



NATIONAL RESOURCE CENTER  
ACHIEVING A BETTER LIFE EXPERIENCE ACT



# The Achieving a Better Life Experience (ABLE) Act – *The History, The Mechanics, The Future*

HCBS Conference  
September 3, 2015





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

**A kitchen table idea**



**President's desk**



# The “ABLE Act” Story – A long, open road!

6B » Wednesday, July 22, 2015 » THE STAR

LOCAL

## T.O. family celebrates ADA at White House

■ 7-year-old, parents share in anniversary

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WASHINGTON — Little Brianna Pitzele followed up shaking hands with President Barack Obama on Monday by giving a kiss to Vice President Joe Biden.

Brianna, who has Down syndrome, turned 7 this week and went with her parents, Brad and Julianne Pitzele, of Thousand Oaks, to the White House to celebrate the 25th anniversary of the passage of the Americans with Disabilities Act.

The Pitzeles heard the president say that “days like today are a celebration of our history. But they’re also a chance to rededicate ourselves to the future — to address the injustices that still linger, to remove the barriers that remain.”

While listening to Obama, Brad Pitzele, 38, said he was struck by the “amazing” message the president imparted. “What he said that I found really touching was that, for the next 18 months, he was going to continue to push forward an agenda that’s



CONTRIBUTED PHOTO

Sara Hart Weir (from left), president of the National Down Syndrome Society; Brad and Julianne Pitzele, of Thousand Oaks; and their daughter Brianna, pose with Vice President Joe Biden at a White House ceremony Monday.

friendly to the disability community — and even beyond. So he seemed to say that his legacy beyond his presidency might be tied to helping folks with disabilities. “We need champions

in this,” he said. “We definitely need champions.” The Pitzeles were invited to represent the National Down Syndrome Society in the East Room ceremony for their long-time efforts at getting the

Achieving a Better Life Experience Act passed at the national and state levels. Brianna helped cast a vote for the federal House bill in December at the invitation of Rep. Julia Brownley, D-Westlake

Village. That measure has since been signed into law. “The ABLE Act allows folks with disabilities to earn money without losing access to Social Security and Medicaid

“The ABLE Act allows folks with disabilities to earn money without losing access to Social Security and Medicaid benefits.”

Brad Pitzele, father of daughter with Down syndrome

benefits,” Pitzele explained. When he’s not working in e-commerce marketing collectible comic books and action figures, Pitzele said he’s lobbying for passage of the California version of the ABLE Act, which is pending in Sacramento.

The California bills — AB 449 and SB 324 — would conform with current federal law and encourage individuals and families to save private funds “for the purpose of supporting persons with disabilities to maintain their health, independence, and quality of life.”

The bills are co-sponsored by the Pitzeles’ state representatives, Sen. Fran Pavley, D-Agoura Hills, and Assemblywoman Jacqui Irwin, D-Thousand Oaks.



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)

Medicaid & SSI do not provide all the necessary supports and services

We disincentive “employment” in the US

Sheltered Workshops and sub-min wage is legal, unemployment rates are very high in the US



People with disabilities are going to college – we have 250 postsecondary programs in the US now

People with disabilities are pursuing employment opportunities, especially in competitive and integrated settings, like no other time

People with disabilities want to work and can

People with disabilities are living longer and have so much to contribute



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

The legislative intent of ABLE Accounts is to provide secure funding for disability-related expenses on behalf of designated beneficiaries with disabilities

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

# What it took to get the ABLE Act

The Opinion Pa

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## The #passtheABLEAct Bunch



say the accounts, called 529-ABLE plans, would be easier and less expensive to set up and maintain than the trust funds often used for



# ABLE Act in the States

- 33 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, Colorado, Connecticut, Delaware, Florida, Hawaii, Iowa, Kansas, Louisiana (pre-federal and post-federal), Maryland, Massachusetts (pre-federal), Minnesota, Missouri, Montana, Nebraska, North Dakota, Nevada, Rhode Island, Tennessee, Texas, Utah, Vermont, Virginia, Washington, Wisconsin and West Virginia



# ABLE Act in the States (Con't)

- The following states have passed ABLE related legislation and are currently awaiting the Governor's signature: Illinois, New York, Ohio, Oregon.
- The following states have ABLE bills filed that are still active: California, District of Columbia, Maine, Massachusetts (revision of pre-federal legislation), Michigan, New Jersey, North Carolina, and Pennsylvania. We expect most of these bills to become law.



# What is an ABLER Account?

- **ABLE accounts:**
  - Are established in the new Section 529A Qualified ABLE Programs
  - Are qualified savings accounts that receive preferred federal tax treatment
  - Enable eligible individuals to save for disability related expenses
  - Are NOT yet available, and there are still some unknowns

**\*Assets in and distributions for qualified disability expenses will be disregarded or given special treatment in determining eligibility for most federal means-tested benefits**



# What are some important requirements of ABLÉ account?

- Each eligible individual may have only one ABLÉ 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 ABLÉ account
- Aggregate contributions may not exceed the state limit for 529 savings accounts

# 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
  - 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 ABLÉ account be used for?

Distributions from an ABLÉ account may be made for qualified disability expenses, related to the individual's disability or blindness and made for his/her benefit, including:

- o Education
- o Housing
- o Transportation
- o Employment training and support
- o Assistive technology and personal support services
- o Health, prevention, and wellness
- o Financial management and administrative services
- o Legal fees
- o Expenses for oversight and monitoring
- o Basic Living Expenses (NPRM)
- o Funeral and burial expenses
- o Any other expenses approved by the Secretary of the Treasury under regulations consistent with the purpose of the program

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

# How do ABLÉ account assets impact eligibility for federal benefits?

- ABLÉ assets will be disregarded or receive favorable treatment when determining eligibility for most federal means-tested benefits
- **For SSI only**, the first \$100,000 in ABLÉ account assets will be disregarded
  - 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 resources*
  - Housing expenses are intended to receive the same treatment as all housing costs paid by outside sources (SSI benefits subject to reduction of 1/3 federal SSI payment, as applicable)



# Impact on Federal Benefits (Con't)

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

# Tax Implications on an ABLER Account

- Contributions to an ABLER account are made with post-tax dollars
- *Federal taxation:* In general, ABLER programs are exempt from taxation. Distributions from ABLER 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 ABLER accounts



# When will ABLÉ accounts be available?

- Before ABLÉ accounts become available, States need to pass authorizing legislation
- Each state must decide whether (and how) to offer a qualified ABLÉ program to residents – some considering authorizing legislation now
- Analyze Notice of Proposed Rule Making
- The timing of ABLÉ program availability will vary from state to state

# Meet Brian

- Brian is a 26 year old man with Down Syndrome
- Brian works 20 hours a week at a community rehabilitation program making sub-minimum wage but has expressed his desire to work in an integrated environment making a competitive wage
- Brian lives at home with his parents who have partial guardianship over Brian, including support to oversee his finances
- Brian wishes to eventually live on his own with limited supports & become as financially independent as possible
- Brian is heavily dependent on the supports and services provided through Medicaid, Social Security & other federally funded programs
- Brian, with the support of his family, has just recently established an ABLÉ account to assist in his goals



# Meet Molly

- Molly was injured in a car accident when she was 23 and has since been reliant on a wheelchair for mobility
- Molly is currently 34 & unemployed
- Molly wants to work
- Molly is afraid she will lose her federally funded benefits which are imperative in covering her living expenses & paying for her medical necessities related to her disability
- Molly recently established an ABLE account in her state



# Notice of Proposed Rule Making (NPRM)

On June 19<sup>th</sup>, the US Department of Treasury, in conjunction with the IRS, released a Notice of Proposed Rule Making (NPRM) regarding the *Achieving a Better Life Experience (ABLE) Act*

## **The NPRM acts to:**

- assist states and program administrators in better understanding the guidelines on how to develop and maintain an ABLE program
- give additional clarification to parts of the law which may benefit from further explanation and/or guidance
- allow for a 90 day period for the public, including individuals with disabilities and their families, disability related advocacy groups, state administrators, and other stakeholders, to provide input on the various components of the NPRM

# Major Areas of the NPRM

- Establishing an Account and Signature Authority
- Eligibility and Re-Certification
- Transfers, Rollovers, Residency Requirements
- Contributions
- Distributions
- Qualified Disability Expenses
- Community Development Financial Institutions (CDFIs)

# Establishing an Account and Signature Authority

The proposed regulations provide that:

- The eligible individual is responsible for establishing the account
- The designated beneficiary is the owner of the account



# Establishing an Account and Signature Authority (Con't)

## HOWEVER

If an eligible individual is unable to establish an ABLÉ account on his or her own behalf, the ABLÉ account may be established by the eligible individual's agent under a power of attorney or, if none, by a parent or legal guardian of the eligible individual.

## AND

If the designated beneficiary is not able to exercise signature authority over his or her ABLÉ account or chooses to establish an ABLÉ account but not exercise signature authority, the designated beneficiary's agent under a power of attorney or, if none, a parent or legal guardian of the designated beneficiary may be given signature authority.



# Eligibility and Re-Certification

The proposed regulations provide that:

- Eligibility should be determined for each taxable year, and that determination applies for the entire year
- A qualified ABLE program may impose different periodic recertification requirements for different types of impairments
- A qualified ABLE program must specify the documentation that must be provided, both at the time an ABLE account is established and thereafter, to ensure that the designated beneficiary is, and continues to be, an eligible individual

# Loss of Qualification as an Eligible Beneficiary

The proposed regulations provide that:

- If the qualified beneficiary ceases to be an eligible beneficiary the account will still remain an ABLÉ account and the individual will continue to be a designated beneficiary

## **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 are no longer allowed and distributions will not be considered qualified disability expenses. If the individual regains eligibility the moratorium will be lifted.



# Transfers, Rollovers, Residency Requirements

## The proposed regulations provide that:

- A qualified ABLE program may continue to maintain the ABLE account after that designated beneficiary changes his or her residence to another State
- Funds in a qualified tuition account (typical 529) will not be allowed to be rolled over to an ABLE account absent tax consequences and penalties
- A qualified ABLE program is allowed a program-to-program transfers to effectuate a change of qualified ABLE program or a change of designated beneficiary to another eligible individual (provided that the successor is a sibling of the former beneficiary and the transfer is made prior to the death of the transferring account owner)



# Contributions

## **The proposed regulations provide that:**

- A qualified ABLE program may accept cash contributions in the form of cash or a check, money order, credit card payment, or other similar method of payment
- The total annual contributions to an ABLE, other than amounts received in rollovers and program-to-program transfers, must not exceed the individual gift tax exclusion in effect for that calendar year (currently \$14,000) in which the designated beneficiary's taxable year begins
- A qualified ABLE program must provide adequate safeguards to ensure that total contributions to an ABLE account do not exceed that State's limit for aggregate contributions under its qualified tuition program



# Contributions (Con't)

The proposed regulations provide that:

- A qualified ABLE program must return contributions in excess of the annual gift tax exclusion (excess contributions) to the contributor(s), including net income attributable to the excess contributions
- A qualified ABLE program must return all contributions, along with all net income attributable to those contributions, that caused an ABLE account to exceed the limit established by the State for its qualified tuition program (excess aggregate contributions)
- If an excess contribution or excess aggregate contribution is returned to a contributor, the qualified ABLE program must notify the designated beneficiary of such return at the time of the return
- In order to avoid penalties and tax consequences the fund must be returned on a last in, first out basis and no later than the due date of the beneficiary's tax return for the year in which the excess contributions were made



# Distributions

The proposed regulations provide that:

- An ABLÉ account may be used for long-term benefit and/or short-term needs of the designated beneficiary

It would be reasonable to expect distributions and frequency of distribution to reflect that



# Qualified Disability Expenses

The proposed regulations provide that:

- Qualified disability expenses are expenses that relate to the designated beneficiary's blindness or disability and are for the benefit of that designated beneficiary in maintaining or improving his or her health, independence, or quality of life
- The term "qualified disability expenses" should be broadly construed to permit the inclusion of basic living expenses and should not be limited to:
  - expenses for items for which there is a medical necessity, or
  - which provide no benefits to others in addition to the benefit to the eligible individual.



# Qualified Disability Expenses (Con't)

- A qualified ABLE program must establish safeguards to distinguish between distributions used for the payment of qualified disability expenses and other distributions.
- A qualified ABLE program must permit the identification of the amounts distributed for housing expenses as that term is defined for purposes of the Supplemental Security Income program of the Social Security Administration.



# Community Development Financial Institutions (CDFIs)

As a means to offset administrative burden, the proposed regulations expressly allow a qualified ABLE program to contract with one or more Community Development Financial Institutions (CDFIs) that commonly serve disabled individuals and their families to provide one or more required services.



# Next Steps

- The deadline for submitting public comment is September 21<sup>st</sup>, 2015
- The NPRM can be found at (including instructions on how to submit public comments): <https://federalregister.gov/a/2015-15280>
- There will be a public hearing held in Washington DC on October, 14<sup>th</sup> at 10am
- Preliminary Summary of Highlights for Individuals with Disabilities and their Families: <http://www.realeconomicimpact.org/news/?id=1514>





NATIONAL RESOURCE CENTER  
ACHIEVING A BETTER LIFE EXPERIENCE ACT

# ABLE National Resource Center

# ABLE National Resource Center

- Collaboration of over 30 National Disability Organizations
- Managed by National Disability Institute and National Down Syndrome Society
- Provide a consistent disability voice to accelerate ABLE Act implementation at the federal and state levels



# Questions from the Audience



# Contact Information

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