

PENNSYLVANIA
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TREASURY
PA ABLE PROGRAM

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Background on ABLE Legislation

Federal ABLE Act

- ❖ Signed into law on December 14, 2014 after many years of advocacy
- ❖ Did not create ABLE savings accounts but authorizes states to create their own programs
- ❖ Federal IRS regulations are proposed but not final, so what we know now is subject to change when the regulations are final.
- ❖ Some federal agencies, such as the Center for Medicare and Medicaid Services have not yet provided any guidance on how ABLE accounts will impact their services, leaving a number of unanswered questions.



Background on ABLE Legislation

Pennsylvania ABLE Act

- ❖ Introduced as Senate Bill 879 which passed the House and Senate unanimously
- ❖ Signed into law on April 18, 2016, by Governor Tom Wolf
- ❖ Bill gives PA Treasury the flexibility to comply with federal law without the need to amend the state statute as the federal law changes
- ❖ Bill was widely supported by the disability community



Background on ABLE

The purposes of ABLE is to:

- ❖ Encourage and assist individuals and families in saving private funds for supporting individuals with disabilities to maintain health, independence, and quality of life
- ❖ To provide secure funding for disability-related expenses that will supplement but not replace benefits from private insurance and governmental programs



What is ABLE?

A savings program specifically designed for individuals with disabilities. It allows them to:

- ❖ Plan for a financially secure future
- ❖ Save to pay for disability-related expenses
- ❖ Have assets without losing federal and state means-tested benefits (with a few exceptions)
- ❖ Receive significant federal and state tax advantages
- ❖ Be more financially independent by controlling the account



Who do we anticipate will use ABLE?

ABLE will serve a diverse group of people with many different savings needs

- ❖ Individuals with disabilities who have the ability to manage their own finances and want to save for a variety of expenses
- ❖ Parents of minor children or adult children who do not have the legal capacity to contract and who want to save to cover their children's day-to-day or extraordinary expenses
- ❖ Parents who want to save for when they are no longer able to support their adult children with disabilities

Any individual with an eligible/qualifying disability (or their family) will benefit from the tax advantages of these programs



Who May Own an Account?

Two requirements:

1. Have a qualifying disability

- a. Be eligible for Supplemental Security Income (SSI) or Social Security Disability Insurance (SSDI)
- OR
- b. Be able to self-certify that they meet certain disability standards

AND

2. Disability started before 26th birthday



Who May Own an Account?

First, what are **Supplemental Security Income (SSI)** and **Social Security Disability Insurance (SSDI)**?

- ❖ SSDI and SSI are federal programs that provide monthly cash benefits to individuals who have serious disabilities that cause severe functional limitations (children) or an inability to work (adults).
 - ❖ If the individual has **low-income** and assets (up to \$2,000), they may be eligible for **SSI**.
 - ❖ If the individual has a significant enough **work history**, they may be eligible for **SSDI**. There are no income or asset limitations on a SSDI recipient.
 - ❖ An individual may receive both
- ❖ Not everyone with a disability will qualify for either of these benefits. The disability must meet a certain level of severity.



Who May Own an Account?

Qualifying disability, self-certification explained

In order to self-certify, the requirements are:

- 1) Blindness or physical or mental impairment **AND**
- 2) The blindness or impairment must result in “marked and severe functional limitation” **AND**
- 3) The blindness or impairment must “have lasted or is expected to last 12 continuous months or result in death” **AND**
- 4) Written diagnosis signed by a physician who meets Social Security Administration (SSA) criteria. The diagnosis does not need submitted with enrollment.

Note: Generally speaking, a diagnosis alone is not enough. Must be accompanied by severe functional limitations. For example Multiple Sclerosis may be asymptomatic or Autism may be mild.



Who May Own an Account?

The second requirement is the disability has to have started before the beneficiary's 26th birthday.

- ❖ This simply states that the onset of the disability had to have occurred before the beneficiary turned 26.
- ❖ The diagnosis may occur later, but it must be determined that the disability occurred beforehand.
- ❖ The beneficiary can be any age when the account is opened.



Who May Open an Account?

- ❖ If the eligible individual is:
 - An adult (18 or older) with legal capacity to contract, he or she must open the account. But can later designate someone else to have signature rights over the account.
 - A child or an adult who lacks the legal capacity to contract, a person acting in a fiduciary capacity can open the account.
 - Proposed IRS regulations permit that person to be a parent, guardian, power of attorney
 - PA law would allow that person to be a trustee, SSA representative payee, or designee of parent or guardian – if permitted by the final IRS regulations.
- ❖ PA law specifies that the fiduciary who opens the account retains authority after child becomes an adult.



Certification, Recertification, and Remission

Federal law states an individual needs to be eligible in each tax year:

- ❖ Imposes a requirement to be recertified eligible each year
- ❖ Requirement can be satisfied if an individual self-reports when they are no longer eligible
- ❖ Eligibility is maintained until the end of the tax year
- ❖ Neither Treasury nor any other agency will be reviewing certification of eligibility. If audited by the IRS, an individual will have to produce this documentation to support eligibility

When an individual is no longer eligible:

- ❖ Account can remain open
- ❖ No additional contributions can be made to the account
- ❖ Any withdrawals taken from the account are non-qualified



Federal ABLE Benefits

- ❖ ABLE assets not counted in **ANY** federal means-tested benefits (limited exception for SSI).
- ❖ Tax Benefits:
 - Contributions are after tax
 - Earnings are not taxed while growing in the account
 - Earnings are not taxed when withdrawn and used for “qualified disability expenses”

Keep Documentation (it is up to the Account Owner to prove the withdrawals are qualified if audited)
- ❖ Limited Federal Bankruptcy Protection
 - For more details on this, please visit PAABLE.gov



What are “Qualified Disability Expenses?”

- ❖ Education
- ❖ Housing (some limitations)
- ❖ 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

Proposed IRS regulations includes “basic living expenses”



Significance of Being Qualified or Non-Qualified

❖ Tax consequences

- ❖ Withdrawals used for “**qualified disability expenses**” are not subject to taxes.
- ❖ The earnings portion of withdrawals used for “**non-qualified expenses**” are subject to income tax at the taxpayer’s rate plus an addition 10%.

❖ Consequences for SSI recipients

- ❖ Withdrawals intended to be used for “qualified disability expenses” do not impact SSI benefits
- ❖ Withdrawals for non-qualified expenses can impact SSI benefits unless used in the same month the withdrawal is taken.

❖ Who decides if an expense is qualified or non-qualified?

- ❖ The account owner – subject to an IRS audit or review by the Social Security Adm.



Federal Account Requirements and Restrictions

- ❖ Only one ABLE account per beneficiary may be opened
- ❖ Beneficiary is considered the account owner even if they are a minor or an adult who does not have the legal capacity to contract
- ❖ Any contribution by others to an ABLE account are a gift to the beneficiary
- ❖ Beneficiary may be changed to sibling who is an eligible individual with a disability
- ❖ Change plans once in 12 months (rollovers to another ABLE program or beneficiary)
- ❖ Change the account investment options twice per year



Interaction with SSI

- ❖ ABLE account value over \$100,000, the excess will be counted as an asset
 - SSI allows a recipient to have up to \$2,000 in assets. Once they exceed this, they are no longer eligible for SSI
 - This means if the ABLE account value is \$100,000 and they have less than \$2,000 in other assets, they are still eligible
 - If they exceed a \$100,000 in ABLE and have \$2,000 or less in other assets they:
 - Have their SSI benefits suspended. Not terminated.
 - Once they fall below the threshold, their benefits are activated again without reapplication
 - Are still eligible for Medical Assistance (Medicaid)



Interaction with SSI

- ❖ Withdrawals for housing and non-qualified withdrawals can reduce SSI benefits
 - Timing is critical
 - If used in the same month the withdrawal is taken there is no impact
 - If used in a different month from when the withdrawal is taken their benefits may be reduced

If rent is due on the first of the month, a recipient can take their withdrawal and pay their rent in the prior month. If they take their withdrawal in the prior month but pay their rent on the first of the next month, they may have their benefits reduced. Non-qualified withdrawals are addressed in a similar manner with regard to SSI benefits (however there are still tax consequences on the non-qualified withdrawal).



Interaction with SSI

❖ Gifts to an SSI recipient

- If an individual wants to give a gift to an SSI recipient (such as paying for their groceries), the money should be directly put into the ABLE account by the giftor.
- If it is given to the recipient, and not the ABLE account, it may reduce their monthly allowance.

❖ How will SSA know?

- SSI recipients are required to tell SSA of anything that would impact their benefits
- ABLE plans are required to report monthly to SSA (as of the 1st of the month) on every ABLE account. This includes balances and every withdrawal made during that month.



Contribution Amounts and Methods

- ❖ Annual contribution limit is tied to the federal gift tax amount
 - 2016 = \$14,000
 - Will automatically increase with adjustments to the gift tax exclusion amount

- ❖ Contributions can be made directly to the account by anyone

- ❖ Completed gifts to the beneficiary
 - Each state sets its own limit and it is tied to their 529 college savings account limits. These are reviewed annually.
 - Pennsylvania ABLE account value limit = \$511,758

- ❖ Anticipated contribution methods
 - Checks
 - Payroll deduction
 - Electronic bank transfers
 - Automatic transfers



Death of Beneficiary

When the beneficiary dies:

- ❖ Whether the account can be transferred to another eligible individual who is a sibling is uncertain. This is expected to be addressed in the final IRS regulations.
- ❖ The PA ABLE account can still be used to pay
 - Outstanding qualified expenses
 - Funeral and burial expenses
- ❖ Remainder becomes part of the beneficiary's estate
 - Earning portion subject to taxes but not the additional 10% tax



Death of Beneficiary

Repayment of Medical Assistance (Medicaid)

- ❖ The federal ABLE law permits a state to file a claim against an ABLE account for Medical Assistance paid during the time the beneficiary had an ABLE account.
- ❖ PA's ABLE law prohibits any PA agency from filing a claim against a Pa ABLE account.
- ❖ However, federal Medicaid law requires the PA Department of Human Services to seek repayment of Medical Assistance from the estate under certain circumstances.



Estate Repayment

Medical Assistance repayment can be sought from the estate (not the account):

- ❖ When the deceased beneficiary
 - Is 55 or older
 - Is not survived by a spouse, child under 21, or blind or disabled child of any age

- ❖ For expenses incurred after the beneficiary turned 55, which were for
 - ❖ Nursing facility services
 - ❖ Home and community-based services
 - ❖ Related hospital and prescription drug services



ABLE Accounts and Special Needs Trusts

Feature	ABLE	Special Needs Trust
Control	Beneficiary	Trustee
Cost	Lower	Higher
Contribution Limit	\$14,000/year	None
Tax Exemption	Yes	No
Uses	Expansive	Expansive
Medical Assistance Repayment	Not from PA ABLE account; but from estate in certain circumstances	Depends on type



PA ABLE Details

- ❖ **Anticipated Savings Options:** Choose among several
 - Interest bearing checking account with debit card
 - 4-7 mutual fund type options with different mixes of stocks and bonds, ranging from conservative to moderate to aggressive
 - New contributions can choose new options
 - Old contributions can change options twice per year



PA ABLE Details

❖ **Anticipated Costs:**

- Part of 13 state network formed to keep cost low – hope to be one of lowest cost in nation
- Annual account maintenance fee – taken quarterly - lower if choose to have e-delivery
- Typical banking fees for checking accounts
- Percentage on assets (asset-based fee) taken out of earnings



PA Benefits

- ❖ No state income tax on growth
 - Proposed PA legislation would make contributions PA income tax deductible (H.B. 1319)
- ❖ No state inheritance tax on the entire amount
- ❖ ABLE assets not counted in PA means-tested disability, medical assistance, other health, or student aid benefits
- ❖ Protected from attachment, levy or execution by creditor
- ❖ Fiduciary can retain control of account after beneficiary is 18
- ❖ Treasury can close an account if in the best interest of the beneficiary, subject to a hearing



Pending Federal Legislative Changes

Bill that would increase age of eligibility to 46.

Bill that would increase amount that can be put into an ABLE account if the account owner is working.

Bill that would allow tax-free rollover of 529 into ABLE account.




ABLE Program Information

PAABLE.gov

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1-800-440-4000





This presentation provides only highlights of ABLE and the coming PA ABLE Program. When the program becomes available, there will be a disclosure statement containing important information about the risks, costs and other details about the program. You should not make any decision about participating in the program until you have read the disclosure statement.

The disclosure statement will be available online at PAABLE.gov or by calling 1-800-440-4000.

