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NATIONAL RESOURCE CENTER
ACHIEVING A BETTER LIFE EXPERIENCE ACT



#ABLEtoSave Webinar Series

“ABLE Eligibility and Interplay with Federal Benefits”

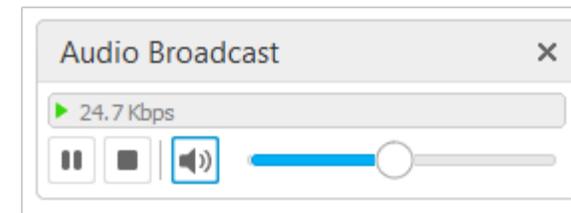
Facilitated by

Chris Rodriguez, Director, ABLE National Resource Center



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Please note: This webinar is being recorded and the materials will be placed on the ABLE National Resource Center website at: <http://www.ablenrc.org/events/abletosave-series-able-eligibility-and-interplay-public-benefits>

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Presenters and Guests

- Presenters and Panelists
 - Chris Rodriguez, Director, ABLE National Resource Center
 - James R. Sheldon, Jr, Supervising Attorney, National Assistive Technology Advocacy Project
 - Marlene Ulisky, Social Security Benefits Expert, National Disability Institute

Agenda

- ABLE National Resource Center
- #ABLEtoSave Campaign
- ABLE Basics
- Eligibility
- Examples
- Benefits and ABLE Funds
- Profiles Examples
- Question and Answers

ABLE National Resource Center



NATIONAL RESOURCE CENTER
ACHIEVING A BETTER LIFE EXPERIENCE ACT

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The ABLE National Resource Center

The ABLE National Resource Center (ANRC) is a collaborative whose supporters share the goal of accelerating the design and availability of ABLE accounts for the benefit of individuals with disabilities and their families. We bring together the investment, support and resources of the country's largest and most influential national disability organizations.

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#ABLEtoSave



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#ABLEtoSave Campaign Description

#ABLEtoSave is a month-long marketing and informational campaign taking place throughout August. This national campaign is spearheaded by the ABLE National Resource Center (“the Center”), in collaboration with the Center’s 25+ national disability organizational members, state ABLE programs, financial institutions, and other ABLE related stakeholders. #ABLEtoSave will strive to blanket the country with widespread information concerning all things ABLE, with the aim to significantly accelerate the opening of ABLE accounts by eligible individuals with disabilities and their families.

#ABLEtoSave Campaign Goal

The primary goal of #ABLEtoSave is to increase awareness and education about ABLE accounts and to accelerate the opening of ABLE accounts nationwide in the short- and long-term.

#ABLEtoSave Campaign Outline

#ABLEtoSave will take place in the month of August and will be broken down into 5 individual weeks of education, information and marketing. Each week will focus on a different aspect of ABLE, with the aim to provide potential ABLE account owners, and their families, with comprehensive education and motivation to feel comfortable enrolling in an ABLE program of their choice.

- WEEK 1 (August 6 – 12): BASIC OVERVIEW OF ABLE
- WEEK 2 (August 13 – 19): ELIGIBILITY
- WEEK 3 (August 20-26): QUALIFIED DISABILITY EXPENSES
- WEEK 4 (August 27- 31): ENROLLMENT and BEYOND

The campaign is national in scale and will utilize a diverse set of tools in order to maximize reach. These tools include, but are not limited to, social media, national webinars, short videos, twitter chats, virtual town halls, email blasts and the utilization of the Center's website.

ABLE Basics



What is ABLE?

The Stephen Beck, Jr. Achieving a Better Life Experience (ABLE) Act (PL 113-295) 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.*



Basic Characteristics

- There are eligibility requirements related to opening an ABLE account that speak to the age in which the individual first experienced his/her disability and related to the severity of such disability
- An eligible individual is not obligated to enroll in their state of residence
- The “Designated beneficiary” is the account owner (although another person such as a parent, guardian, or person with power of attorney may be allowed signature authority over the account).
- Funds in the account may be used for “qualified disability related expenses”
- Assets in, and distributions for qualified disability related expenses, will be disregarded or given special treatment when determining eligibility for *most* federal means-tested benefits (including Social Security and Medicaid)
- Multiple individuals may contribute to an individual’s ABLE account
- In general, there is a \$15,000 annual contribution limit (all contributors combined)

Eligibility

Who is eligible to be an ABLÉ account beneficiary?

To be eligible, individuals must meet two requirements:

- 1) Age requirement: must be disabled 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) and are receiving those benefits,
 - OR**
 - Submit a “disability certification” assuring that the individual holds documentation of a physician’s diagnosis and signature, and confirming that the individual meets the functional disability criteria in the ABLÉ Act (related to the severity of disability described in Title XVI or Title II of the Social Security Act).

1) Age of Onset Requirement

- This requirement states that in order to be eligible to open an ABLE account the individual's disability must have “occurred before the date on which the individual attained age 26”.
 - This does NOT mean that the individual with a disability has to be under the age of 26 to open an ABLE account.
 - This does NOT mean that the individual with a disability necessarily had to have a formal diagnosis related to their disability prior to their 26 birthday.
 - The age of on set requirement is 1 of 2 requirements that must be met.

2) Severity Related to Disability

In addition to the age of onset requirement, the individual must also meet additional criteria related to the severity of their disability in order to be determined eligible to open an ABLE account.

The individual can satisfy this requirement in the following ways:

- Being a current beneficiary of Supplemental Security Income (SSI) or Social Security Disability Insurance (SSDI)
- or**
- Submitting a “disability certification” to the satisfaction of the Secretary of the US Treasury

Disability Certification

If an individual with a disability is not currently a beneficiary of either SSI or SSDI, depending on the severity of their disability, they may still be eligible to open an ABLÉ account through establishing a “disability certification”.

What is a Disability Certification?

A disability certification with respect to an individual is a certification signed under penalties of perjury by the individual, or by the other individual establishing (or with signature authority over) the ABLE account for the individual, that—

(i) The individual—

(A) Has a medically determinable physical or mental impairment that results in marked and severe functional limitations and that—

(1) Can be expected to result in death; or

(2) Has lasted or can be expected to last for a continuous period of not less than 12 months; **or**

(B) Is blind (within the meaning of section 1614(a)(2) of the Social Security Act);

(ii) Such blindness or disability occurred before the date on which the individual attained age 26 (and, for this purpose, an individual is deemed to attain age 26 on his or her 26th birthday); **and**

(iii) Includes a copy of the individual's diagnosis relating to the individual's relevant impairment or impairments, signed by a physician.

Disability Certification (additional info)

- Conditions listed in the “List of Compassionate Allowances Conditions” maintained by the Social Security Administration (at www.socialsecurity.gov/compassionateallowances/conditions.htm) are deemed to meet the requirements regarding the filing of a disability certification, if the condition was present before the date on which the individual attained age 26.
 - To establish that an individual with such a condition meets the definition of an eligible individual, the individual must identify the condition and certify to the qualified ABLE program both the presence of the condition and its onset prior to age 26, in a manner specified by the qualified ABLE program.
- In most circumstances the disability certification will not need to be filed with the State ABLE Program, the Department of Treasury or the IRS prior to, or during, the establishment of the ABLE account. However, the individual attempting to open the ABLE account, or the person with signature authority, will likely be asked to sign, under penalty of perjury, that they do in fact have the disability certification and should be prepared to submit the document(s) if ever requested.

Additional Eligibility Info

- Whether an individual is an eligible individual is determined for each taxable year, **and that determination applies for the entire year**, however, a qualified ABLE program may choose different methods of ensuring a designated beneficiary's status as an eligible individual and may impose different periodic recertification requirements for different types of impairments.
- No inference may be drawn from a disability certification for purposes of establishing eligibility for benefits under title II, XVI, or XIX of the Social Security Act.

Loss of ABLÉ Eligibility

- If the ABLÉ account owner ceases to be an eligible individual, then for each taxable year in which the designated beneficiary is not an eligible individual, the account will continue to be an ABLÉ account, the designated beneficiary will continue to be the designated beneficiary of the ABLÉ account, and the ABLÉ account will not be deemed to have been distributed. However, beginning on the first day of the designated beneficiary's first taxable year for which the designated beneficiary does not satisfy the definition of an eligible individual, additional contributions to the designated beneficiary's ABLÉ account must not be accepted by the qualified ABLÉ program. Additionally, no amounts incurred during that year and each subsequent year in which the designated beneficiary does not satisfy the definition of an eligible individual will be qualified disability expenses.
- If the designated beneficiary subsequently again becomes an eligible individual, contributions to the designated beneficiary's ABLÉ account again may be accepted subject to the contribution limits under section 529A, and expenses incurred that meet the definition of a qualified disability expense will be qualified disability expenses.

Pending Eligibility Related Legislation



The ABLE Age Adjustment Act (S. 817/HR 1874)

- The ABLE Age Adjustment Act is a bill pending in the House and Senate that will increase the age of onset for eligibility from 26 to 46, increasing the number of individuals with disabilities who would be eligible to open an ABLE account.
- The ABLE Age Adjustment Act would not change the severity of disability requirement,
- The ABLE Age Adjustment Act is pending in the House and Senate
- Consider encouraging your Members of Congress to cosponsor the Bill!

Federal Benefits and ABLE Funds



Federal Benefits and ABLF Funds

- ABLF funds are meant to supplement, not supplant, benefits provided through private insurance, the Medicaid program under title XIX of the Social Security Act, the supplemental security income program under title XVI of such Act, the beneficiary's employment, and other sources.
- Funds in an ABLF account are not to be taken into consideration when determining eligibility for federally funded means tested benefits (with one exception related to beneficiaries of Supplemental Security Income (SSI)) and only in the circumstance when the account exceeds \$100,000.

How do ABLÉ account assets impact eligibility for federal benefits?

ABLE assets, and disbursements for qualified expenses, will be disregarded or receive favorable treatment when determining eligibility for *most* federal means-tested benefits:

- **Supplemental Security Income (SSI):** For SSI, only the first \$100,000 in ABLE account assets will be disregarded.
 - SSI payments (monthly cash benefit) will be **suspended** (not terminated) 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 resources.*

Impact on Federal Benefits (cont.)

- **Medicaid:** ABLE assets are disregarded in determining Medicaid eligibility
 - Medicaid benefits are NOT suspended if the ABLE account balance exceeds \$100,000 (that is only applicable to the SSI cash benefit)
 - **Medicaid Payback:** Any assets remaining in the ABLE account when a beneficiary dies, subject to outstanding qualified disability expenses, can be used to reimburse a state for Medicaid payments made on behalf of the beneficiary after the creation of the ABLE account (the state would have to file a claim for those funds)

Examples of ABLE Eligibility



Sample Profile- “Jack”

Jack's Characteristics

- Jack is 43 years old
- Jack has a diagnosis of Amyotrophic Lateral Sclerosis (ALS or “Lou Gehrig's Disease)
- Jack is a current beneficiary of Social Security Disability Insurance (SSDI)
- Jack first began to experience symptoms of ALS when he when he was 34.

Is Jack Eligible to Open and ABLA Account?

NOT ELIGIBLE

- Because Jack's disability did not onset before his 26th birthday, he would not be eligible to open an ABLA account.
- The ABLA Age Adjustment Act (HR 1874/ S. 817) would help Jack by raising the eligibility age for onset of disability from 26 to 46.
- If this bill becomes law, then Jack would be eligible to open an ABLA account.

Sample Profile- “Mary”

Mary's Characteristics

- Mary is 8 years old
- Mary is a person with down syndrome
- Mary is a current beneficiary of Supplemental Security Income (SSI)

Is Mary Eligible to Open and ABLER Account?

ELIGIBLE

- Mary's disability onset when she was born.
- Since she receives SSI and has a disability which onset before her 26th birthday, she would be eligible to open an ABLER Account.



Sample Profile- “John”

John's Characteristics

- John is 22 years old
- John has been diagnosed with having Cerebral Palsy (CP)
- Impairments related to his CP have been recognizable since birth.
- John has a job and the amount of income John receives disqualifies him from the SSI program
- John is using a disability certification

Is John Eligible to Open and ABLER Account?

ELIGIBLE

- John's CP causes “Marked and Severe” functional limitations as signed to by a qualified physician
- John's disability onset before his 26th birthday.
- Since he meets the age of onset and severity of disability requirements in the ABLER statute, he is eligible to open an ABLER account

Sample Profiles- “Sally and Sue”

- Sally and Sue are identical twins.
- Both Sally and Sue had the same medical history up until their accidents and neither had a disability.
- Unfortunately, Sally and Sue were in two separate car accidents.
 - Sally was paralyzed in a car accident a day prior to her 26th birthday. Sue was paralyzed in a car accident a day following her 26th birthday.
 - Both Sally and Sue have a disability certification signed by a doctor stating how their paralysis caused “Marked and Severe” functional limitations.
 - Since Sally had a disability which onset prior to her 26th birthday, she would be eligible to open an ABLE Account.
 - Since Sue’s disability onset after her 26th birthday, she would not be eligible to open an ABLE Account.
- The ABLE Age Adjustment Act (HR 1874/ S. 817) would help Sue by raising the eligibility age for onset of disability from 26 to 46.
- If this bill becomes law, then Sue would be eligible to open an ABLE account

Sample Profile- “Anna”

- Anna does not have a disability but likes the idea of an ABLÉ account because her friend has one.
- Since she does not have a disability, she would not be eligible to open an ABLÉ account.

Federal Benefits and ABLE Funds



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ABLE Account Effects

On Other Key Benefit Programs



Medicaid – CMS Guidance

Centers for Medicare and Medicaid Services (CMS)

- Dear State Medicaid Director Letter, SMD# 17-002 (Sept. 7, 2017), www.medicaid.gov/federal-policy-guidance/downloads/smd17002.pdf .

State Medicaid agencies must disregard ABLER assets.

- Regardless of the amount in the account.
- And must disregard earnings generated by account.

Medicaid – CMS Guidance and SMD# 17-002 (Cont.)

Contributions to ABLER account.

- Contributions by designated beneficiary still counted by Medicaid program as income in month received.
- Contributions by third parties not counted by Medicaid.

Distributions from ABLER accounts

- If used for Qualified Disability expense, not counted by Medicaid program as income in determining eligibility.

The 1619(b) Medicaid Work Incentive

Exists in all states.

- Can keep Medicaid, in many cases, if SSI terminated due to budgeting of earned income.
- Annual state earnings limits range from \$27,322 to \$66,812 (or higher if medical expenses are very high).
- Must keep countable resources within SSI's \$2,000 limit.

1619(b) Program will not Count ABLER Account Assets.

- Because this is considered a non-cash SSI benefit and SSI will not count ABLER account up to \$100,000.
- Also, SSI policy and SMD 17-002 provide that Medicaid continues even if ABLER account balance exceeds \$100,000.

Medicare Savings Programs

Implemented through State Medicaid Agency.

- Key MSP programs: Qualified Medicare Beneficiaries (QMB), Specified Low-Income Beneficiaries (SLMB), and QI-1.
- Each MSP pays for Medicare Part B premiums (\$134 monthly in 2018). QMB also pays copays and deductibles.
- 2018 countable income limits: QMB - \$1,012, SLMB - \$1,214, QI-1 - \$1,366. Asset limits vary by state.
- States must use SSI rules to determine countable income and assets or more liberal rules.
- ***MSP eligibility not affected by assets in ABLE account.***
- ***ABLE account distributions for designated disability expenses not counted as income by MSP.***

State Vocational Rehabilitation Agencies

State VR agency can fund range of items and services.

- To support work goal.
- States can set their own financial need criteria which generally applies to any expensive service.

SSI beneficiary is exempt from financial need test.

- *If assets in an ABLE account, will still meet financial needs test based on SSI status.*
- Although payments for educational or vocational expenses from ABLE account are permitted, failure to make those distributions should not affect financial need status.

Case Scenario

Combining Range of Work Incentives, Other Benefits & ABLE Account



The Case of Eva

21 years old, gets SSI of \$750 monthly, plus Medicaid

- Spinal cord and a full-time wheelchair user.
- Medicaid pays or has paid for power wheelchair, medications, and a home health aide, among other things.

Will graduate from college in 2020

- Hopes to retain Medicaid when she goes to work.
- Wants Medicaid to pay for home health services and a replacement power wheelchair when she graduates.
- Expects to earn \$33,000 or more as entry-level math teacher.
- Presently, \$185,000 in Special Needs Trust from lawsuit.

Eva Resides in Accessible Ranch Home with Parents

To move into own apartment this summer

- To remain there for her last two years of college, possibly remaining there when she gets her first job.
- Rent would be \$950 per month including utilities.
- To pay rent she will need a student loan.
- If trust paid for rent, her SSI would be reduced by about \$250 per month.

State Vocational Rehabilitation Agency Support

- The VR agency has paid for tuition, books, and special transportation to and from the college campus.
- Has also paid for a driving evaluation which supports Eva's ability to drive a modified van.
- If Eva can purchase van at cost of \$27,000, the VR agency will cover van modifications to allow her to use the van at a cost of about \$40,000 if she continues to be financially eligible for their services.

How Can Eva Meet the Following Needs?

- \$950 per month for apartment without a student loan.
- Keep Medicaid for next 2 years & when she starts work.
- Buy the van for \$27,000.
- Have the VR agency pay for \$40,000 in van modifications and continue to cover the costs of college.
- ***Set up a future ABLE account.***
- Currently, neither Eva nor her parents have available money to put into the ABLE account.

July 2018: Sets up ABLER Account in State with National ABLER Account

20 or more states have national ABLER accounts.

- Make immediate deposit of \$15,000 maximum into account from trust (remember trusts can make deposits into an ABLER account).
- ABLER account used to pay \$950 rent in September 2018.
- ***Per SSI policy, ABLER payments for rent are not treated as income.***
- SSI payment not reduced, Medicaid retained.



Trust Makes \$15,000 Per Year Deposits into ABLE Account.

- ***Again, trust can contribute to ABLE account.***
- \$15,000 limit is tied to IRS exempt gift amount which could increase in 2019 or 2020.
- ABLE account continues to pay monthly rent. Full SSI and Medicaid continue.
- Financial eligibility for VR agency services continues.

Final Years of College: VR Continues to Pay for College

- ***Eva retains SSI despite ABLE account funds.***
- Federal VR policy - SSI beneficiary is exempt from financial needs test for tuition, many other services.
- ***ABLE account pays*** four months of rent in 2018, retains about \$11,000 balance. Balance increases to about \$14,000 by end of 2019 and \$16,000 by end of 2020.
- Trust balances go down, but Eva and trustee agree this is good use of trust money.

ABLE Account Supplements

VR Agency Assistance

VR Agency Might Not Fund (but ABLE Account Could):

- New tablet computer if they already funded laptop.
- Professional clothing for student teaching, job interviews.
- New smart phone.
- A summer school course, to ease the burden of meeting all required courses for her degree.
- A tutor to get her through a required course outside of her major.
- A four-in-one printer, copier, scanner and fax for her apartment to support her studies and job search.

Purchase Van with Loan, Get Van Modifications

- ***ABLE account makes \$5,000 down payment.***
- Eva borrows the balance, \$22,000 from her state's Assistive Technology Loan Fund (Alternative Financing Project).
- ***Will use ABLE account to make monthly payments.*** Alternatively, monthly payments could come from:
 - Trust if approved by the trustee; or
 - An approved SSI Plan to Achieve Self Support (PASS) once Eva is working and has countable wages that could go into a PASS.
- VR agency pays \$40,000 for van modifications, allowing Eva to drive as a wheelchair user.

Starts Work as a Math Teacher, Keeps Medicaid Through 1619(b)

- Starting pay is \$33,000 per year.
- **\$16,000 in ABLE account to pay rent.** \$140,000 in trust.
- Medicaid eligible through 1619(b) work incentive, if her state's 1619(b) threshold is higher than \$33,000 (half of states).
- 1619(b) follows SSI rules -- assets must be less than \$2,000.
 - **Neither trust nor the ABLE account (up to \$100,000) counted by SSI for 1619(b) eligibility.**
 - **ABLE rent payments have no impact on 1619(b) eligibility.**

Question & Answers



Contact us!

Christopher J. Rodriguez

Director

ABLE National Resource Center

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Upcoming Webinar

Title: “What Can I Use My ABLÉ Fund For: Understanding “Qualified Disability Expenses”?”

When: Wednesday, August 22nd at 2pm Eastern

Description: Funds in an ABLÉ account cannot be used for just any expense. The purpose of this webinar is to inform and educate potential ABLÉ account owners about what are appropriate and lawful uses of the funds in an ABLÉ account. This webinar will go into detail concerning the definition of “qualified disability expense” and the consequences of misusing funds. The webinar will incorporate a panel of ABLÉ related stakeholders that will be asked to give their perspective on the presentation, including their experience with the given topic.

More info (including how to register) at: www.ablenrc.org.