a tax- savings vehicle operated by a state or educational institution designed to help families set aside funds for future college costs. Note: A 529 Education Savings Plan is a tax-free savings account already in existence. The ABLE Act allows states to create a new type of 529 Education Savings Plan called the 529-ABLE Account.

What is a 529-ABLE Account?

A 529-ABLE account or 529A, allows for an account within Section 529 of the Internal Revenue Code of 1986, and is a tax-free savings vehicle operated by a state for disability-related expenses that will supplement, but not supplant, benefits provided through private insurances, the Medicaid program, the supplemental security income program, the beneficiary's employment, and other sources.

Contributions are in after-tax dollars but earnings would grow tax-free just like with 529 college savings accounts (Roth style). Withdrawals must be for qualified expenses, or else the earnings portion would be subject to regular income tax and a 10% penalty (state penalties could also apply).

529A accounts would be administered on a voluntary basis by the States in a similar manner as 529 college savings accounts. Families would have a choice of investment options. As with 529 college savings accounts, the range of investment options available for ABLE accounts would be determined by the States.

Eligibility for an ABLE account cannot be used to qualify for supplemental security income (SSI) or Medicaid.

ELIGIBILITY DETERMINATION

What are the age requirements for individual beneficiaries?

Individual must have been diagnosed with a qualified disability prior to age 26 to qualify for an ABLE account.

Are 529-ABLE accounts available to any individual with a disability? How is the term disability defined?

How to Qualify for an ABLE Account:

Any individual who has been diagnosed with a disability before the age of 26 years old, and who is receiving, deemed to be, or treated as receiving supplemental security income benefits or disability benefits under Title II of the Social Security Act.

OR

Any individual who has been diagnosed with a disability before the age of 26 years old, who has a medically determined physical or mental impairment, which results in marked and severe functional limitations, and which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 month or is blind, and provides a copy of their diagnosis signed by a physician.

TAX QUESTIONS

Are there any limits to the amount of funds that can be contributed to an ABLE Account during a certain period of time?

Annual contribution limit: Total contributions cannot exceed the gift tax exclusion in a single year, this is currently set at \$14,000 each year.

Lifetime Contribution Limits: Aggregate contributions to an ABLE account would be subject to an overall limit matching the State limit for Section 529 educational accounts.

Are there any restrictions on the number of 529-ABLE accounts that can be used for one individual beneficiary?

Qualified beneficiaries can have only ONE ABLE account.

Do beneficiaries of 529-ABLE accounts pay any interest or taxes (federal or state) on assets accumulated within the account?

There is no federal taxation on funds held in a 529-ABLE account. Assets can be accumulated, invested, grown and distributed from federal taxes. Contributions to the accounts are made on an after-tax basis, but assets in the account grow tax and are protected from tax as long as they are used to pay qualified expenses. Individual states will ultimately determine how the funds are treated for state taxation purposes.

Are there any tax benefits for those who contribute to a 529-ABLE account?

No federal tax benefits are provided under traditional 529 Education Savings Plans or 529-ABLE account; however, individual states may provide tax benefits.

Can I open multiple ABLE accounts in different states like current 529 Educational Accounts?

No. Qualified individuals or their families must open ABLE account in the state in which the beneficiary resides. If the state declines to offer 529 ABLE accounts, the state may opt into a memorandum of understanding with other states to provide ABLE accounts.

ALLOWABLE EXPENSES

What are the qualified expenses that the funds accumulated in a 529-ABLE account can be used for?

Qualified disability expenses are any expenses made for the designated beneficiary related to their disability, 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.

Are there any penalties for using funds accumulated through 529-ABLE account for non-qualified expenses?

Such distributions will be subject to a 10% penalty on the earnings portion of the non-allowable expense. In addition, all earnings would be subject to ordinary income tax.

ASSET ACCUMULATION & BENEFITS DETERMINATION

Can an individual with a disability work and maintain a 529-ABLE account?

Yes, as long as the individual meets the definition of disability irrespective of whether s/he is engaged in substantial gainful activity.

Can an individual with a disability contribute to these accounts from wages earned?

Yes, after required taxes are paid, earnings may be contributed to the account, just as any other contribution. For administrative purposes any contributions made by someone other than the account owner are treated as if the contribution was from the account owner.

Do assets accumulated in 529-ABLE account count toward asset/income means-testing for determining eligibility into Federal benefits programs?

Assets up to \$100,000 held in 529-ABLE account are specifically excluded from the income and assets tests used to determine eligibility. This includes the current SSI eligibility requirements that prohibit beneficiaries from having over \$2000 in assets at any one time.

Do assets accumulated in 529-ABLE Accounts count toward asset/income means-testing for determining eligibility in State benefits programs?

The ABLE Act does not prohibit states from treating the accounts differently for programs funded FULLY with state funds.

OWNERSHIP, CONTROL & ADMINISTRATION OF ABLE ACCOUNTS

Who controls the funds in an ABLE Account?

529 ABLE accounts are established in the beneficiary's name, contributions into an ABLE account could be made by any person. 529 ABLE accounts may be withdrawal for qualified expenses from the beneficiary or a family member or individual on the account.

What is the administrative process for opening and maintaining an ABLE Account?

Each state will have its own process for establishing 529-ABLE accounts. The process should be identical to the process used to establish a 529 Education Savings Plan. Each state will need to reform their current process to take into account the eligibility provisions to establish a 529-ABLE Account.

What are the administrative fees for opening and maintaining an ABLE Account?

Fees will vary by the state.

TREATMENT OF 529-ABLE ACCOUNTS UNDER CERTAIN FEDERAL PROGRAMS

If a 529-ABLE beneficiary is receiving SSI benefits, how will assets in the beneficiary's 529-ABLE affect his/her benefits?

If the beneficiary is receiving Supplemental Security Income (SSI) benefits, when the assets in the account total \$100,000, any monthly SSI benefits will be placed in suspension. If the assets in the ABLE account drop back below \$100,000, the SSI benefit suspension ceases and any SSI benefit resumes. The beneficiary will not have to reapply for SSI benefits once the account drops back below the \$100,000 threshold.

Can the beneficiary of a 529-ABLE account lose his/her Medicaid benefits?

No. ABLE account beneficiaries do not lose Medicaid eligibility based on assets in their ABLE account or suspension of SSI benefits.

What is the Medicaid Payback Provision?

In the event the qualified beneficiary dies (or ceases to be an individual with a disability) with remaining assets in an ABLE account are first distributed to any State Medicaid plan that provided medical assistance to the designated beneficiary. The amount of any such Medicaid payback is calculated based on amounts paid by Medicaid *after* the creation of the ABLE Account.

ISSUES PERTAINING TO ACCOUNT ROLL-OVERS

Can pre-existing savings accounts already established for an individual with a disability be rolled over into a 529-ABLE Account?

No, beneficiaries cannot roll over funds from a 529 Educational Account into a 529 ABLE Account.

Upon moving to another state or the death of a beneficiary, can 529-ABLE accounts be rolled over?

Amounts in an ABLE account could be rolled over to another account for the same beneficiary- if he or she moves to another state. There wouldn't be tax liability for this rollover contribution. In addition, 529-ABLE accounts can be rolled over to an eligible sibling of the beneficiary without a taxable event if the new beneficiary is also a qualified individual.

From THINKPROGRESS online news

In a rare show of bipartisanship, the House recently passed what's considered "the broadest legislation to help the disabled in nearly a quarter century," giving families and advocates a glimmer of hope in the ongoing fight to meet the needs of a vulnerable population.

The bill, titled the Achieving A Better Life Experience (ABLE) Act, would allow states to establish a program modeled after tax-free college saving accounts. If enacted, families would be able to deposit up to \$14,000 annually in accounts at financial institutions with which they would pay for long-term needs, including education, transportation, and health care.

People older than the age of 25 qualify if they are diagnosed with a disability that creates "marked and severe functional limitations." In all, ABLE account holders would be able to accrue \$100,000 in savings without losing eligibility for Social Security and Medicaid, a significant jump in the current asset limit of \$2,000.

"Today is a tremendous day for people with disabilities," William Daroff of the Jewish Federations of North America, which co-chairs the Jewish Disability Network, told Reuters after the House approved the measure. "We look forward to working with President

"We look forward to working with President Obama and the 74 senators co-sponsoring the ABLE Act, and we urge lawmakers to move forward with this bill."

If it passes through the Senate, ABLE will stand on the shoulders of the Americans with Disabilities Act (ADA), a law enacted in 1990 that provides legal safeguards against discrimination for the disabled. A key part of the legislation required that employers accommodate the needs of their disabled employees, except in cases where doing so would cause "undue burden."

Today, the ADA protects more than 56 million people — nearly one-fifth of the American population — with a disability, nearly half of whom have received a "severe" designation. In 2008, the scope of disabilities under the legislation broadened to include loss of vision, speech impediments, developmental and mental disorders, immobility, and debilitating health issues. Some contingent of disability advocates, however, argue that categorizing some conditions — autism and deafness, for example — enables discrimination and social prejudice against those groups.

Nonetheless, disabled people still face financial hardship, even with government programs for the group accounting for more than 12 percent of the federal budget. Although disability insurance replaces a portion of a disabled person's income when they're no longer able to work, it doesn't cover the cost of medical care and long-term services, affecting populations older than the age of 65. Private insurance and Medicare also don't do much in providing long-term care, with coverage for an extensive stay in a nursing home to require that a person be hospitalized for that condition 100 days prior

Even with Supplemental Security Income, more than 70 percent of families with one or more disabled children have difficulty paying for food, housing, and utilities. Data compiled by the National Council on Disability shows that disabled Americans are three times as likely to live in poverty as their non-disabled counterparts.

For disabled adults, part of that income disparity stems from an inability of many to enter the workforce, often times as a result of their condition. Less than 20 percent of disabled people hold jobs, compared to more than two in three non-disabled people.

While the ADA has included the disabled among the protected classes, some people argue that the bill hasn't been effective in holding employers accountable to creating more inclusionary hiring practices and paying their disabled employees fairly. For example, a special wage certificate under Section 14(c) of the 1938 Fair Labor Standards Act allows employers to pay their disabled workers significantly less than the minimum wage.

"This is the biggest labor scam in this country right now that nobody's doing anything about," former New York Gov. David Paterson, who is legally blind, told the Press & Sun-Bulletin earlier this year. "It reminds me of the attitude about slavery, where if you try to stick up for the workers they try to tell you 'Oh they're doing what's best for them.'"

The bipartisan coalition of congressmen and women — 404 members in total — that voted for ABLE believe that the legislation would do what's best for America's disabled population by providing a means of financial freedom and stability. Earlier this week, Sens. Bob Casey (D-PA) and Richard Burr (R-NC) led a rallying cry among the lawmakers in their chamber to pass ABLE, which now has 74 sponsors.

While ABLE's path to the White House looks clear now more than ever, it has its share of critics — including the right-wing think tank the Heritage Foundation, whose members argue that the bill could encourage Social Security fraud and abuse.

Tags: