



PRE-CONFERENCE:

Pooled Trust Intensive

Wednesday, October 14, 2015

11:30 A.M. – 12:15 P.M.

ABLE Accounts and More: What Pooled Trust Administrators Need to Know

Presenter:

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Attorney at Law

The Dale Law Firm, PC

Pacheco, CA

- Texas Session Bill 1664
- California Legislature Assembly Bill 449
- ABLE Act Proposed IRS Regs
- PowerPoint

Stetson University College of Law presents:

2015 SPECIAL NEEDS TRUSTS

THE NATIONAL CONFERENCE

October 14-16, 2015

The Vinoy Renaissance Resort & Golf Club

St. Petersburg, Florida

STETSON UNIVERSITY

Center for Excellence in Elder Law

ACCESS AND JUSTICE FOR ALL®

S.B. No. 1664

AN ACT

relating to the establishment of the Texas Achieving a Better Life Experience (ABLE) Program; authorizing the imposition of fees.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 54.602(b), Education Code, is amended to read as follows:

(b) The board shall administer the following programs:

(1) the prepaid higher education tuition program established under this subchapter; [and]

(2) the higher education savings plan established under Subchapter G;

(3) the prepaid tuition unit undergraduate education program established under Subchapter H;

(4) the Texas Save and Match Program established under Subchapter I; and

(5) the Texas Achieving a Better Life Experience Program established under Subchapter J.

SECTION 2. Chapter 54, Education Code, is amended by adding Subchapter J to read as follows:

SUBCHAPTER J. TEXAS ACHIEVING A BETTER LIFE EXPERIENCE (ABLE) PROGRAM

Sec. 54.901. PURPOSES OF PROGRAM. The purposes of this subchapter are as follows:

(1) to encourage and assist individuals and families in saving funds for the purpose of supporting individuals with disabilities to maintain health, independence, and quality of life; and

(2) to provide secure funding for qualified disability expenses on behalf of designated beneficiaries with disabilities that will supplement, but 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 the Social Security Act, the beneficiary's employment, and other sources.

Sec. 54.902. DEFINITIONS. In this subchapter:

(1) "ABLE account" has the meaning assigned by Section 529A, Internal Revenue Code.

(2) "ABLE program" or "program" means the Texas Achieving a Better Life Experience Program created under this subchapter.

(3) "Board" means the Prepaid Higher Education Tuition Board established under Section 54.602.

(4) "Designated beneficiary" means a resident of this state with a disability who is an eligible individual and named as the designated beneficiary of an ABLE account.

(5) "Eligible individual" means a person who has certified to the board that the person is eligible to participate in the ABLE program.

(6) "Financial institution" means a bank, a trust company, a depository trust company, an insurance company, a broker-dealer, a registered investment company or investment manager, the Texas Safekeeping Trust Company, or another similar financial institution authorized to transact business in this state.

(7) "Internal Revenue Code" means the Internal Revenue

Code of 1986.

(8) "Participant" means a designated beneficiary or the parent or custodian or other fiduciary of the beneficiary who has entered into a participation agreement under this subchapter.

(9) "Participation agreement" means an agreement between a participant and the board under this subchapter that conforms to the requirements prescribed by this subchapter.

(10) "Qualified disability expenses" means any expenses related to the eligible individual's blindness or disability that are made for the benefit of an eligible individual who is the designated beneficiary, and includes expenses for education, housing, transportation, employment training and support, assistive technology and personal support services, health, prevention and wellness, financial management and administrative services, legal fees, oversight and monitoring, a funeral and burial, and other expenses approved under federal regulations adopted under Section 529A, Internal Revenue Code.

(11) "Texas ABLE savings plan account" means the Texas ABLE savings plan account created under Section 54.903.

Sec. 54.903. CREATION OF PROGRAM AND ACCOUNT; ADMINISTRATION. (a) The Texas Achieving a Better Life Experience (ABLE) Program is created under this subchapter. The Texas ABLE savings plan account is established as a trust fund outside of the state treasury.

(b) The board shall administer the ABLE program.

(c) The board, the office of the comptroller, and any manager or other contractor that contracts with the board to provide services under this subchapter are not covered entities for purposes of Chapter 181, Health and Safety Code.

Sec. 54.904. POWERS AND DUTIES OF BOARD. (a) To establish and administer the ABLE program, the board shall:

(1) develop and implement the program;

(2) adopt rules and establish policies and procedures to implement this subchapter to:

(A) permit the program to qualify as a qualified ABLE program under Section 529A, Internal Revenue Code;

(B) make changes to the program as necessary for the participants in the program to obtain or maintain federal income tax benefits or treatment provided by Section 529A, Internal Revenue Code, and exemptions under federal securities laws; and

(C) make changes to the program as necessary to ensure the program's compliance with all other applicable laws and regulations;

(3) either directly or through a contractual arrangement for investment or plan manager services with a financial institution or plan manager or another qualified entity, develop and provide information for participants and their families necessary to establish and maintain an ABLE account;

(4) enter into agreements with any financial institution or any state or federal agency or contractor or other entity as required to administer the program under this subchapter;

(5) enter into participation agreements with participants;

(6) solicit and accept any gifts, grants, legislative appropriations, and other funds from the state, any unit of federal, state, or local government, or any other person, firm, partnership, or corporation;

(7) invest participant funds in appropriate investment instruments; and

(8) make provision for the payment of costs of administering the program.

(b) The board has all powers necessary or proper to carry out its duties under this subchapter and to effectuate the purposes of this subchapter, including the power to:

- (1) sue and be sued;
- (2) enter into contracts and other necessary instruments;
- (3) enter into agreements or other transactions with the United States, state agencies, and other entities as necessary;
- (4) appear on its own behalf before governmental agencies;
- (5) contract for necessary goods and services, including specifying in the contract duties to be performed by the provider of a good or service that are a part of or are in addition to the person's primary duties under the contract;
- (6) contract with another state that administers a qualified ABLE program as authorized by Section 529A, Internal Revenue Code, to provide residents of this state with access to a qualified ABLE program;
- (7) engage the services of private consultants, trustees, records administrators, managers, legal counsel, auditors, and other appropriate parties or organizations for administrative or technical assistance;
- (8) participate in any government program;
- (9) impose fees and charges;
- (10) develop marketing plans or promotional materials or contract with a consultant to market the program;
- (11) make reports;
- (12) purchase liability insurance covering the board and employees and agents of the board;
- (13) make changes to the program as necessary for the participants in the program to obtain or maintain federal income tax benefits or treatment provided by Section 529A, Internal Revenue Code, and exemptions under federal securities laws; and
- (14) establish other policies, procedures, and eligibility criteria to implement this subchapter.

Sec. 54.9045. COLLECTION OF FEES. The board shall collect administrative fees and service charges in connection with any agreement, contract, or transaction relating to the program in amounts not exceeding the amount necessary to recover the cost of establishing and maintaining the program.

Sec. 54.905. INVESTMENT OF FUNDS. (a) All money paid by a participant in connection with a participation agreement shall be:

- (1) deposited into an individual ABLE account held on behalf of that participant in the Texas ABLE savings plan account; and
- (2) promptly invested by the board.

(b) The board at least annually shall establish and review the asset allocation and selection of the underlying investments of the ABLE program.

(c) The board may delegate to duly appointed financial institutions authority to act on behalf of the board in the investment and reinvestment of all or part of the funds and may also delegate to those financial institutions the authority to act on behalf of the board in the holding, purchasing, selling, assigning, transferring, or disposing of any or all of the securities and investments in which the funds in the Texas ABLE savings plan account have been invested, as well as the proceeds from the investment of those funds.

(d) In delegating investment authority to financial institutions, the board may authorize the pooling of funds from the ABLE accounts with other funds administered by the board to

maximize returns for participants. If funds from the ABLE accounts are pooled with other funds administered by the board, the board shall track, monitor, report, and record separately all investment activity related to the ABLE accounts, including any earnings and fees associated with each individual ABLE account.

(e) The board may select one or more financial institutions to serve as custodian of all or part of the program's assets.

(f) In the board's discretion, the board may contract with one or more financial institutions to serve as plan manager and to invest the money in ABLE accounts.

(g) A contract between the board and a financial institution to act as plan manager under this subchapter may be for a term of up to five years and may be renewable.

(h) In exercising or delegating investment powers and authority, members of the board shall exercise ordinary business care and prudence under the facts and circumstances prevailing at the time of the action or decision. A member of the board is not liable for any action taken or omitted with respect to the exercise of, or delegation of, those powers and authority if the member discharged the duties of the member's position in good faith and with the degree of diligence, care, and skill that a prudent person acting in a like capacity and familiar with those matters would use in the conduct of an enterprise of a like character and with like aims.

(i) In administering this subchapter, the board is subject to the board's ethics policy adopted under Section 54.6085.

Sec. 54.906. TREATMENT OF ASSETS. (a) The assets of the ABLE program shall at all times be preserved, invested, and spent only for the purposes provided by this subchapter and in accordance with the participation agreements entered into under this subchapter.

(b) Except as provided by Section 529A, Internal Revenue Code, the state does not have a property right in the assets of the ABLE program.

Sec. 54.9065. EXCLUSION OF ABLE ACCOUNT ASSETS FROM CERTAIN BENEFIT ELIGIBILITY DETERMINATIONS. Notwithstanding any other provision of state law that requires consideration of the financial circumstances of an applicant for assistance or a benefit provided under that law, the agency making the determination of eligibility for the assistance or benefit may not consider the amount in the applicant's ABLE account, including earnings on that amount, and any distribution for qualified disability expenses in determining the applicant's eligibility to receive and the amount of the assistance or benefit with respect to the period during which the individual maintains the ABLE account.

Sec. 54.907. EXEMPTION FROM SECURITIES LAWS. An ABLE account is not a security within the meaning of the term as defined by Section 4, The Securities Act (Article 581-4, Vernon's Texas Civil Statutes), and is exempt from the provisions of The Securities Act (Article 581-1 et seq., Vernon's Texas Civil Statutes).

Sec. 54.908. PARTICIPATION AGREEMENTS. (a) Under the ABLE program, the board may enter into participation agreements with participants on behalf of designated beneficiaries.

(b) A participation agreement may include the following terms:

- (1) the requirements and applicable restrictions for:
 - (A) opening an ABLE account;
 - (B) making contributions to an ABLE account; and
 - (C) directly or indirectly, directing the investment of the contributions or balance of the ABLE account;

(2) the eligibility requirements for a participant to enter into a participation agreement and the rights of that participant;

(3) the administrative fee and other fees and charges applicable to an ABLE account;

(4) the terms and conditions under which an ABLE account or participation agreement may be modified, transferred, or terminated;

(5) the method of disposition of abandoned ABLE accounts; and

(6) any other terms and conditions the board considers necessary or appropriate, including those necessary to conform the ABLE account to the requirements of Section 529A, Internal Revenue Code, or other applicable federal law.

(c) The participation agreement may be amended throughout the term of the agreement, including to allow a participant to increase or decrease the level of participation and to change the designated beneficiary or other matters authorized by this section and Section 529A, Internal Revenue Code.

(d) If the board finds a participant has made a material misrepresentation in the application for a participation agreement or in any communication regarding the ABLE program, the board may liquidate the participant's ABLE account. If the board liquidates an ABLE account under this subsection, the participant is entitled to a refund, subject to any charges or fees provided by the participation agreement and the Internal Revenue Code.

Sec. 54.9085. ENCUMBRANCE OR TRANSFER OF ACCOUNT PROHIBITED. (a) An ABLE account may not be assigned for the benefit of creditors, used as security or collateral for any loan, or otherwise subject to alienation, sale, transfer, assignment, pledge, encumbrance, or charge.

(b) Notwithstanding Subsection (a), the state is a permissible creditor upon the death of a designated beneficiary for the purposes set forth in Section 529A, Internal Revenue Code.

Sec. 54.909. USE OF FUND ASSETS. The assets of the program may only be used to:

(1) make distributions to designated beneficiaries;

(2) pay the costs of program administration and operations;

(3) make refunds for cancellations, excess contributions, liquidation under Section 54.908(d), and death, in accordance with a computation method determined by the board;

(4) roll over funds to another ABLE account to the extent authorized by Section 529A, Internal Revenue Code; and

(5) make distributions to the state as authorized by Section 529A, Internal Revenue Code.

Sec. 54.910. DESIGNATED BENEFICIARY. (a) The participant is the designated beneficiary and the owner of the ABLE account except as described by Subsection (b) and as otherwise permitted by Section 529A, Internal Revenue Code.

(b) If the designated beneficiary of the account is a minor or has a custodian or other fiduciary appointed for the purpose of managing the minor's financial affairs, the parent or custodian or other fiduciary of the beneficiary may serve as the participant if that form of ownership is permitted or not prohibited by Section 529A, Internal Revenue Code.

(c) A designated beneficiary may own only one ABLE account, and each ABLE account may have only one owner, except as otherwise permitted by Section 529A, Internal Revenue Code.

Sec. 54.911. VERIFICATION UNDER OATH. The board may require a participant to verify under oath:

- individual;
- (2) the participant's selection to change a designated beneficiary;
- (3) the participant's selection to cancel a participation agreement; and
- (4) any other information the board may require.

Sec. 54.912. CANCELLATION. (a) A participant may cancel a participation agreement at will.

(b) Each participation agreement must provide that the agreement may be canceled on the terms and conditions and on payment of applicable fees and costs as provided by rule.

Sec. 54.913. REPORTS. (a) The board shall comply with the reporting requirements in Section 529A, Internal Revenue Code.

(b) The board shall report financial information related to the ABLE program in an annual financial report in accordance with the comptroller's requirements and guidelines for state agencies.

(c) The board shall include financial information for the ABLE program in the board's annual report posted on the board's website.

(d) The board shall prepare any other reports required by state or federal rules and regulations.

Sec. 54.914. CONFIDENTIALITY OF RECORDS. (a) Except as otherwise provided by this section, all information relating to the program is public and subject to disclosure under Chapter 552, Government Code.

(b) Information relating to a prospective or current participant or designated beneficiary or to a participation agreement, including any personally identifiable information, is confidential except that the board may disclose that information to:

(1) a participant regarding the participant's account;
or

(2) a state or federal agency as necessary to administer the program or as required by Section 529A, Internal Revenue Code, or other federal or state requirements.

Sec. 54.915. PROGRAM LIMITATIONS. (a) Nothing in this subchapter or in any participation agreement entered into under this subchapter may be construed to guarantee that amounts saved under the program will be sufficient to cover the qualified disability expenses of a designated beneficiary.

(b) Nothing in this subchapter or in any participation agreement entered into under this subchapter may be construed to create any obligation of the state, any agency or instrumentality of the state, or a plan manager to guarantee for the benefit of a participant:

(1) the return of any amount contributed to an account;

(2) the rate of interest or other return on an account;
or

(3) the payment of interest or other return on an account.

(c) The board by rule shall require that informational materials used in connection with a contribution to an ABLE account clearly indicate that the account is not insured by this state and that neither the principal deposited nor the investment return is guaranteed by the state.

Sec. 54.916. TERMINATION OR MODIFICATION OF PROGRAM. (a) If the comptroller determines that the ABLE program is not financially feasible, the comptroller shall notify the governor and the legislature and recommend that the board not administer an ABLE

program or that the program be modified or terminated. The program may be terminated only by the legislature.

(b) If the comptroller determines that the ABLE program is not financially feasible, the board may adjust the terms of participation agreements as necessary to ensure the financial feasibility of the program.

(c) If the legislature terminates the ABLE program, the balance of each ABLE account shall be paid to the participant, to the extent possible.

Sec. 54.917. ABLE PROGRAM ADVISORY COMMITTEE. (a) The ABLE program advisory committee is established to review rules and procedures related to the ABLE program, to provide guidance, suggest changes, and make recommendations for the administration of the program, and to provide assistance as needed to the board and comptroller during the creation of the program.

(b) The comptroller shall appoint at least five and not more than seven members to the advisory committee, including at least one member from each of the following groups:

(1) persons with a disability who qualify for the program;

(2) family members of a person with a disability who qualifies for the program;

(3) representatives of disability advocacy organizations; and

(4) representatives of the financial community.

(c) The comptroller shall appoint a presiding officer.

(d) The advisory committee shall meet quarterly or more frequently as the presiding officer determines is necessary to carry out the responsibilities of the committee.

(e) A member of the advisory committee is not entitled to compensation or reimbursement for travel expenses.

(f) Chapter 2110, Government Code, does not apply to this section.

(g) This section expires and the advisory committee is abolished December 1, 2019.

SECTION 3. If before implementing any provision of this Act a state agency determines that a waiver or authorization from a federal agency is necessary for implementation of that provision, the agency affected by the provision shall request the waiver or authorization and may delay implementing that provision until the waiver or authorization is granted.

SECTION 4. The Prepaid Higher Education Tuition Board may begin enrollment in the ABLE program as soon as reasonably practical to allow sufficient time for successful development and implementation of the ABLE program.

SECTION 5. Not later than December 1, 2015, the comptroller shall appoint the members of the ABLE program advisory committee as required by Section 54.917, Education Code, as added by this Act.

SECTION 6. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2015.

President of the Senate

Speaker of the House

I hereby certify that S.B. No. 1664 passed the Senate on April 15, 2015, by the following vote: Yeas 31, Nays 0; and that the Senate concurred in House amendments on May 28, 2015, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

I hereby certify that S.B. No. 1664 passed the House, with amendments, on May 24, 2015, by the following vote: Yeas 138, Nays 1, two present not voting.

Chief Clerk of the House

Approved:

Date

Governor

AMENDED IN SENATE JULY 1, 2015
AMENDED IN ASSEMBLY MAY 5, 2015
AMENDED IN ASSEMBLY MARCH 19, 2015
CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 449

Introduced by Assembly Member Irwin
(Principal coauthor: Assembly Member Wilk)
(Principal coauthor: Senator *coauthors: Senators Hertzberg and Pavley*)
(Coauthors: Assembly Members Baker, Brown, Chávez,
Cristina Garcia, Jones, Maienschein, Steinorth, and Waldron)
(Coauthors: Senators Allen, Anderson, and Vidak)

February 23, 2015

An act to add ~~and repeal~~ Sections 17140.4 and 23711.4 ~~of to~~ the Revenue and Taxation Code, and to add ~~and repeal~~ Chapter 15 (commencing with Section 4875) ~~of to~~ Division 4.5 of the Welfare and Institutions Code, relating to ~~taxation~~: *taxation, and making an appropriation therefor.*

LEGISLATIVE COUNSEL'S DIGEST

AB 449, as amended, Irwin. Income taxation: savings plans: Qualified ABLE Program.

The Personal Income Tax Law and the Corporation Tax Law, in specified conformity with federal income tax laws regarding qualified tuition programs, provide that distributions from a qualified tuition program are generally not included in the income of the donor or the beneficiary, as specified.

Existing federal law, the Stephen Beck Jr., Achieving a Better Life Experience Act of 2014 (ABLE Act), for taxable years beginning on

or after January 1, 2015, encourages and assists individuals and families to save private funds for the purpose of supporting persons with disabilities to maintain their health, independence, and quality of life by excluding from gross income distributions used for qualified disability expenses by a beneficiary of a Qualified ABLE Program established and maintained by a state, as specified.

This bill would, for taxable years beginning on or after January 1, 2016, ~~and before January 1, 2021~~, conform to these federal income tax law provisions relating to the ABLE Act under the Personal Income Tax Law and the Corporation Tax Law, as provided. The bill would also establish in state government a Qualified ABLE Program and the ~~Qualified~~ ABLE Fund for purposes of implementing the federal ABLE Act. *The bill would create the ABLE Act Board. The bill would authorize the Able Fund to accept moneys from ABLE Accounts, to be segregated into the program account and the administrative account. The bill would continuously appropriate funds in the accounts to the board for specified purposes, thereby making an appropriation.* The bill would require the Treasurer to administer the program in compliance with the requirements of the federal ABLE Act. ~~This bill would repeal the Qualified ABLE Program as of January 1, 2022.~~

Vote: majority. Appropriation: ~~no~~ yes. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. It is the intent of the Legislature to further the
- 2 purposes of the federal Stephen Beck Jr., Achieving a Better Life
- 3 Experience Act to ensure that people with disabilities may save
- 4 for the future to achieve greater independence.
- 5 SEC. 2. This act shall be known, and may be cited, as the
- 6 California Achieving a Better Life Experience Act.
- 7 SEC. 3. Section 17140.4 is added to the Revenue and Taxation
- 8 Code, to read:
- 9 17140.4. For taxable years beginning on or after January 1,
- 10 2016, ~~and before January 1, 2021~~, Section 529A of the Internal
- 11 Revenue Code, relating to qualified ABLE programs, added by
- 12 Section 102 of Division B of Public Law 113-295, shall apply,
- 13 except as otherwise provided.
- 14 (a) Section 529A of the Internal Revenue Code is modified as
- 15 follows:

1 (1) By substituting the phrase “under this part and Part 11
2 (commencing with Section 23001)” in lieu of the phrase “under
3 this subtitle.”

4 (2) By substituting “Article 2 (commencing with Section
5 23731)” in lieu of “Section 511.”

6 (b) A copy of the report required to be filed with the Secretary
7 of the Treasury under Section 529A(d) of the Internal Revenue
8 Code, relating to reports, shall be filed with the Franchise Tax
9 Board at the same time and in the same manner as specified in that
10 section.

11 ~~(c) This section shall remain in effect only until December 1,~~
12 ~~2021, and as of that date is repealed.~~

13 SEC. 4. Section 23711.4 is added to the Revenue and Taxation
14 Code, to read:

15 23711.4. For taxable years beginning on or after January 1,
16 2016, ~~and before January 1, 2021,~~ Section 529A of the Internal
17 Revenue Code, relating to qualified ABLE programs, added by
18 Section 102 of Division B of Public Law 113-295, shall apply,
19 except as otherwise provided.

20 (a) Section 529A of the internal Revenue Code is modified as
21 follows:

22 (1) By substituting the phrase “under Part 10 (commencing with
23 Section 17001) and this part” in lieu of the phrase “under this
24 subtitle.”

25 (2) By substituting “Article 2 (commencing with Section
26 23731)” in lieu of “Section 511.”

27 (b) A copy of the report required to be filed with the Secretary
28 of the Treasury under Section 529A(d) of the Internal revenue
29 Code, relating to reports shall be filed with the Franchise Tax
30 Board at the same time and in the same manner as specified in that
31 section.

32 ~~(c) This section shall remain in effect only until December 1,~~
33 ~~2021, and as of that date is repealed.~~

34 SEC. 5. Chapter 15 (commencing with Section 4875) is added
35 to Division 4.5 of the Welfare and Institutions Code, to read:

36
37 CHAPTER 15. QUALIFIED ABLE PROGRAM

38
39 4875. For purposes of this chapter:

1 (a) “ABLE account” or “account” means the account an eligible
2 individual makes contributions to pursuant to this chapter for the
3 purpose of meeting the qualified disability expenses of the
4 designated beneficiary of the account.

5 (b) “ABLE Fund” or “fund” means the fund established by this
6 chapter for purposes of implementing the federal ABLE Act.

7 (c) “Designated beneficiary” means the eligible individual who
8 established an ABLE account and is the owner of the account.

9 (d) “Eligible individual” means an individual who is eligible
10 under the program for a taxable year if during that taxable year
11 both of the following criteria are met:

12 (1) The individual is entitled to benefits based on blindness or
13 disability under Title II or XVI of the federal Social Security Act,
14 and that blindness or disability occurred before the date on which
15 the individual attained 26 years of age.

16 (2) A disability certification, as defined in the federal ABLE
17 Act, with respect to the individual is filed pursuant to the
18 requirements set forth in the federal ABLE Act.

19 (e) “Federal ABLE Act” means the federal Stephen Beck Jr.,
20 Achieving a Better Life Experience Act of 2014.

21 (f) “Qualified ABLE Program” or “program” means the program
22 established by this chapter to implement the federal ABLE act
23 pursuant to Section 529A of the Internal Revenue Code.

24 (g) “Qualified disability expenses” means any expenses related
25 to the eligible individual’s blindness or disability that are made
26 for the benefit of an eligible individual who is the designated
27 beneficiary, including expenses related to education, housing,
28 transportation, employment training and support, assistive
29 technology and personal support services, health, prevention and
30 wellness, financial management and administrative services, legal
31 fees, expenses for oversight and monitoring, funeral and burial
32 expenses, and other expenses, which are approved by the Secretary
33 of the Treasury under regulations and consistent with the purposes
34 of the federal ABLE Act.

35 4876. *There is hereby created the ABLE Act Board that consists*
36 *of the Treasurer, the Director of Finance, the State Controller,*
37 *the Director of Developmental Services, the chairperson of the*
38 *State Council on Developmental Disabilities, or their designees.*

1 ~~4876.~~

2 4877. (a) There is hereby established in state government a
3 Qualified ABLÉ Program and the ~~Qualified~~ ABLÉ Fund for
4 purposes of implementing the federal ABLÉ Act pursuant to
5 Section 529A of the Internal Revenue Code.

6 (b) The Qualified ABLÉ Program shall be administered by the
7 Treasurer, who shall be responsible for ensuring that the program
8 is administered in compliance with the requirements of the federal
9 ABLÉ Act.

10 (c) *(1) The ABLÉ Fund shall accept moneys from all ABLÉ*
11 *accounts.*

12 *(2) The Able Act Board shall segregate moneys received by the*
13 *ABLÉ Fund into two accounts, which shall be identified as the*
14 *program account and the administrative account.*

15 *(A) Notwithstanding Section 13340 of the Government Code,*
16 *the program account is hereby continuously appropriated, without*
17 *regard to fiscal years, to the ABLÉ Act Board for the purposes*
18 *specified in this act.*

19 *(B) Notwithstanding Section 13340 of the Government Code,*
20 *the administrative account is hereby continuously appropriated,*
21 *without regard to fiscal years, to the ABLÉ Act Board for*
22 *administration of the act. Administrative costs shall not exceed 1*
23 *percent of the incoming funds for the fiscal year.*

24 (d) *Funding for startup and first-year administrative costs shall*
25 *be appropriated from the General Fund in the annual Budget Act.*
26 *The board shall repay, within five years, the amount appropriated,*
27 *plus interest calculated at the rate earned by the Pooled Money*
28 *Investment Account. Necessary administrative costs in future years*
29 *shall be paid out of the administrative fund pursuant to*
30 *subparagraph (B) of paragraph (2) of subdivision (c).*

31 ~~4877.~~

32 4878. Under the program, a person may make contributions
33 for a taxable year, for the benefit of an individual who is an eligible
34 individual for that taxable year, to an ABLÉ account that is
35 established for the purpose of meeting the qualified disability
36 expenses of the designated beneficiary of the account, if both of
37 the following criteria are met:

38 (a) The designated beneficiary is limited to one ABLÉ account
39 for purposes of this chapter.

(b) The ABLE account is established only for a designated beneficiary who is a resident of this state.

~~4878.~~

4879. Notwithstanding any other law, moneys in, contributions to, and any distribution for qualified disability expenses from, an ABLE account, not to exceed one hundred thousand dollars (\$100,000), shall not count toward determining eligibility for a state or local means-tested program.

~~4879.~~

4880. (a) The Treasurer may adopt regulations to implement this chapter.

(b) The Treasurer shall adopt regulations to track all ABLE accounts in California.

~~4880. This chapter shall remain in effect only until January 1, 2022, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2022, deletes or extends that date.~~



[4830-01-p]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1, 25, 26, and 301

[REG-102837-15]

RIN 1545-BM68

Guidance under Section 529A: Qualified ABLE Programs

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations under section 529A of the Internal Revenue Code that provide guidance regarding programs under The Stephen Beck, Jr., Achieving a Better Life Experience Act of 2014. Section 529A provides rules under which States or State agencies or instrumentalities may establish and maintain a new type of tax-favored savings program through which contributions may be made to the account of an eligible disabled individual to meet qualified disability expenses. These accounts also receive favorable treatment for purposes of certain means-tested Federal programs. In addition, these proposed regulations provide corresponding amendments to regulations under sections 511 and 513, with respect to unrelated business taxable income, sections 2501, 2503, 2511, 2642 and 2652, with respect to gift and generation-skipping transfer taxes, and section 6011, with respect to reporting

requirements. This document also provides notice of a public hearing on these proposed regulations.

DATES: Comments must be received by **[INSERT DATE 90 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]**. Outlines of topics to be discussed at the public hearing scheduled for October 14, 2015, at 10 am, must be received by **[INSERT DATE 90 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG-102837-15), room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG-102837-15), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC, or sent electronically via the Federal eRulemaking Portal at <http://www.regulations.gov> (IRS REG-102837-15). The public hearing will be held in the Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations under section 529A, Taina Edlund or Terri Harris, (202) 317-4541, or Sean Barnett, (202) 317-5800; concerning the proposed estate and gift tax regulations, Theresa Melchiorre, (202) 317-4643; concerning the reporting provisions under section 529A, Mark Bond, (202) 317-6844; concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, call Regina Johnson, (202) 317-6901 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review and approval in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the **Office of Management and Budget**, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the **Internal Revenue Service**, Attn: IRS Reports Clearance Officer, SE:W:CAR:MP:T:T:SP, Washington, DC 20224. Comments on the collection of information should be received by **[INSERT DATE 60 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]**.

Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the Internal Revenue Service, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information;

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collection of information may be minimized, including through forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

The collection of information in the proposed regulations is in §§1.529A-2, 1.529A-5, 1.529A-6 and 1.529A-7. The collection of information flows from sections 529A(d)(1), (d)(2), (d)(3), (e)(1) and (e)(2) of the Internal Revenue Code (Code). Section 529A(d)(1) requires qualified ABLE programs to provide reports to the Secretary and to designated beneficiaries with respect to contributions, distributions, the return of excess contributions, and such other matters as the Secretary may require. Section 529(d)(2) provides that the Secretary shall make available to the public reports containing aggregate information, by diagnosis and other relevant characteristics, on contributions and distributions from the qualified ABLE program. Section 529(d)(3) requires qualified ABLE programs to provide notice to the Secretary upon the establishment of an ABLE account, containing the name and State of residence of the designated beneficiary and such other information as the Secretary may require. Section 529A(e)(1) requires that a disability certification with respect to certain individuals be filed with the Secretary. Section 529A(e)(2) provides that the disability certification include a certification to the satisfaction of the Secretary that the individual has a medically determinable physical or mental impairment that occurred before the date on which the individual attained age 26 and also include a copy of a physician's diagnosis. The burden under §§ 1.529A-5 and 1.529A-6 is reflected in the burden under the new Form 5498-QA, "ABLE Account Contribution Information," and the new Form 1099-QA, "Distributions from ABLE Accounts," respectively.

The expected recordkeepers are programs described in section 529A, established and maintained by a State or a State agency or instrumentality and individuals with ABLE accounts.

Estimated number of recordkeepers: 10,050.

Estimated average annual burden hours per recordkeeper: 1.6 hours.

Estimated total annual recordkeeping burden: 16,080.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and return information are confidential, as required by 26 U.S.C. 6103.

Background

The Stephen Beck, Jr., Achieving a Better Life Experience (ABLE) Act of 2014, enacted on December 19, 2014, as part of The Tax Increase Prevention Act of 2014 (Public Law 113-295), added section 529A to the Internal Revenue Code. Congress recognized the special financial burdens borne by families raising children with disabilities and the fact that increased financial needs generally continue throughout the disabled person's lifetime. Section 101 of the ABLE Act confirms that one of the purposes of the Act is to "provide secure funding for disability-related expenses on behalf of designated beneficiaries with disabilities that will supplement, but not supplant, benefits" otherwise

available to those individuals, whether through private sources, employment, public programs, or otherwise. Prior to the enactment of the ABLE Act, various types of tax-advantaged savings arrangements existed, but none adequately served the goal of promoting saving for these financial needs. Section 529A allows the creation of a qualified ABLE program by a State (or agency or instrumentality thereof) under which a separate ABLE account may be established for a disabled individual who is the designated beneficiary and owner of that account. Generally, contributions to that account are subject to both an annual and a cumulative limit, and, when made by a person other than the designated beneficiary, are treated as non-taxable gifts to the designated beneficiary. Distributions made from an ABLE account for qualified disability expenses of the designated beneficiary are not included in the designated beneficiary's gross income. The earnings portion of distributions from the ABLE account in excess of the qualified disability expenses is includible in the gross income of the designated beneficiary. An ABLE account may be used for the long-term benefit and/or short-term needs of the designated beneficiary.

Section 103 of the ABLE Act, while not a tax provision, is critical to achieving the goal of the ABLE Act of providing financial resources for the benefit of disabled individuals. Because so many of the programs that provide essential financial, occupational, and other resources and services to disabled individuals are available only to persons whose resources and income do not exceed relatively low dollar limits, section 103 generally provides that a designated beneficiary's ABLE account (specifically, its account balance, contributions to the account, and distributions from the account) is

disregarded for purposes of determining the designated beneficiary's eligibility for and the amount of any assistance or benefit provided under certain means-tested Federal programs. However, in the case of the Supplemental Security Income program under title XVI of the Social Security Act, distributions for certain housing expenses are not disregarded, and the balance (including earnings) in an ABLE account is considered a resource of the designated beneficiary to the extent that balance exceeds \$100,000. Section 103 also addresses the impact of an excess balance in an ABLE account on the designated beneficiary's eligibility under the Supplemental Security Income program and Medicaid.

Finally, section 104 of the ABLE Act addresses the treatment of ABLE accounts in bankruptcy proceedings.

Notice 2015-18, 2015-12 IRB 765 (March 23, 2015), provides that the section 529A guidance will confirm that the owner of the ABLE account is the designated beneficiary of the account, and that the person with signature authority over (if not the designated beneficiary of) the account may neither have nor acquire any beneficial interest in the ABLE account and must administer that account for the benefit of the designated beneficiary of that account. The Notice further provides that, in the event that state legislation creating ABLE programs enacted in accordance with section 529A prior to issuance of guidance does not fully comport with the guidance when issued, the Treasury Department and the IRS intend to provide transition relief to provide sufficient time to allow States to implement the changes necessary to avoid the disqualification of the program and of the ABLE accounts already established under the program.

The Treasury Department and the IRS reiterate that States that enact legislation creating an ABLE program in accordance with section 529A, and those individuals establishing ABLE accounts in accordance with such legislation, will not fail to receive the benefits of section 529A merely because the legislation or the account documents do not fully comport with the final regulations when they are issued. The Treasury Department and the IRS intend to provide transition relief to enable those State programs and accounts to be brought into compliance with the requirements in the final regulations, including providing sufficient time after issuance of the final regulations in order for changes to be implemented.

Explanation of Provisions

Qualification as an ABLE program

The proposed regulations provide guidance on the requirements a program must satisfy in order to be a qualified ABLE program described in section 529A. Specifically, in addition to other requirements, the program must: be established and maintained by a State or a State's agency or instrumentality; permit the establishment of an ABLE account only for a designated beneficiary who is a resident of that State, or a State contracting with that State for purposes of the ABLE program; permit the establishment of an ABLE account only for a designated beneficiary who is an eligible individual; limit a designated beneficiary to only one ABLE account, wherever located; permit contributions to an ABLE account established to meet the qualified disability expenses of the account's designated beneficiary; limit the nature and amount of contributions that can be made to an ABLE account; require a separate accounting for the ABLE account of each designated

beneficiary with an ABLE account in the program; limit the designated beneficiary to no more than two opportunities in any calendar year to provide investment direction, whether directly or indirectly, for the ABLE account; and prohibit the pledging of an interest in an ABLE account as security for a loan.

Because each qualified ABLE program will have significant administrative obligations beyond what is required for the administration of qualified tuition programs under section 529 (on which section 529A was loosely modeled), and because the frequency of distributions from the ABLE accounts is likely to be far greater than those made from qualified tuition accounts, the proposed regulations expressly allow a qualified ABLE program or any of its contractors 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. For example, a CDFI could provide screening and verification of disabilities, certification of the qualified purpose of distributions, debit card services to facilitate distributions, and social data collection and reporting. A CDFI also may be able to obtain grants to defray the cost of administering the program. In general, if certified by the Treasury Department, a CDFI may receive a financial assistance award from the CDFI Fund that was established within the Treasury Department in 1994 to promote community development in economically distressed communities through investments in CDFIs across the country.

Established and maintained

The proposed regulations provide that a program is established by a State, or its agency or instrumentality, if the program is initiated by State statute or regulation, or by an

act of a State official or agency with the authority to act on behalf of the State. A program is maintained by a State or its agency or instrumentality if: all the terms and conditions of the program are set by the State or its agency or instrumentality, and the State or its agency or instrumentality is actively involved on an ongoing basis in the administration of the program, including supervising all decisions relating to the investment of assets contributed to the program. The proposed regulations set forth factors that are relevant in determining whether a State, or its agency or instrumentality, is actively involved in the administration of the program. Included in the factors is the manner and extent to which it is permissible for the program to contract out for professional and financial services.

Establishment of an ABLE account

The proposed regulations provide that, consistent with the definition of a designated beneficiary in section 529A(e)(3), the designated beneficiary of an ABLE account is the eligible individual who establishes the account or an eligible individual who succeeded the original designated beneficiary. The proposed regulations also provide that the designated beneficiary is the owner of that account.

The Treasury Department and the IRS recognize, however, that certain eligible individuals may be unable to establish an account themselves. Therefore, the proposed regulations clarify that, if the eligible individual cannot establish the account, the eligible individual's agent under a power of attorney or, if none, his or her parent or legal guardian may establish the ABLE account for that eligible individual. For purposes of these proposed regulations, because each of these individuals would be acting on behalf of the designated beneficiary, references to actions of the designated beneficiary, such as

opening or managing the ABLE account, are deemed to include the actions of any other such individual with signature authority over the ABLE account. The proposed regulations also provide that, consistent with Notice 2015-18, a person other than the designated beneficiary with signature authority over the account of the designated beneficiary may neither have, nor acquire, any beneficial interest in the account during the designated beneficiary's lifetime and must administer the account for the benefit of the designated beneficiary.

At the time an ABLE account is created for a designated beneficiary, the designated beneficiary must provide evidence that the designated beneficiary is an eligible individual as defined in section 529A(e)(1). Section 529A(e)(1) provides that an individual is an eligible individual for a taxable year if, during that year, either the individual is entitled to benefits based on blindness or disability under title II or XVI of the Social Security Act and the blindness or disability occurred before the date on which the individual attained age 26, or a disability certification meeting specified requirements is filed with the Secretary. If an individual is asserting he or she is entitled to benefits based on blindness or disability under title II or XVI of the Social Security Act and the blindness or disability occurred before the date on which the individual attained age 26, the proposed regulations provide that each qualified ABLE program may determine the evidence required to establish the individual's eligibility. For example, a qualified ABLE program could require the individual to provide a copy of a benefit verification letter from the Social Security Administration and allow the individual to certify, under penalties of perjury, that the blindness or disability occurred before the date on which the individual

attained age 26.

Alternatively, the designated beneficiary must submit the disability certification when opening the ABLE account. Consistent with section 529A(e)(2), the proposed regulations provide that a disability certification is a certification by the designated beneficiary that he or she: (1) has a medically determinable physical or mental impairment, which results in marked or severe functional limitations, and which (i) can be expected to result in death or (ii) has lasted or can be expected to last for a continuous period of not less than 12 months; or (2) is blind (within the meaning of section 1614(a)(2) of the Social Security Act) and that such blindness or disability occurred before the date on which the individual attained age 26. The certification must include a copy of the individual's diagnosis relating to the individual's relevant impairment or impairments, signed by a licensed physician (as defined in section 1861(r) of the Social Security Act, 42 U.S.C. 1395x(r)). Consistent with other IRS filing requirements, the proposed regulations also provide that the certification must be signed under penalties of perjury.

While evidence of an individual's eligibility based on entitlement to Social Security benefits should be objectively verifiable, the sufficiency of a disability certification that an individual is an eligible individual for purposes of section 529A might not be as easy to establish. Nevertheless, the Treasury Department and the IRS wish to facilitate an eligible individual's ability to establish an ABLE account without undue delay. Therefore, the proposed regulations provide that an eligible individual must present the disability certification, accompanied by the diagnosis, to the qualified ABLE program to demonstrate eligibility to establish an ABLE account. The proposed regulations further

provide that the disability certification will be deemed to be filed with the Secretary once the qualified ABLE program has received the disability certification or a disability certification has been deemed to have been received under the rules of the qualified ABLE program, which information the qualified ABLE program, as discussed further below, will file with the IRS in accordance with the filing requirements under §1.529A-5(c)(2)(iv).

Disability determination

Consistent with section 529A(g)(4), the Treasury Department and the IRS have consulted with the Commissioner of Social Security regarding disability certifications and determinations of disability. For purposes of the disability certification, the proposed regulations provide that the phrase “marked and severe functional limitations” means the standard of disability in the Social Security Act for children claiming benefits under the Supplemental Security Income for the Aged, Blind, and Disabled (SSI) program based on disability, but without regard to the age of the individual. This phrase refers to a level of severity of an impairment that meets, medically equals, or functionally equals the listings in the Listing of Impairments (the listings) in appendix 1 of subpart P of 20 CFR part 404. (See 20 CFR 416.906, 416.924 and 416.926a). This listing developed and used by the Social Security Administration describes for each of the major body systems impairments that cause marked and severe functional limitations. Most body system sections are in two parts: an introduction, followed by the specific listings. The introduction contains information relevant to the use of the listings with respect to that body system, such as examples of common impairments in the body system and definitions used in the listings

for that body system. The introduction may also include specific criteria for establishing a diagnosis, confirming the existence of an impairment, or establishing that an impairment satisfies the criteria of a particular listing with respect to the body system. The specific listings that follow the introduction for each body system specify the objective medical and other findings needed to satisfy the criteria of that listing. Most of the listed impairments are permanent or expected to result in death, although some listings state a specific period of time for which an impairment will meet the listing.

An impairment is medically equivalent to a listing if it is at least equal in severity and duration to the severity and duration of any listing. An impairment that does not meet or medically equal any listing may result in limitations that functionally equal the listings if it results in marked limitations in two domains of functioning or an extreme limitation in one domain of functioning, as explained in 20 CFR 416.926a. In addition, the proposed regulations provide that certain conditions, specifically those listed in the Compassionate Allowances Conditions list maintained by the Social Security Administration, are deemed to meet the requirements of an impairment sufficient for a disability certification without a physician's diagnosis, provided that the condition was present before the date on which the individual attained age 26. The proposed regulations also provide the flexibility from time to time to identify additional impairments that will be deemed to meet these requirements. The Treasury Department and the IRS request comments on what other conditions should be deemed to meet the requirements of section 529A(e)(2)(A)(i).

Change in eligible individual status

The Treasury Department and the IRS recognize that there may be circumstances in which a designated beneficiary ceases to be an eligible individual but subsequently regains that status. Consequently, the Treasury Department and the IRS believe that it is appropriate to permit continuation of the ABLE account (albeit with some changes in the applicable rules) during the period in which a designated beneficiary is not an eligible individual as long as the designated beneficiary was an eligible individual when the account was established. Therefore, if at any time a designated beneficiary no longer meets the definition of an eligible individual, his or her ABLE account remains an ABLE account to which all of the provisions of the ABLE Act continue to apply, and no (taxable) distribution of the account balance is deemed to occur. However, the proposed regulations provide that, beginning on the first day of the taxable year following the taxable year in which the designated beneficiary ceased to be an eligible individual, no contributions to the ABLE account may be accepted. If the designated beneficiary subsequently again becomes an eligible individual, then additional contributions may be accepted subject to the applicable annual and cumulative limits. In this way, the Treasury Department and the IRS intend to prevent a deemed distribution of the ABLE account (and preserve the account's qualification as an ABLE account for all purposes) if, for example, the disease that caused the impairment goes into a temporary remission, and to preserve the ABLE account with its tax-free distributions for qualified disability expenses if the impairment resumes and once again qualifies the designated beneficiary as an eligible individual. Note that expenses will not be qualified disability expenses if they are incurred at a time when a designated beneficiary is neither disabled nor blind

within the meaning of §1.529A-1(b)(9)(A) or §1.529A-2(e)(1)(i).

The proposed regulations provide flexibility regarding annual recertifications. A qualified ABLE program generally must require annual recertifications that the designated beneficiary continues to satisfy the definition of an eligible individual. However, a qualified ABLE program may deem an annual recertification to have been provided in appropriate circumstances. For example, a qualified ABLE program may permit certification by an individual that he or she has a permanent disability to be considered to meet the annual requirement to present a certification to the qualified ABLE program. In other cases, a program may require all of the same evidence needed for the initial disability certification when the account was established, may require a statement under penalties of perjury that nothing has changed that would change the original disability certification, or may incorporate some other method of ensuring that the designated beneficiary continuously qualifies as an eligible individual. Alternatively, a qualified ABLE program may identify certain impairments or categories of impairments for which recertifications will be deemed to have been made annually to the qualified ABLE program unless and until the qualified ABLE program provides otherwise (for example, if a cure is discovered for a disease that causes an impairment). An initial certification or recertification that meets the requirements of the qualified ABLE program will be deemed to have met the requirement of section 529A(e)(1)(B). The Treasury Department and the IRS request comments regarding how a qualified ABLE program will be able to demonstrate eligibility in subsequent years if it allows deemed recertifications.

Contributions to an ABLE account

The proposed regulations provide that, as a general rule, all contributions to an ABLE account must be made in cash. 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. In addition, the proposed regulations provide that the total contributions to an ABLE account in the designated beneficiary's taxable year, other than amounts received in rollovers and program-to-program transfers, must not exceed the amount of the annual per-donee gift tax exclusion under section 2503(b) in effect for that calendar year (currently \$14,000) in which the designated beneficiary's taxable year begins. Finally, a qualified ABLE program must provide adequate safeguards to ensure that total contributions to an ABLE account (including the proceeds from a preexisting ABLE account) do not exceed that State's limit for aggregate contributions under its qualified tuition program.

To implement these requirements, 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), along with all net income attributable to those excess contributions. Similarly, the proposed regulations also require the return of 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 other than the designated beneficiary, the qualified ABLE program must notify the designated beneficiary of such return at the time of the return. The proposed regulations further

provide that such returns of excess contributions and excess aggregate contributions must be received by the contributor(s) on or before the due date (including extensions) of the designated beneficiary's income tax return for the year in which the excess contributions were made or in the year the excess aggregate contributions caused amounts in the ABLE account to exceed the limit in effect under section 529A(b)(6), respectively. The proposed regulations provide rules for determining the net income attributable to a contribution made to an ABLE account, and also provide that these excess contributions and excess aggregate contributions must be returned to contributors on a last-in, first-out basis. In the case of contributions that exceed the annual gift tax exclusion, a failure to return such excess contributions within the time period discussed in this paragraph will result in the imposition on the designated beneficiary of a 6 percent excise tax under section 4973(a)(6) on the amount of excess contributions. As part of a planned revision of IRA regulations, the Treasury Department and the IRS intend to propose regulations under section 4973 to reflect that ABLE accounts are subject to section 4973.

Application of gift tax to contributions to an ABLE account

Gift tax consequences may arise from contributions to an ABLE account even though the aggregate amount of such contributions to an ABLE account from all contributors may not exceed the annual exclusion amount under section 2503(b) applicable to any single contributor. Specifically, if a contributor makes other gifts to a designated beneficiary in addition to the gift to the designated beneficiary's ABLE account, the contributor's total gifts made to the designated beneficiary in that year could

give rise to a gift tax liability.

Contributions may be made by any person. The term person is defined in section 7701(a)(1) to include an individual, trust, estate, partnership, association, company, or corporation. Therefore, for purposes of section 529A(b)(1)(A), a person would include an individual and each of the entities described in section 7701(a)(1). Under section 2501(a)(1), the gift tax applies only to gifts by individuals, but it also applies to gifts made directly or indirectly. As a result, a gift made by a trust, estate, association, company, corporation, or partnership is treated as having been made by the owner(s) of that entity. For example, a gift from a corporation to a designated beneficiary is treated as a gift from the shareholders of the corporation to the designated beneficiary. See Example (1) of §25.2511-1(h). Accordingly, the proposed regulations provide that, for purposes of sections 529A(b)(1)(A) and 529A(c)(1)(C), a contribution by a corporation is treated as a gift by its shareholders and a contribution by a partnership is treated as a gift by its partners. This rule also applies to trusts, estates, associations, and companies. See section 2511 and §25.2511-1(c).

The legislative history of section 529A suggests that a “person” described in section 529A(b)(1)(A) includes the designated beneficiary of an ABLE account. See 160 CONG. REC. H7051, H8317, H8318, H8321, H8322 (2014). A person may transfer his or her property into an account, such as a bank account or a trust, for his or her benefit and retain dominion and control over the property transferred. Because an individual cannot make a transfer of property to himself or herself and a transfer of property is a fundamental requirement for a completed gift, this type of transfer from a person’s own

property cannot be treated as a completed gift for tax purposes. See §25.2511-2(b) and (c). Therefore, the proposed regulations provide that any contribution by a designated beneficiary to a qualified ABLE program benefitting the designated beneficiary is not treated as a completed gift. Because the designated beneficiary remains the owner of the account for purposes of chapter 12, if the designated beneficiary transfers the funds in the account to another person as permitted under these proposed regulations, the designated beneficiary making the transfer is the donor for purposes of chapter 12 and the transferor for generation-skipping transfer tax purposes of chapter 13.

Distributions

If distributions from an ABLE account do not exceed the designated beneficiary's qualified disability expenses, no amount is includible in the designated beneficiary's gross income. Otherwise, the earnings portion of the distributions from the ABLE account as determined in the manner provided under section 72, reduced by the product of such earnings portion and the ratio of the amount of the distributions for qualified disability expenses to total distributions, is includible in the gross income of the designated beneficiary to the extent not otherwise excluded from gross income. As required by section 529A(c)(1)(D), the proposed regulations provide that, for purposes of applying section 72 to amounts distributed from an ABLE account: (1) all distributions during a taxable year are treated as one distribution; and (2) the value of the contract, income on the contract, and investment in the contract are computed as of the close of the calendar year in which the designated beneficiary's taxable year begins.

The proposed regulations also provide that, in addition to the income tax on the portion of a distribution included in gross income, an additional tax of 10 percent of the amount includible in gross income is imposed. This additional tax does not apply, however, to distributions on or after the designated beneficiary's death or to returns of excess contributions, excess aggregate contributions, or contributions to additional purported ABLE accounts made by the due date (including extensions) of the designated beneficiary's tax return for the year in which the relevant contributions were made.

Section 529A(c)(1)(C) addresses the tax consequences of the rollover of an ABLE account to an ABLE account for the same designated beneficiary maintained under a different State's qualified ABLE program, as well as a change of designated beneficiary. The proposed regulations describe with respect to these two situations the circumstances in which amounts will not be includible in income. The first is any change of designated beneficiary if the new designated beneficiary is both (1) an eligible individual for his or her taxable year in which the change is made and (2) a sibling of the former designated beneficiary. For purposes of these proposed regulations, a sibling also includes step-siblings and half-siblings, whether by blood or by adoption. The proposed regulations provide that a qualified ABLE program must permit a change of designated beneficiary, as long as the change is made prior to the death of the former designated beneficiary and as long as the successor designated beneficiary is an eligible individual. Because the designated beneficiary will be subject to gift and/or generation-skipping transfer tax if the successor designated beneficiary is not a sibling of the designated beneficiary, the Treasury Department and the IRS request comments regarding whether

the final regulations should permit States to require that a successor designated beneficiary also must be a sibling of the designated beneficiary.

The second situation in which a distribution is not included in gross income arises if a distribution to the designated beneficiary of the ABLE account is paid, not later than the 60th day after the date of the distribution, to another (or the same) ABLE account for the benefit of the designated beneficiary or for the benefit of an eligible individual who is a sibling of the designated beneficiary. However, the preceding sentence does not apply to such a distribution that occurs within 12 months of a previous rollover to another ABLE account for the same designated beneficiary.

The Treasury Department and the IRS have been asked whether a qualified tuition account under section 529 may be rolled into an ABLE account for the same designated beneficiary free of tax. Because such a distribution to the ABLE account would not constitute a qualified higher education expense under section 529, the Treasury Department and the IRS do not believe they have the authority to allow such a transfer on a tax-free basis.

In addition, the proposed regulations authorize a qualified ABLE program to allow program-to-program transfers to effectuate a change of qualified ABLE program or a change of designated beneficiary to another eligible individual. Such a direct transfer is neither a distribution taxed in accordance with section 72 nor an excess contribution. A program-to-program transfer also could be accomplished, if permitted by the qualified ABLE program, through a check delivered to the designated beneficiary but negotiable

only by the qualified State program under which the new ABLÉ account is being established.

The Treasury Department and the IRS recognize that moving funds by use of a program-to-program transfer may be preferable to moving them by a rollover because a rollover, even if made within the permissible 60-day period, may jeopardize the designated beneficiary's eligibility for certain benefits under various means-tested programs. Moreover, a direct program-to-program transfer could facilitate the efficient transfer of all relevant information regarding the application of contribution limits and the total amount of accumulated earnings that will also apply to the new account. The Treasury Department and the IRS request comments as to whether and to what extent a qualified ABLÉ program should be permitted to require that funds from another State's ABLÉ program be accepted only through program-to-program transfers.

Qualified disability expenses

Section 529A(e)(5) defines a qualified disability expense. Consistent with that subsection, 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. Such expenses include, but are not limited to, expenses for 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, and other expenses that may be identified from

time to time in future guidance published in the Internal Revenue Bulletin. As previously stated, expenses incurred at a time when a designated beneficiary is neither disabled nor blind within the meaning of the proposed regulations are not qualified disability expenses.

In order to implement the legislative purpose of assisting eligible individuals in maintaining or improving their health, independence, or quality of life, the Treasury Department and the IRS conclude that 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. For example, expenses for common items such as smart phones could be considered qualified disability expenses if they are an effective and safe communication or navigation aid for a child with autism. The Treasury Department and the IRS request comments regarding what types of expenses should be considered qualified disability expenses and under what circumstances. The proposed regulations authorize the identification of additional types of qualified disability expenses in guidance published in the Internal Revenue Bulletin. See §601.601(d)(2). A qualified ABLE program must establish safeguards to distinguish between distributions used for the payment of qualified disability expenses and other distributions, and to 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.

Limitation on number of ABLE accounts of a designated beneficiary

Section 529A(c)(4) generally provides that, except with respect to certain rollovers, once an ABLE account has been established for a designated beneficiary, no account subsequently established for that same designated beneficiary may qualify as an ABLE account. The proposed regulations provide that, except with respect to rollovers and program-to-program transfers, no designated beneficiary may have more than one ABLE account in existence at the same time, but provides that a prior ABLE account that has been closed does not prohibit the subsequent creation of another ABLE account for the same designated beneficiary. A qualified ABLE program must obtain a verification from the eligible individual, signed under penalties of perjury, that he or she has no other ABLE account (except in the case of a rollover or program-to-program transfer). The proposed regulations provide that, in the event that any additional ABLE account is opened for a designated beneficiary with an ABLE account already in existence, only the first such account created for that designated beneficiary qualifies as an ABLE account, and each other account is treated for all purposes as being an account of the designated beneficiary that is not an ABLE account under a qualified ABLE program. The proposed regulations also provide, however, that a return, in accordance with the rules that apply to returns of excess contributions and excess aggregate contributions under §1.529A-2(g)(4), of the entire balance of a second or other subsequent account received by the contributor(s) on or before the due date (including extensions) for filing the designated beneficiary's income tax return for the year in which the account was opened and contributions to the second or subsequent account were made will not be treated as a gift or distribution to the designated beneficiary for purposes of section 529A.

The prohibition of multiple ABLE accounts, however, does not apply to prevent a timely rollover or program-to-program transfer of the designated beneficiary's account to an ABLE account under a different qualified ABLE program.

Residency requirements

Consistent with section 529A(b)(1)(C), the proposed regulations require that an ABLE account for a designated beneficiary may be established only under the qualified ABLE program of the State in which that designated beneficiary is a resident or with which the State of the designated beneficiary's residence has contracted for the provision of ABLE accounts. If a State does not establish and maintain a qualified ABLE program, it may contract with another State to provide an ABLE program for its residents. The statute is silent as to whether a designated beneficiary must move his or her existing ABLE account when the designated beneficiary changes his or her residence. The Treasury Department and the IRS are concerned about imposing undue administrative burdens and costs on designated beneficiaries who frequently change State residency, such as members of military families. Therefore, the proposed regulations provide that a qualified ABLE program may permit a designated beneficiary to continue to maintain his or her ABLE account that was created in that State, even after the designated beneficiary is no longer a resident of that State. However, in order to enforce the one ABLE account limitation and in accordance with section 529A(g)(1), the proposed regulations provide that, other than in the case of a rollover or a program-to-program transfer of a designated beneficiary's ABLE account, a qualified ABLE program must require the designated beneficiary to verify, under penalties of perjury, when creating an ABLE account that the

account being established is the designated beneficiary's only ABLE account. For example, the eligible individual could be required to check a box providing such verification on a form used to establish the account. The Treasury Department and the IRS are concerned that without such safeguards individuals could inadvertently establish two accounts with adverse tax consequences due to the loss of ABLE account status for the second account and expect qualified ABLE programs to establish safeguards to ensure that the required limit of one ABLE account per designated beneficiary is not violated.

Investment direction

Section 529A(b)(4) states that a program shall not be treated as a qualified ABLE program unless it provides that the designated beneficiary may directly or indirectly direct the investment of any contributions to the program or any earnings thereon no more than two times in any calendar year. A program will not violate this requirement merely because it permits a designated beneficiary or a person with signature authority over a designated beneficiary's account to serve as one of the program's board members or employees, or as a board member or employee of a contractor that the program hires to perform administrative services.

Cap on contributions

Section 529A(b)(6) provides that a qualified ABLE program must provide adequate safeguards to prevent aggregate contributions on behalf of a designated beneficiary in excess of the limit established by the State under section 529(b)(6) relating to Qualified State Tuition Programs. The proposed regulations provide a safe harbor that permits a

qualified ABLE program to satisfy this requirement regarding total cumulative contributions if the program prohibits any additional contributions to an account as soon as the account balance reaches the specified contribution limit under such State's program established under section 529. Once the account balance falls below the prescribed limit, contributions may resume, subject to the same limitation. The Treasury Department and the IRS believe that recommencement of contributions is appropriate based on the nature and purposes of the ABLE program.

Gift and generation-skipping transfer (GST) taxes

The proposed regulations provide that contributions to an ABLE account by a person other than the designated beneficiary are treated as completed gifts to the designated beneficiary of the account, and that such gifts are neither gifts of a future interest nor a qualified transfer under section 2503(e). Accordingly, no distribution from an ABLE account to the designated beneficiary of that account is treated as a taxable gift. Finally, neither gift nor GST taxes apply to the change of designated beneficiary of an ABLE account, as long as the new designated beneficiary is an eligible individual who is a sibling of the former designated beneficiary.

Distribution on death

The proposed regulations provide that, upon the death of the designated beneficiary, all amounts remaining in the ABLE account are includible in the designated beneficiary's gross estate for purposes of the estate tax. See section 2031. Further, the proposed regulations cross-reference section 2053 for purposes of determining the deductibility by the designated beneficiary's estate of amounts payable from the ABLE

account to satisfy claims by creditors such as a State and also cross-reference section 2652(a)(1) for treatment of the deceased designated beneficiary as the transferor of any property remaining in the ABLE account that may pass to a beneficiary.

Pursuant to section 529A(f), a qualified ABLE program must provide that, upon the designated beneficiary's death, any State may file a claim (either with the person with signature authority over the ABLE account or the executor of the designated beneficiary's estate as defined in section 2203) for the amount of the total medical assistance paid for the designated beneficiary under the State's Medicaid plan after the establishment of the ABLE account. The amount paid in satisfaction of such a claim is not a taxable distribution from the ABLE account. Further, the amount is to be paid only after the payment of all outstanding payments due for the qualified disability expenses of the designated beneficiary and is to be reduced by the amount of all premiums paid by or on behalf of the designated beneficiary to a Medicaid Buy-In program under that State's Medicaid plan.

Unrelated business taxable income and filing requirements

A qualified ABLE program generally is exempt from income taxation. A qualified ABLE program, however, is subject to the taxes imposed by section 511 relating to the imposition of tax on unrelated business taxable income ("UBTI"). For purposes of this tax, certain administrative and other fees do not constitute unrelated business income to the ABLE program. A qualified ABLE program is not required to file Form 990, "Return of Organization Exempt From Income Tax," but will be required to file Form 990-T, "Exempt Organization Business Income Tax Return," if a filing would be required under the rules of

§§1.6012-2(e) and 1.6012-3(a)(5) if the ABLE program were an organization described in those sections.

Reporting requirements

The proposed regulations set forth recordkeeping and reporting requirements. A qualified ABLE program must maintain records that enable the program to account to the Secretary with respect to all contributions, distributions, returns of excess contributions or additional accounts, income earned, and account balances for any designated beneficiary's ABLE account. In addition, a qualified ABLE program must report to the Secretary the establishment of each ABLE account, including the name and residence of the designated beneficiary, and other relevant information regarding the account that is included on the new Form 5498-QA, "ABLE Account Contribution Information." It is anticipated that the qualified ABLE program will report if the eligible individual has presented an adequate disability certification, accompanied by a diagnosis, to demonstrate eligibility to establish an account. Information regarding distributions will be reported on the new Form 1099-QA, "Distributions from ABLE Accounts." The proposed regulations contain more detail on how the information must be reported.

In addition, section 529A(b)(3) requires that a qualified ABLE program provide separate accounting for each designated beneficiary. Separate accounting requires that contributions for the benefit of a designated beneficiary, as well as earnings attributable to those contributions, are allocated to that designated beneficiary's account. Whether or not a program ordinarily provides each designated beneficiary an annual account statement showing the income and transactions related to the account, the program must

give this information to the designated beneficiary upon request.

Section 529A(d)(4) provides that States are required to submit electronically to the Commissioner of Social Security, on a monthly basis and in the manner specified by the Commissioner of Social Security, statements on relevant distributions and account balances from all ABLE accounts. The report of the Committee on Ways and Means (H.R. Rep. No. 113-614, pt. 1, at 15 (2014)) indicates that States should work with the Commissioner of Social Security to identify data elements for the monthly reports, including the type of qualified disability expenses.

Effective Date/Applicability Date

These regulations are proposed to be effective as of the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**. These rules, when adopted as final regulations, will apply to taxable years beginning after December 31, 2014. The reporting requirements of §§1.529A-5 through 1.529A-7 will apply to information returns required to be filed, and payee statements required to be furnished, after December 31, 2015. **Until the issuance of final regulations, taxpayers and qualified ABLE programs may rely on these proposed regulations.**

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13563. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to this regulation and, because the regulation does not impose a collection of information on small entities, the Regulatory

Flexibility Act (5 U.S.C. chapter 6) does not apply. This regulation, if adopted, would primarily affect states and individuals and therefore would not have a significant economic impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small businesses.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any comments that are timely submitted to the IRS as prescribed in this preamble under the “Addresses” heading. The Treasury Department and the IRS request comments on all aspects of the proposed rules. All comments will be available at www.regulations.gov or upon request. A public hearing will be scheduled if requested in writing by any person that timely submits written or electronic comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

A public hearing has been scheduled for **October 14, 2015**, beginning at **10:00 am** in the Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For

information about having your name placed on the building access list to attend the hearing, see the “FOR FURTHER INFORMATION CONTACT” section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit written comments by **INSERT DATE 90 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER**, and an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by **INSERT DATE 90 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER**. Submit a signed paper original and eight (8) copies or an electronic copy. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal authors of these regulations are Terri Harris and Sean Barnett, Office of Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the Treasury Department and the IRS participated in the development of these regulations.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 25

Gift taxes, Reporting and recordkeeping requirements.

26 CFR Part 26

Estate taxes, Reporting and recordkeeping requirements.

26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes,
Penalties, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR parts 1, 25, 26 and 301 are proposed to be amended as follows:

PART 1--INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding an entry in numerical order to read as follows:

Authority: 26 U.S.C. 7805* * *

Sections 1.529A-1 through 1.529A-7 also issued under 26 U.S.C. 529A(g).* * *

Par. 2. Section 1.511-2 is amended by adding paragraph (e) to read as follows:

§1.511-2 Organizations subject to tax.

* * * * *

(e) ABLE programs--(1) Unrelated business taxable income. A qualified ABLE program described in section 529A generally is exempt from income taxation, but is subject to taxes imposed by section 511 relating to the imposition of tax on unrelated business income. A qualified ABLE program is required to file Form 990-T, "Exempt Organization Business Income Tax Return," if such filing would be required under the

rules of §§1.6012-2(e) and 1.6012-3(a)(5) if the ABLE program were an organization described in those sections.

(2) Effective/applicability dates. This paragraph (e) applies to taxable years beginning after December 31, 2014.

Par. 3. Section 1.513-1 is amended by adding Example 4 to paragraph (d)(4)(i) to read as follows:

§1.513-1 Definition of unrelated trade or business.

* * * * *

(d) * * *

(4) * * *

(i) * * *

Example 4. P is a qualified ABLE program described in section 529A. P receives amounts in order to open or maintain ABLE accounts, as administrative or maintenance fees and other similar fees including service charges. Because the payment of these amounts are essential to the operation of a qualified ABLE program, the income generated from the activity does not constitute gross income from an unrelated trade or business.

* * * * *

Par. 4. An undesignated center heading is added immediately following §1.528-10 and §§ 1.529A-0 through 1.529A-7 are added to read as follows:

Sec.

* * * * *

QUALIFIED ABLE PROGRAMS

1.529A-0 Table of contents.

1.529A-1 Exempt status of qualified ABLE program and definitions.

1.529A-2 Qualified ABLE program.
1.529A-3 Tax treatment.
1.529A-4 Gift, estate, and generation-skipping transfer taxes.
1.529A-5 Reporting of the establishment of and contributions to an ABLE account.
1.529A-6 Reporting of distributions from and termination of an ABLE account.
1.529A-7 Electronic furnishing of statements to designated beneficiaries and contributors.

* * * * *

§1.529A-0 Table of contents.

This section lists the following captions contained in §§1.529A-1 through 1.529A-7.

§1.529A-1 Exempt status of qualified ABLE program and definitions.

- (a) In general.
- (b) Definitions.
 - (1) ABLE account.
 - (2) Contracting State.
 - (3) Contribution.
 - (4) Designated beneficiary.
 - (5) Disability certification.
 - (6) Distribution.
 - (7) Earnings.
 - (8) Earnings ratio.
 - (9) Eligible individual.
 - (10) Excess contribution.
 - (11) Excess aggregate contribution.
 - (12) Investment in the account.
 - (13) Member of the family.
 - (14) Program-to-program transfer.
 - (15) Qualified ABLE program.
 - (16) Qualified disability expenses.
 - (17) Rollover.
- (c) Effective/applicability date.

§1.529A-2 Qualified ABLE program.

- (a) In general.
- (b) Established and maintained by a State or agency or instrumentality of a State.

- (1) Established.
- (2) Maintained.
- (3) Community Development Financial Institutions (CDFIs).
- (c) Establishment of an ABLE account.
 - (1) In general.
 - (2) Only one ABLE account.
 - (3) Beneficial interest.
- (d) Eligible individual.
 - (1) In general.
 - (2) Frequency of recertification.
 - (3) Loss of qualification as an eligible individual.
- (e) Disability certification.
 - (1) In general.
 - (2) Marked and severe functional limitations.
 - (3) Compassionate allowance list.
 - (4) Additional guidance.
 - (5) Restriction on use of certification.
- (f) Change of designated beneficiary.
- (g) Contributions.
 - (1) Permissible property.
 - (2) Annual contributions limit.
 - (3) Cumulative limit.
 - (4) Return of excess contributions and excess aggregate contributions.
- (h) Qualified disability expenses.
 - (1) In general.
 - (2) Example.
- (i) Separate accounting.
- (j) Program-to-program transfers.
- (k) Carryover of attributes.
- (l) Investment direction.
- (m) No pledging of interest as security.
- (n) No sale or exchange.
- (o) Change of residence.
- (p) Post-death payments.
- (q) Reporting requirements.
- (r) Effective/applicability date.

§1.529A-3 Tax treatment.

- (a) Taxation of distributions.
- (b) Additional exclusions from gross income.
 - (1) Rollover.
 - (2) Program-to-program transfers.

- (3) Change in designated beneficiary.
- (4) Payments to creditors post-death.
- (c) Computation of earnings.
- (d) Additional tax on amounts includible in gross income.
 - (1) In general.
 - (2) Exceptions.
- (e) Tax on excess contributions.
- (f) Filing requirements.
- (g) Effective/applicability date.

§1.529A-4 Gift, estate, and generation-skipping transfer taxes.

- (a) Contributions.
 - (1) In general.
 - (2) Generation-skipping transfer (GST) tax.
 - (3) Designated beneficiary as contributor.
- (b) Distributions.
- (c) Change of designated beneficiary.
- (d) Transfer tax on death of designated beneficiary.
- (e) Effective/applicability date.

§1.529A-5 Reporting of the establishment of and contributions to an ABLE account.

- (a) In general.
- (b) Additional definitions.
 - (1) Filer.
 - (2) TIN.
- (c) Requirement to file return.
 - (1) Form of return.
 - (2) Information included on return.
- (3) Time and manner of filing return.
- (d) Requirement to furnish statement.
 - (1) In general.
 - (2) Time and manner of furnishing statement.
- (3) Copy of Form 5498-QA.
- (e) Request for TIN of designated beneficiary.
- (f) Penalties.
 - (1) Failure to file return.
 - (2) Failure to furnish TIN.
- (g) Effective/applicability date.

§1.529A-6 Reporting of distributions from and termination of an ABLE account.

- (a) In general.
- (b) Requirement to file return.
 - (1) Form of return.
 - (2) Information included on return.
 - (3) Time and manner of filing return.
- (c) Requirement to furnish statement.
 - (1) In general.
 - (2) Time and manner of furnishing statement.
 - (3) Copy of Form 1099-QA.
- (d) Request for TIN of contributor(s).
- (e) Penalties.
 - (1) Failure to file return.
 - (2) Failure to furnish TIN.
- (f) Effective/applicability date.

§1.529A-7 Electronic furnishing of statements to designated beneficiaries and contributors.

- (a) Electronic furnishing of statements.
 - (1) In general.
 - (2) Consent.
 - (3) Required disclosures.
 - (4) Format.
 - (5) Notice.
 - (6) Access period.
- (b) Effective/applicability date.

§1.529A-1 Exempt status of qualified ABLE program and definitions.

(a) In general. A qualified ABLE program described in section 529A is exempt from income tax, except for the tax imposed under section 511 on the unrelated business taxable income of that program.

(b) Definitions. For purposes of section 529A, this section and §§1.529A-2 through 1.529A-7--

(1) ABLE account means an account established under a qualified ABLE program and owned by the designated beneficiary of that account.

(2) Contracting State means a State without a qualified ABLE program of its own, which, in order to make ABLE accounts available to its residents who are eligible individuals, contracts with another State having such a program.

(3) Contribution means any payment directly allocated to an ABLE account for the benefit of a designated beneficiary.

(4) Designated beneficiary means the individual who is the owner of the ABLE account and who either established the account at a time when he or she was an eligible individual or who has succeeded the former designated beneficiary in that capacity (successor designated beneficiary). If the designated beneficiary is not able to exercise signature authority over his or her ABLE account or chooses to establish an ABLE account but not exercise signature authority, references to the designated beneficiary with respect to his or her actions include actions by the designated beneficiary's agent under a power of attorney or, if none, a parent or legal guardian of the designated beneficiary.

(5) Disability certification means a certification deemed sufficient by the Secretary to establish a certain level of physical or mental impairment that meets the requirements described in §1.529A-2(e).

(6) Distribution means any payment from an ABLE account. A program-to-program transfer is not a distribution.

(7) Earnings attributable to an account are the excess of the total account balance on a particular date over the investment in the account as of that date.

(8) Earnings ratio means the amount of earnings attributable to the account as of

the last day of the calendar year in which the designated beneficiary's taxable year begins, divided by the total account balance on that same date, after taking into account all distributions made during that calendar year and all contributions received during that same year other than those (if any) returned in accordance with §1.529A-2(g)(4).

(9) Eligible individual for a taxable year means an individual who either:

(i) Is entitled during that taxable year to benefits based on blindness or disability under title II or XVI of the Social Security Act, provided that 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); or

(ii) Is the subject of a disability certification filed with the Secretary for that taxable year.

(10) Excess contribution means the amount by which the amount contributed during the taxable year of the designated beneficiary to an ABLE account exceeds the limit in effect under section 2503(b) for the calendar year in which the taxable year of the designated beneficiary begins.

(11) Excess aggregate contribution means the amount contributed during the taxable year of the designated beneficiary that causes the total of amounts contributed since the establishment of the ABLE account (or of an ABLE account for the same designated beneficiary that was rolled into the current ABLE account) to exceed the limit in effect under section 529(b)(6). In the context of the safe harbor in §1.529A-2(g)(3), however, excess aggregate contribution means a contribution that causes the account balance to exceed the limit in effect under section 529(b)(6).

(12) Investment in the account means the sum of all contributions made to the account, reduced by the aggregate amount of contributions included in distributions, if any, made from the account. In the case of a rollover into an ABLE account the amount included as investment in the recipient account is not the full amount of the rollover contribution, but instead is equal to the amount of the rollover contribution that constituted the investment in the account from which the rollover was made.

(13) Member of the family means a sibling, whether by blood or by adoption. Such term includes a brother, sister, stepbrother, stepsister, half-brother, and half-sister.

(14) Program-to-program transfer means the direct transfer of the entire balance of an ABLE account into an ABLE account of the same designated beneficiary in which the transferor ABLE account is closed upon completion of the transfer, or of part or all of the balance to an ABLE account of another eligible individual who is a member of the family of the former designated beneficiary, without any intervening distribution or deemed distribution to the designated beneficiary.

(15) Qualified ABLE program means a program established and maintained by a State, or agency or instrumentality of a State, under which an ABLE account may be established by and for the benefit of the account's designated beneficiary who is an eligible individual, and that meets the requirements described in §1.529A-2.

(16) Qualified disability expenses means any expenses incurred at a time when the designated beneficiary is an eligible individual that relate to the blindness or disability of the designated beneficiary of an ABLE account, including expenses that are for the benefit of the designated beneficiary in maintaining or improving his or her health,

independence, or quality of life. See §1.529A-2(h). Any expenses incurred at a time when a designated beneficiary is neither disabled nor blind within the meaning of §1.529-1(b)(9)(A) or §1.529-2(e)(1)(i) are not qualified disability expenses.

(17) Rollover means a contribution to an ABLE account of a designated beneficiary (or of an eligible individual who is a member of the family of the designated beneficiary) of all or a portion of an amount withdrawn from the designated beneficiary's ABLE account, provided the contribution is made within 60 days of the date of the withdrawal and, in the case of a rollover to the designated beneficiary's ABLE account, no rollover has been made to an ABLE account of the designated beneficiary within the prior 12 months.

(c) Effective/applicability date. This section applies to taxable years beginning after December 31, 2014.

§1.529A-2 Qualified ABLE program.

(a) In general. A qualified ABLE program is a program established and maintained by a State, or an agency or instrumentality of a State, that satisfies all of the requirements of this section and under which--

(1) An ABLE account may be established for the purpose of meeting the qualified disability expenses of the designated beneficiary of the account;

(2) The designated beneficiary must be a resident of such State or a resident of a Contracting State (as residence is determined under the law of the State of the designated beneficiary's residence);

(3) A designated beneficiary is limited to only one ABLE account at a time except as otherwise provided with respect to program-to-program transfers and rollovers;

(4) Any person may make contributions to such an ABLE account, subject to the limitations described in paragraph (g) of this section; and

(5) Distributions (other than rollovers and returns of contributions as described in paragraph (g)(4) of this section) may be made only to or for the benefit of the designated beneficiary of the ABLE account.

(b) Established and maintained by a State or agency or instrumentality of a State--(1) Established. A program is established by a State or its agency or instrumentality if the program is initiated by State statute or regulation or by an act of a State official or agency with the authority to act on behalf of the State.

(2) Maintained. A program is maintained by a State or an agency or instrumentality of a State if--

(i) The State or its agency or instrumentality sets all of the terms and conditions of the program, including but not limited to who may contribute to the program, who may be a designated beneficiary of the program, and what benefits the program may provide; and

(ii) The State or its agency or instrumentality is actively involved on an ongoing basis in the administration of the program, including supervising the implementation of decisions relating to the investment of assets contributed under the program. Factors that are relevant in determining whether a State or its agency or instrumentality is actively involved in the administration of the program include, but are not limited to: whether the State or its agency or instrumentality provides services to designated beneficiaries that are not provided to persons who are not designated beneficiaries; whether the State or its agency or instrumentality establishes detailed operating rules for administering the

program; whether officials of the State or its agency or instrumentality play a substantial role in the operation of the program, including selecting, supervising, monitoring, auditing, and terminating the relationship with any private contractors that provide services under the program; whether the State or its agency or instrumentality holds the private contractors that provide services under the program to the same standards and requirements that apply when private contractors handle funds that belong to the State or its agency or instrumentality or provide services to the State or its agency or instrumentality; whether the State or its agency or instrumentality provides funding for the program; and whether the State or its agency or instrumentality acts as trustee or holds program assets directly or for the benefit of the designated beneficiaries. For example, if the State or its agency or instrumentality thereof exercises the same authority over the funds invested in the program as it does over the investments in or pool of funds of a State employees' defined benefit pension plan, then the State or its agency or instrumentality will be considered actively involved on an ongoing basis in the administration of the program.

(3) Community Development Financial Institutions (CDFIs). Some or all of the services described in paragraphs (b)(2)(i) and (ii) of this section may be performed by one or more Community Development Financial Institutions (CDFIs) with whom the State (or its agency or instrumentality) contracts for that purpose.

(c) Establishment of an ABLE account--(1) In general. Except as otherwise provided in this paragraph (c), a qualified ABLE program must provide that an ABLE account may be established only for an eligible individual under a qualified ABLE program

of the State in which the eligible individual is a resident. The qualified ABLE program also may allow the establishment of an ABLE account for an eligible individual who is a resident of a Contracting State as defined in §1.529A-1(b)(2). If an eligible individual is unable to establish an ABLE account on his or her own behalf, the ABLE account may be established on behalf of the eligible individual by the eligible individual's agent under a power of attorney or, if none, by a parent or legal guardian of the eligible individual.

(2) Only one ABLE account--(i) In general. Except in the case of rollovers or program-to-program transfers, a designated beneficiary is limited to one ABLE account at a time, regardless of where located. To ensure that this requirement is met, a qualified ABLE program must obtain a verification, signed under penalties of perjury, that the eligible individual has no other existing ABLE account (other than an ABLE account that will terminate with the rollover or program-to-program transfer into the new ABLE account) before that program can permit the establishment of an ABLE account for that eligible individual. In the case of a rollover, the ABLE account from which amounts were rolled must be closed as of the 60th day after the amount was distributed from the ABLE account in order for the account that received the rollover to be treated as an ABLE account.

(ii) Treatment of additional accounts. Except in the case of rollovers or program-to-program transfers, if an ABLE account is established for a designated beneficiary who already has an ABLE account in existence, an additional account will not be treated as an ABLE account. However, if all contributions made to that account are returned in accordance with the rules that apply to excess contributions and excess

aggregate contributions under paragraph (g)(4) of this section, the additional account will be treated as never having been established.

(3) Beneficial interest. The eligible individual for whose benefit an ABLE account is established is the designated beneficiary of the account. A person other than the designated beneficiary with signature authority over the account of the designated beneficiary may neither have nor acquire any beneficial interest in the account during the lifetime of the designated beneficiary and must administer the account for the benefit of the designated beneficiary of the account.

(d) Eligible individual--(1) In general. Whether an individual is an eligible individual (as defined in §1.529A-1(b)(9)) is determined for each taxable year, and that determination applies for the entire year. A qualified ABLE program must specify the documentation that an individual must provide, both at the time an ABLE account is established for that individual and thereafter, in order to ensure that the designated beneficiary of the ABLE account is, and continues to be, an eligible individual. For purposes of determining whether an individual is an eligible individual, a disability certification will be deemed to be filed with the Secretary once the qualified ABLE program has received the disability certification (as described in paragraph (e) of this section) or a disability certification has been deemed to have been received under the rules of the qualified ABLE program, which information the qualified ABLE program will file in accordance with the filing requirements under §1.529A-5(c)(2)(iv).

(2) Frequency of recertification--(i) In general. 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.

(ii) Considerations. In developing its rules on recertification, a qualified ABLE program may take into consideration whether an impairment is incurable and, if so, the likelihood that a cure may be found in the future. For example, a qualified ABLE program may provide that the initial certification will be deemed to be valid for a stated number of years, which may vary with the type of impairment. If the qualified ABLE program imposes an enforceable obligation on the designated beneficiary or other person with signature authority over the ABLE account to promptly report changes in the designated beneficiary's condition that would result in the designated beneficiary's failing to satisfy the definition of eligible individual, the program also may provide that a certification is valid until the end of the taxable year in which the change in the designated beneficiary's condition occurred.

(3) Loss of qualification as an eligible individual. If the designated beneficiary of an ABLE account 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 ABLE account, the designated beneficiary will continue to be the designated beneficiary of the ABLE account (and will be referred to as such), and the ABLE 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 ABLE account must not be accepted by the qualified ABLE 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 ABLE 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.

(e) Disability certification--(1) In general. Except as provided in paragraph (e)(3) of this section or additional guidance described in paragraph (e)(4) of this section, 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 (as defined in paragraph (e)(2) of this section), 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 meeting the criteria of section 1861(r)(1) of the Social Security Act (42 U.S.C. 1395x(r)).

(2) Marked and severe functional limitations. For purposes of paragraph (e)(1) of this section, the phrase "marked and severe functional limitations" means the standard of disability in the Social Security Act for children claiming Supplemental Security Income for the Aged, Blind, and Disabled (SSI) benefits based on disability (see 20 CFR 416.906). Specifically, this is a level of severity that meets, medically equals, or functionally equals the severity of any listing in appendix 1 of subpart P of 20 CFR part 404, but without regard to age. (See 20 CFR 416.906, 416.924 and 416.926a.) Such phrase also includes any impairment or standard of disability identified in future guidance published in the Internal Revenue Bulletin (see § 601.601(d)(2) of this chapter). Consistent with the regulations of the Social Security Administration, the level of severity is determined by taking into account the effect of the individual's prescribed treatment. (See 20 CFR 416.930.)

(3) Compassionate allowance list. 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 of section 529A(e)(1)(B) 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.

(4) Additional guidance. Additional guidance on conditions deemed to meet the requirements of section 529A(e)(1)(B) may be identified in future guidance published in the Internal Revenue Bulletin. See §601.601(d)(2) of this chapter.

(5) Restriction on use of certification. No inference may be drawn from a disability certification described in this paragraph (e) for purposes of establishing eligibility for benefits under title II, XVI, or XIX of the Social Security Act.

(f) Change of designated beneficiary. A qualified ABLE program must permit a change in the designated beneficiary of an ABLE account, but only during the life of the designated beneficiary. At the time of the change, the successor designated beneficiary must be an eligible individual.

(g) Contributions--(1) Permissible property. Except in the case of program-to-program transfers, contributions to an ABLE account may only be made in cash. A qualified ABLE program may allow cash contributions to be made in the form of a check, money order, credit card, electronic transfer, or similar method.

(2) Annual contributions limit. A qualified ABLE program must provide that no contribution to an ABLE account will be accepted to the extent such contribution, when added to all other contributions (whether from the designated beneficiary or one or more

other persons) to that ABLE account made during the designated beneficiary's taxable year causes the total of such contributions to exceed the amount in effect under section 2503(b) for the calendar year in which the designated beneficiary's taxable year begins. For this purpose, contributions do not include rollovers or program-to-program transfers.

(3) Cumulative limit--(i) In general. A qualified ABLE program maintained by a State or its agency or instrumentality must provide adequate safeguards to prevent aggregate contributions on behalf of a designated beneficiary in excess of the limit established by that State under section 529(b)(6). For purposes of the preceding sentence, aggregate contributions include contributions to any prior ABLE account maintained by any State or its agency or instrumentality for the same designated beneficiary or any prior designated beneficiary.

(ii) Safe harbor. A qualified ABLE program maintained by a State or its agency or instrumentality satisfies the requirement in paragraph (g)(3)(i) of this section if it refuses to accept any additional contribution to an ABLE account once the balance in that account reaches the limit established by that State under section 529(b)(6). Once the account balance falls below such limit, additional contributions again may be accepted, subject to the limits under this paragraph (g)(3)(i) of this section.

(4) Return of excess contributions and excess aggregate contributions. If an excess contribution as defined in §1.529A-1(b)(10) or an excess aggregate contribution as defined in §1.529A-1(b)(11) is allocated to or deposited into the ABLE account of a designated beneficiary, a qualified ABLE program must return that excess contribution or excess aggregate contribution, including all net income attributable to that excess

contribution or excess aggregate contribution, as determined under the rules set forth in §1.408-11 (treating an IRA as an ABLE account and returned contributions under section 408(d)(4) as excess contributions or excess aggregate contributions), to the person or persons who made that contribution. An excess contribution or excess aggregate contribution must be returned to its contributor(s) on a last-in-first-out basis until the entire excess contribution or excess aggregate contribution, along with all net income attributable to such contribution, has been returned. Returned contributions must be received by the contributor(s) on or before the due date (including extensions) for the Federal income tax return of the designated beneficiary for the taxable year in which the excess contribution or excess aggregate contribution was made. See §1.529A-3(e) for income tax considerations for the contributor(s). If an excess contribution or excess aggregate contribution and the net income attributable to the excess contribution or excess aggregate contribution are returned to a contributor other than the designated beneficiary, the qualified ABLE program must notify the designated beneficiary of such return at the time of the return.

(h) Qualified disability expenses--(1) In general. Qualified disability expenses, as defined in §1.529A-1(b)(16), are expenses incurred that relate to the blindness or disability of the designated beneficiary of the ABLE account and are for the benefit of that designated beneficiary in maintaining or improving his or her health, independence, or quality of life. Such expenses include, but are not limited to, expenses related to the designated beneficiary's education, housing, transportation, employment training and support, assistive technology and related services, personal support services, health,

prevention and wellness, financial management and administrative services, legal fees, expenses for oversight and monitoring, and funeral and burial expenses, as well as other expenses that may be identified from time to time in future guidance published in the Internal Revenue Bulletin. See § 601.601(d)(2) of this chapter. Qualified disability expenses include basic living expenses and are not limited to items for which there is a medical necessity or which solely benefit a disabled individual. A qualified ABLE program must establish safeguards to distinguish between distributions used for the payment of qualified disability expenses and other distributions, and to 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.

(2) Example. The following example illustrates this paragraph (h):

Example. B, an individual, has a medically determined mental impairment that causes marked and severe limitations on her ability to navigate and communicate. A smart phone would enable B to navigate and communicate more safely and effectively, thereby helping her to maintain her independence and to improve her quality of life. Therefore, the expense of buying, using, and maintaining a smart phone that is used by B would be considered a qualified disability expense.

(i) Separate accounting. A program will not be treated as a qualified ABLE program unless it provides separate accounting for each ABLE account. Separate accounting requires that contributions for the benefit of a designated beneficiary and any earnings attributable thereto must be allocated to that designated beneficiary's account. Whether or not a program provides each designated beneficiary an annual account statement showing the total account balance, the investment in the account, the accrued

earnings, and the distributions from the account, the program must give this information to the designated beneficiary upon request.

(j) Program-to-program transfers. A qualified ABLE program may permit a change of qualified ABLE program or a change of designated beneficiary by means of a program-to-program transfer as defined in §1.529A-1(b)(14). In that event, subject to any contrary provisions or limitations adopted by the qualified ABLE program, rules similar to the rules of §1.401(a)(31)-1, Q&A-3 and 4 (which apply for purposes of a direct rollover from a qualified plan to an eligible retirement plan) apply for purposes of determining whether an amount is paid in the form of a program-to-program transfer.

(k) Carryover of attributes. Upon a rollover or program-to-program transfer, all of the attributes of the former ABLE account relevant for purposes of calculating the investment in the account and applying the annual and cumulative limits on contributions are applicable to the recipient ABLE account. The portion of the rollover or transfer amount that constituted investment in the account from which the distribution or transfer was made is added to investment in the recipient ABLE account. Similarly, the portion of the rollover or transfer amount that constituted earnings of the account from which the distribution or transfer was made is added to the earnings of the recipient ABLE account.

(l) Investment direction. A program will not be treated as a qualified ABLE program unless it provides that the designated beneficiary of an ABLE account established under such program may direct, whether directly or indirectly, the investment of any contributions to the program (or any earnings thereon) no more than two times in any calendar year.

(m) No pledging of interest as security. A program will not be treated as a qualified ABLE program unless the terms of the program, or a state statute or regulation that governs the program, prohibit any interest in the program or any portion thereof from being used as security for a loan. This restriction includes, but is not limited to, a prohibition on the use of any interest in the ABLE program as security for a loan used to purchase such interest in the program.

(n) No sale or exchange. A qualified ABLE program must ensure that no interest in an ABLE account may be sold or exchanged.

(o) Change of residence. A qualified ABLE program may continue to maintain the ABLE account of a designated beneficiary after that designated beneficiary changes his or her residence to another State.

(p) Post-death payments. A qualified ABLE program must provide that a portion or all of the balance remaining in the ABLE account of a deceased designated beneficiary must be distributed to a State that files a claim against the designated beneficiary or the ABLE account itself with respect to benefits provided to the designated beneficiary under that State's Medicaid plan established under title XIX of the Social Security Act. The payment of such claim (if any) will be made only after providing for the payment from the designated beneficiary's ABLE account of all outstanding payments due for his or her qualified disability expenses, and will be limited to the amount of the total medical assistance paid for the designated beneficiary after the establishment of the ABLE account (the date on which the ABLE account, or any ABLE account from which amounts were rolled or transferred to the ABLE account of the same designated beneficiary, was

opened) over the amount of any premiums paid, whether from the ABLE account or otherwise by or on behalf of the designated beneficiary, to a Medicaid Buy-In program under any such State Medicaid plan.

(q) Reporting requirements. A qualified ABLE program must comply with all applicable reporting requirements, including without limitation those described in §§ 1.529A-5 through 1.529A-7.

(r) Effective/applicability dates. This section applies to taxable years beginning after December 31, 2014.

§1.529A-3 Tax treatment.

(a) Taxation of distributions. Each distribution from an ABLE account consists of earnings (computed in accordance with paragraph (c) of this section) and investment in the account. If the total amount distributed from an ABLE account to or for the benefit of the designated beneficiary of that ABLE account during his or her taxable year does not exceed the qualified disability expenses of the designated beneficiary for that year, no amount distributed is includible in the gross income of the designated beneficiary for that year. If the total amount distributed from an ABLE account to or for the benefit of the designated beneficiary of that ABLE account during his or her taxable year exceeds the qualified disability expenses of the designated beneficiary for that year, the distributions from the ABLE account, except to the extent excluded from gross income under this section or any other provision of chapter 1 of the Internal Revenue Code, must be included in the gross income of the designated beneficiary in the manner provided under this section and section 72. In such a case, the earnings portion of the distribution

includible in gross income is equal to the earnings portion of the distribution reduced by an amount that bears the same ratio to the earnings portion as the amount of qualified disability expenses during the year bears to the total distributions during the year. For this purpose, all amounts relevant under section 72 are determined as of December 31 of the year in which the designated beneficiary's taxable year begins, and all amounts distributed from an ABLE account to or for the benefit of the designated beneficiary during his or her taxable year are treated as one distribution. If an excess contribution or excess aggregate contribution is returned within the time period required in §1.529A-2(g)(4), any net income distributed is includible in the gross income of the contributor(s) in the taxable year in which the excess contribution or excess aggregate contribution was made.

(b) Additional exclusions from gross income--(1) Rollover. A rollover as defined in §1.529A-1(b)(17) is not includible in gross income under paragraph (a) of this section.

(2) Program-to-program transfers. A program-to-program transfer as defined in §1.529A-1(b)(14) is not a distribution and is not includible in gross income under paragraph (a) of this section.

(3) Change of designated beneficiary--(i) In general. A change of designated beneficiary of an ABLE account is not treated as a distribution for purposes of section 529A, and is not includible in gross income under paragraph (a) of this section, if the successor designated beneficiary is--

(A) An eligible individual for such calendar year; and

(B) A member of the family of the former designated beneficiary.

(ii) Other designated beneficiary changes. In the case of any change of designated beneficiary not described in paragraph (b)(3)(i) of this section, the former designated beneficiary of that ABLE account will be treated as having received a distribution of the fair market value of the assets in that ABLE account on the date on which the change is made to the new designated beneficiary.

(4) Payments to creditors post-death. Distributions made after the death of the designated beneficiary in payment of outstanding obligations due for qualified disability expenses of the designated beneficiary are not includible in the gross income of the designated beneficiary or his or her estate. Included among these obligations is the post-death payment of any part of a claim filed against the designated beneficiary or the ABLE account by a State under a State Medicaid plan.

(c) Computation of earnings. The earnings portion of a distribution is equal to the product of the amount of the distribution and the earnings ratio, as defined in §1.529A-1(b)(8). The balance of the distribution (the amount of the distribution minus the earnings portion of that distribution) is the portion of that distribution that constitutes the return of investment in the account.

(d) Additional tax on amounts includible in gross income--(1) In general. If any amount of a distribution from an ABLE account is includible in the gross income of a person for any taxable year under paragraph (a) of this section (the “includible amount”), the tax imposed on that person by Chapter 1 of the Internal Revenue Code shall be increased by an amount equal to 10 percent of the includible amount.

(2) Exceptions--(i) Distributions on or after the death of the designated beneficiary.

Paragraph (d)(1) of this section does not apply to any distribution made from the ABLE account on or after the death of the designated beneficiary to the estate of the designated beneficiary, to an heir or legatee of the designated beneficiary, or to a creditor described in paragraph (b)(4) of this section.

(ii) Returned excess contributions and additional accounts. Paragraph (d)(1) of this section does not apply to any return made in accordance with §1.529A-2(g)(4) of an excess contribution, excess aggregate contribution, or additional account.

(e) Tax on excess contributions. Under section 4973(h), a contribution to an ABLE account in excess of the annual contributions limit described in §1.529A-2(g)(2) is subject to an excise tax in an amount equal to 6 percent of the excess contribution. However, if the excess contribution is returned in accordance with the provisions of §1.529A-2(g)(4), it is treated as an amount not contributed.

(f) Filing requirements. A qualified ABLE program is not required to file Form 990, "Return of Organization Exempt From Income Tax," Form 1041, "U.S. Income Tax Return for Estates and Trusts," or Form 1120, "U.S. Corporation Income Tax Return." However, a qualified ABLE program is required to file Form 990-T, "Exempt Organization Business Income Tax Return," if such filing would be required under the rules of §§1.6012-2(e) and 1.6012-3(a)(5) if the ABLE program were an organization described in those sections.

(g) Effective/applicability dates. This section applies to taxable years beginning after December 31, 2014.

§1.529A-4 Gift, estate, and generation-skipping transfer taxes.

(a) Contributions--(1) In general. Each contribution by a person to an ABLE account other than by the designated beneficiary of that account is treated as a completed gift to the designated beneficiary of the account for gift tax purposes. Under the applicable gift tax rules, a contribution from a corporation, partnership, trust, estate, or other entity is treated as a gift by the shareholders, partners, or other beneficial owners in proportion to their respective ownership interests in the entity. See §25.2511-1(c) and (h). A gift into an ABLE account is not treated as either a gift of a future interest in property, or a qualified transfer under section 2503(e). To the extent a contributor's gifts to the designated beneficiary, including gifts paid into the designated beneficiary's ABLE account, do not exceed the annual limit in section 2503(b), the contribution is not subject to gift tax. This provision, however, does not change any other provision applicable to the transfer. For example, a contribution by the employer of the designated beneficiary's parent continues to constitute earned income to the parent and then a gift by the parent to the designated beneficiary.

(2) Generation-skipping transfer (GST) tax. To the extent the contribution into an ABLE account is a nontaxable gift for gift tax purposes, the inclusion ratio for purposes of the GST tax will be zero pursuant to section 2642(c)(1).

(3) Designated beneficiary as contributor. A designated beneficiary may make a contribution to fund his or her own ABLE account. That contribution is not a gift. However, in the event of any change of designated beneficiary, the portion of the then fair market value of the ABLE account attributable to that contribution and any earnings attributable to that contribution will constitute a gift by the designated beneficiary to the

successor designated beneficiary, and the usual gift and GST tax rules will apply.

(b) Distributions. No distribution from an ABLE account to or for the benefit of the designated beneficiary is treated as a taxable gift to that designated beneficiary.

(c) Change of designated beneficiary. Neither gift tax nor generation-skipping transfer tax applies to a change of designated beneficiary if the successor designated beneficiary is both an eligible individual and a member of the family (as described in §1.529A-1(b)(13)) of the designated beneficiary. The previous sentence does not apply to any other change of designated beneficiary.

(d) Transfer tax on death of designated beneficiary. Upon the death of the designated beneficiary, the designated beneficiary's ABLE account is includible in his or her gross estate for estate tax purposes under section 2031. The payment of outstanding qualified disability expenses and the payment of certain claims made by a State under its Medicaid plan may be deductible for estate tax purposes if the requirements of section 2053 are satisfied.

(e) Effective/applicability date. This section applies to taxable years beginning after December 31, 2014.

§1.529A-5 Reporting of the establishment of and contributions to an ABLE account.

(a) In general. A filer defined in paragraph (b)(1) of this section must, with respect to each ABLE account--

(1) File an annual information return, as described in paragraph (c) of this section, with the Internal Revenue Service; and

(2) Furnish an annual statement, as described in paragraph (d) of this section, to the designated beneficiary of the ABLE account.

(b) Additional definitions. In addition to the definitions in §1.529A-1(b), the following definitions also apply for purposes of this section--

(1) Filer means the State or its agency or instrumentality that establishes and maintains the qualified ABLE program under which an ABLE account is established. The filing may be done by either an officer or employee of the State or its agency or instrumentality having control of the qualified ABLE program, or the officer's or employee's designee.

(2) TIN means taxpayer identification number as defined in section 7701(a)(41).

(c) Requirement to file return--(1) Form of return. For purposes of reporting the information described in paragraph (c)(2) of this section, the filer must file Form 5498-QA, "ABLE Account Contribution Information," or any successor form, together with Form 1096, "Annual Summary and Transmittal of U.S. Information Returns."

(2) Information included on return. With respect to each ABLE account, the filer must include on the return--

- (i) The name, address, and TIN of the designated beneficiary of the ABLE account;
- (ii) The name, address, and TIN of the filer;
- (iii) Information regarding the establishment of the ABLE account, as required by the form and its instructions;
- (iv) Information regarding the disability certification or other basis for eligibility of the designated beneficiary, as required by the form and its instructions. For further

information regarding eligibility and disability certification, see §1.529A-2(d) and (e), respectively;

(v) The total amount of any contributions made with respect to the ABLE account during the calendar year;

(vi) The fair market value of the ABLE account as of the last day of the calendar year; and

(vii) Any other information required by the form, its instructions, or published guidance. See §§601.601(d) and 601.602 of this chapter.

(3) Time and manner of filing return--(i) In general. Except as provided in paragraph (c)(3)(ii) of this section, the information returns required under this paragraph must be filed on or before May 31 of the year following the calendar year with respect to which the return is being filed, in accordance with the forms and their instructions.

(ii) Extensions of time. See §§1.6081-1 and 1.6081-8 of this chapter for rules relating to extensions of time to file information returns required in this section.

(iii) Electronic filing. See §301.6011-2 of this chapter for rules relating to electronic filing.

(iv) Substitute forms. The filer may file the returns required under this paragraph (c) on a substitute form. A substitute form must comply with applicable revenue procedures (see §601.601(d)(2) of this chapter) or other guidance published by the IRS, including Publication 1179, “General Rules and Specifications for Substitute Forms 1096, 1098, 1099, 5498, and Certain Other Information Returns.”

(d) Requirement to furnish statement--(1) In general. The filer must furnish a statement to the designated beneficiary of the ABLE account for which it is required to file a Form 5498-QA (or any successor form). The statement must include--

- (i) The information required under paragraph (c)(2) of this section;
- (ii) A legend that identifies the statement as important tax information that is being furnished to the Internal Revenue Service; and
- (iii) The name and address of the office or department of the filer that is the information contact for questions regarding the ABLE account to which the Form 5498-QA relates.

(2) Time and manner of furnishing statement--(i) In general. Except as provided in paragraph (d)(2)(ii) of this section, the filer must furnish the statement described in paragraph (d)(1) of this section to the designated beneficiary on or before March 15 of the year following the calendar year with respect to which the statement is being furnished. If mailed, the statement must be sent to the designated beneficiary's last known address. The statement may be furnished electronically, as provided in §1.529A-7.

(ii) Extensions of time. The Internal Revenue Service may grant an extension of time to furnish statements required in this section upon a showing of good cause. See the instructions to Form 5498-QA.

(3) Copy of Form 5498-QA. The filer may satisfy the requirement of this paragraph (d) by furnishing either a copy of Form 5498-QA (or successor form) or another document that contains the information required by paragraph (d)(1) of this section, if the document complies with applicable revenue procedures (see §601.601(d)(2) of this

chapter) or other guidance published by the IRS relating to substitute statements, including Publication 1179, “General Rules and Specifications for Substitute Forms 1096, 1098, 1099, 5498, and Certain Other Information Returns.”

(e) Request for TIN of designated beneficiary. The filer must request the TIN of the designated beneficiary at the time the ABLE account is opened if the filer does not already have a record of the designated beneficiary’s correct TIN. The filer must clearly notify the designated beneficiary that the law requires the designated beneficiary to furnish a TIN so that it may be included on an information return to be filed by the filer. The designated beneficiary may provide his or her TIN in any manner including orally, in writing, or electronically. If the TIN is furnished in writing, no particular form is required. Form W-9, “Request for Taxpayer Identification Number and Certification,” may be used, or the request may be incorporated into the forms related to the establishment of the ABLE account.

(f) Penalties--(1) Failure to file return. The section 6693 penalty may apply to the filer that fails to file information returns at the time and in the manner required by this section, unless it is shown that such failure is due to reasonable cause. See section 6693 and the regulations thereunder.

(2) Failure to furnish TIN. The section 6723 penalty may apply to any designated beneficiary who fails to furnish his or her TIN to the filer. See section 6723, and the regulations thereunder, for rules relating to the penalty for failure to furnish a TIN.

(g) Effective/applicability date. The rules of this section apply to information returns required to be filed, and payee statements required to be furnished, after

December 31, 2015.

§1.529A-6 Reporting of distributions from and termination of an ABLE account.

(a) In general. The filer as defined in §1.529A-5(b)(1) must, with respect to each ABLE account from which any distribution is made or which is terminated during the calendar year--

(1) File an annual information return, as described paragraph (b) of this section, with the Internal Revenue Service; and

(2) Furnish an annual statement, as described in paragraph (c) of this section, to the designated beneficiary of the ABLE account and to each contributor who received a returned contribution in accordance with §1.529A-2(g)(4) attributable to the calendar year.

(b) Requirement to file return--(1) Form of return. For purposes of reporting the information in paragraph (b)(2) of this section, the filer must file Form 1099-QA, "Distributions from ABLE Accounts," or any successor form, together with Form 1096, "Annual Summary and Transmittal of U.S. Information Returns."

(2) Information included on return. The filer must include on the return--

(i) The name, address, and TIN of the designated beneficiary of the ABLE account or of any contributor who received a returned contribution in accordance with §1.529A-2(g)(4) attributable to the calendar year, as applicable;

(ii) The name, address, and TIN of the filer;

(iii) The aggregate amount of distributions from the ABLE account during the calendar year;

- (iv) Information as to basis and earnings with respect to such distributions or returns of contributions;
 - (v) Information regarding termination (if any) of the ABLE account;
 - (vi) Information regarding each rollover and any program-to-program transfer to or from the ABLE account during the designated beneficiary's taxable year;
 - (vii) Whether the return is being furnished to the designated beneficiary or to a contributor; and
 - (viii) Any other information required by the form, its instructions, or published guidance. See §§601.601(d) and 601.602 of this chapter.
- (3) Time and manner of filing return--(i) In general. Except as provided in paragraph (b)(3)(ii) of this section, the Forms 1099-QA and 1096 must be filed on or before February 28 (March 31 if filing electronically) of the year following the calendar year with respect to which the return is being filed, in accordance with the forms and their instructions.
- (ii) Extensions of time. See §§1.6081-1 and 1.6081-8 of this chapter for rules relating to extensions of time to file information returns required in this section.
- (iii) Electronic filing. See §301.6011-2 of this chapter for rules relating to electronic filing.
- (iv) Substitute forms. The filer may file the return required under this paragraph (b) on a substitute form. A substitute form must comply with applicable revenue procedures (see §601.601(d)(2) of this chapter) or other guidance published by the IRS,

including Publication 1179, “General Rules and Specifications for Substitute Forms 1096, 1098, 1099, 5498, and Certain Other Information Returns.”

(c) Requirement to furnish statement--(1) In general. The filer must furnish a statement to the designated beneficiary and each contributor (if any) of the ABLE account for which it is required to file a Form 1099-QA (or any successor form). The statement must include--

(i) The information required under paragraph (b)(2) of this section.

(ii) A legend that identifies the statement as important tax information that is being furnished to the Internal Revenue Service;

(iii) The name and address of the office or department of the filer that is the information contact for questions regarding the ABLE account to which the Form 1099-QA relates.

(2) Time and manner of furnishing statement--(i) In general. Except as provided in paragraph (c)(2)(ii) of this section, a filer must furnish the statement described in paragraph (c)(1) of this section to the designated beneficiary on or before January 31 of the year following the calendar year with respect to which the statement is being furnished. If mailed, the statement must be sent to the recipient’s last known address. The statement may be furnished electronically, as provided in §1.529A-7.

(ii) Extensions of time. The Internal Revenue Service may grant an extension of time to furnish statements required in this section upon a showing of good cause. See the instructions to Form 1099-QA.

(3) Copy of Form 1099-QA. A filer may satisfy the requirement of this paragraph (c) by furnishing either a copy of Form 1099-QA (or successor form) or another document that contains the information required by paragraph (c)(1) of this section and that complies with applicable revenue procedures (see §601.601(d)(2) of this chapter) or other guidance published by the IRS relating to substitute statements, including Publication 1179, “General Rules and Specifications for Substitute Forms 1096, 1098, 1099, 5498, and Certain Other Information Returns.”

(d) Request for TIN of contributor(s). A filer must request the TIN for each contributor to the ABLE account at the time a contribution is made, if the filer does not already have a record of that person’s correct TIN. The filer must clearly notify each contributor to the account that the law requires that person to furnish a TIN so that it may be included on an information return to be filed by the filer. The contributor may provide his or her TIN in any manner including orally, in writing, or electronically. If the TIN is furnished in writing, no particular form is required. Form W-9, “Request for Taxpayer Identification Number and Certification,” may be used, or the request may be incorporated into the forms related to the establishment of the ABLE account.

(e) Penalties--(1) Failure to file return. The section 6693 penalty may apply to a filer that fails to file information returns at the time and in the manner required by this section, unless it is shown that such failure is due to reasonable cause. See section 6693 and the regulations thereunder.

(2) Failure to furnish TIN. The section 6723 penalty may apply to any contributor who fails to furnish his or her TIN to the filer. See section 6723, and the regulations thereunder, for rules relating to the penalty for failure to furnish a TIN.

(f) Effective/applicability date. The rules of this section apply to information returns required to be filed, and payee statements required to be furnished, after December 31, 2015.

§1.529A-7 Electronic furnishing of statements to designated beneficiaries and contributors.

(a) Electronic furnishing of statements--(1) In general. A filer required under §1.529A-5 or §1.529A-6 of this chapter to furnish a written statement to a designated beneficiary of or contributor to an ABLE account may furnish the statement in an electronic format in lieu of a paper format. A filer who meets the requirements of paragraphs (a)(2) through (6) of this section is treated as furnishing the required statement.

(2) Consent--(i) In general. The recipient of the statement must have affirmatively consented to receive the statement in an electronic format. The consent may be made electronically in any manner that reasonably demonstrates that the recipient can access the statement in the electronic format in which it will be furnished to the recipient. Alternatively, the consent may be made in a paper document if it is confirmed electronically.

(ii) Withdrawal of consent. The consent requirement of this paragraph (a)(2) is not satisfied if the recipient withdraws the consent and the withdrawal takes effect before

the statement is furnished. The filer may provide that a withdrawal of consent takes effect either on the date it is received by the filer or on another date no more than 60 days later. The filer also may provide that a request for a paper statement will be treated as a withdrawal of consent.

(iii) Change in hardware or software requirements. If a change in the hardware or software required to access the statement creates a material risk that the recipient will not be able to access the statement, the filer must, prior to changing the hardware or software, provide the recipient with a notice. The notice must describe the revised hardware and software required to access the statement and inform the recipient that a new consent to receive the statement in the revised electronic format must be provided to the filer if the recipient does not want to withdraw the consent. After implementing the revised hardware and software, the filer must obtain from the recipient, in the manner described in paragraph (a)(2)(i) of this section, a new consent or confirmation of consent to receive the statement electronically.

(iv) Examples. For purposes of the following examples that illustrate the rules of this paragraph (a)(2), assume that the requirements of §1.529A-7(a)(3) have been met:

Example 1. Filer F sends Recipient R a letter stating that R may consent to receive statements required under §1.529A-5 or §1.529A-6 electronically on a Web site instead of in a paper format. The letter contains instructions explaining how to consent to receive the statements electronically by accessing the Web site, downloading the consent document, completing the consent document, and e-mailing the completed consent back to F. The consent document posted on the Web site uses the same electronic format that F will use for the electronically furnished statements. R reads the instructions and submits the consent in the manner provided in the instructions. R has consented to receive the statements electronically in the manner described in paragraph (a)(2)(i) of this section.

Example 2. Filer F sends Recipient R an e-mail stating that R may consent to receive statements required under §1.529A-5 or §1.529A-6 electronically instead of in a paper format. The e-mail contains an attachment instructing R how to consent to receive the statements electronically. The e-mail attachment uses the same electronic format that F will use for the electronically furnished statements. R opens the attachment, reads the instructions, and submits the consent in the manner provided in the instructions. R has consented to receive the statements electronically in the manner described in paragraph (a)(2)(i) of this section.

Example 3. Filer F posts a notice on its Web site stating that Recipient R may receive statements required under §1.529A-5 or §1.529A-6 electronically instead of in a paper format. The Web site contains instructions on how R may access a secure Web page and consent to receive the statements electronically. By accessing the secure Web page and giving consent, R has consented to receive the statements electronically in the manner described in paragraph (a)(2)(i) of this section.

(3) Required disclosures--(i) In general. Prior to, or at the time of, a recipient's consent, the filer must provide to the recipient a clear and conspicuous disclosure statement containing each of the disclosures described in paragraphs (a)(3)(ii) through (viii) of this section.

(ii) Paper statement. The recipient must be informed that the statement will be furnished on paper if the recipient does not consent to receive it electronically.

(iii) Scope and duration of consent. The recipient must be informed of the scope and duration of the consent. For example, the recipient must be informed whether the consent applies to statements furnished every year after the consent is given until it is withdrawn in the manner described in paragraph (a)(3)(v)(A) of this section, or only to the statement required to be furnished on or before the due date immediately following the date on which the consent is given.

(iv) Post-consent request for a paper statement. The recipient must be informed of any procedure for obtaining a paper copy of the recipient's statement after giving the

consent and whether a request for a paper statement will be treated as a withdrawal of consent.

(v) Withdrawal of consent. The recipient must be informed that--

(A) The recipient may withdraw a consent by writing (electronically or on paper) to the person or department whose name, mailing address, and e-mail address is provided in the disclosure statement;

(B) The filer will confirm, in writing (either electronically or on paper), the withdrawal and the date on which it takes effect; and

(C) A withdrawal of consent does not apply to a statement that was furnished electronically in the manner described in this paragraph (a) before the date on which the withdrawal of consent takes effect.

(vi) Notice of termination. The recipient must be informed of the conditions under which a filer will cease furnishing statements electronically to the recipient.

(vii) Updating information. The recipient must be informed of the procedures for updating the information needed by the filer to contact the recipient. The filer must inform the recipient of any change in the filer's contact information.

(viii) Hardware and software requirements. The recipient must be provided with a description of the hardware and software required to access, print, and retain the statement, and the date when the statement will no longer be available on the Web site.

(4) Format. The electronic version of the statement must contain all required information and comply with applicable revenue procedures or other guidance published by the IRS relating to substitute statements to recipients, including Publication 1179,

“General Rules and Specifications for Substitute Forms 1096, 1098, 1099, 5498, and Certain Other Information Returns.”

(5) Notice--(i) In general. If the statement is furnished on a Web site, the filer must notify the recipient that the statement is posted on a Web site. The notice may be delivered by mail, electronic mail, or in person. The notice must provide instructions on how to access and print the statement. The notice must include the following statement in capital letters, “IMPORTANT TAX RETURN DOCUMENT AVAILABLE.” If the notice is provided by electronic mail, the foregoing statement must be on the subject line of the electronic mail.

(ii) Undeliverable electronic address. If an electronic notice described in paragraph (a)(5)(i) of this section is returned as undeliverable, and the correct electronic address cannot be obtained from the filer’s records or from the recipient, then the filer must furnish the notice by mail or in person within 30 days after the electronic notice is returned.

(iii) Corrected statements. If the filer has corrected a recipient's statement that was furnished electronically, the filer must furnish the corrected statement to the recipient electronically. If the recipient's statement was furnished through a Web site posting and the filer has corrected the statement, the filer must notify the recipient that it has posted the corrected statement on the Web site within 30 days of such posting in the manner described in paragraph (a)(5)(i) of this section. The corrected statement or the notice must be furnished by mail or in person if--

(A) An electronic notice of the Web site posting of an original statement or the corrected statement was returned as undeliverable; and

(B) The recipient has not provided a new e-mail address.

(6) Access period. Statements furnished on a Web site must be retained on the Web site through October 15 of the year following the calendar year to which the statements relate (or the first business day after such October 15 if October 15 falls on a Saturday, Sunday, or legal holiday). The filer must maintain access to corrected statements that are posted on the Web site through October 15 of the year following the calendar year to which the statements relate (or the first business day after such October 15 if October 15 falls on a Saturday, Sunday, or legal holiday) or the date 90 days after the corrected statements are posted, whichever is later. The rules in this paragraph (a)(6) do not replace the filer's obligation to keep records under section 6001 and §1.6001-1(a) of this chapter.

(b) Effective/applicability date. This section applies to statements required to be furnished after December 31, 2015.

Part 25—GIFT TAXES

Par. 5. The authority citation for part 25 continues to read in part as follows:

Authority: 26 U.S.C. 7805* * *

Par. 6. Section 25.2501-1 is amended by adding a sentence at the end of paragraph (a)(1) to read as follows:

§25.2501-1 Imposition of Tax.

(a) * * *

(1) * * * For gift tax rules related to an ABLE account established under section 529A, see regulations promulgated thereunder.

* * * * *

Par. 7. Section 25.2503-3 is amended by adding a sentence at the end of paragraph (a) to read as follows:

§25.2503-3 Future interests in property.

(a) * * * A contribution to an ABLE account established under section 529A is not a future interest.

* * * * *

Par. 8. Section 25.2503-6 is amended by adding a sentence at the end of paragraph (a) to read as follows:

§25.2503-6 Exclusion for certain qualified transfers to tuition or medical expenses.

(a) * * * A contribution to an ABLE account established under section 529A is not a qualified transfer.

* * * * *

Par. 9. Section 25.2511-2 is amended by adding a sentence at the end of paragraph (a) to read as follows:

§25.2511-2 Cessation of donor's dominion and control.

(a) * * * For gift tax rules related to an ABLE account established under section 529A, see regulations promulgated thereunder.

* * * * *

Part 26--ESTATE TAXES

Par. 10. The authority citation for part 26 continues to read in part as follows:

Authority: 26 U.S.C. 7805* * *

Par. 11. Section 26.2642-1 is amended by adding a sentence at the end of paragraph (a) to read as follows:

§26.2642-1 Inclusion ratio.

(a) * * * For generation-skipping transfer tax rules related to an ABLE account established under section 529A, see regulations promulgated thereunder.

* * * * *

Par. 12. Section 26.2652-1 is amended by adding a sentence at the end of paragraph (a)(1) to read as follows:

§26.2652-1 Transferor defined; other definitions.

(a) * * *

(1) * * * For generation-skipping transfer tax rules related to an ABLE account established under section 529A, see regulations promulgated thereunder.

* * * * *

Part 301—REPORTING AND RECORDKEEPING REQUIREMENTS

Par. 13. The authority citation for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805* * *

§ 301.6011-2 [Amended]

Par. 14. Section 301.6011-2 is amended by adding the word “series” after

“5498” in the first sentence of paragraph (b)(1).


John Dalrymple

Deputy Commissioner for Services and Enforcement.

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ACHIEVING INDEPENDENCE





ABLE Accounts and More: What Pooled Trust Administrators Need to Know



Presented By:
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ACHIEVING INDEPENDENCE


The Achieving a Better Life Experience (ABLE) Act of 2014

- As we walk through a review of the ABLE Act, think of it as one tool in a toolbox with many tools.
- If you are driving a nail into a board – you certainly would not try to pound it in with a screw driver.

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The Achieving a Better Life Experience (ABLE) Act of 2014



- While this is a new tool – it has very specific applications, and it is important to understand
 - when an ABLE Account is the right tool, and
 - when other options are more appropriate

The Achieving a Better Life Experience (ABLE) Act of 2014

- What is important for all persons with disabilities and their families whether this new tool works for a your needs, the ABLE Act focuses our country on the real issue – **the need for sustainable funding and options for all persons with disabilities.**



An Overview of the ABLE Act

- The details:** Starting in 2015, States **would have the option** to establish an ABLE program, under which eligible individuals with disabilities could start an ABLE account, modeled after current Section 529 savings accounts.

An Overview of the ABLE Act

- Eligible individuals **must be severely disabled before turning age 26**, based on a marked and severe functional limitation or receipt of benefits under the SSI or Disability Insurance (DI) programs.

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Who Qualifies?

- 1. Persons Diagnosed as Disabled Before Age 26 and Receiving SSI or SSDI**
 - 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

- 2. Persons Diagnosed as Disabled Before Age 26 and Certified as Meeting Conditions Similar to that Required by SSI or SSDI**
 - 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 months or is blind, and provides a copy of their diagnosis signed by a physician.

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Who Qualifies?

- If the ABLE account beneficiary qualifies because of certification, ABLE eligibility cannot be used to secure supplemental security income (SSI) or Medicaid




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An Overview of the ABLE Act

Other key features:

- Contributions** into an ABLE account **could be made by any person**;
- Contributions would **not be tax deductible**;
- Income earned** by the accounts would **not be taxed**;
- Account **withdrawals**, including portions attributable to investment earnings generated by the account, **for qualified expenses** would **not be taxable**;

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An Overview of the ABLE Act

- Individuals would be **limited to one ABLE account**, and **total annual contributions by all individuals to any one account could be made up to the gift tax limit (\$14,000 in 2015)**
- Aggregate contributions to an ABLE account would be subject to an overall limit matching the State limit for Section 529 accounts.**
- (Example – The 529 limit in California is \$370,000 .) $\$370,000 / \$14,000 = 26.42$ years

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ACHIEVING INDEPENDENCE

An Overview of the ABLE Act

- Individuals with ABLE accounts could **maintain eligibility for means-tested**

In SSI, the first \$100,000 in account balances are excluded from counting as resources, as are most account withdrawals.	ABLE account balances and withdrawals are completely excluded for the purpose of Medicaid and other benefit programs.
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ACHIEVING INDEPENDENCE

ABLE and SSI Eligibility

- 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.


SOCIAL SECURITY ADMINISTRATION

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ACHIEVING INDEPENDENCE

ABLE and Medicaid Eligibility

- ABLE account beneficiaries do not lose Medicaid eligibility based on assets in their ABLE account or suspension of SSI benefits.
- For instance, in Arizona the maximum amount that can be placed in a 529 plan is \$412,000 .
- Therefore – if contributions exceed \$100,000 – SSI eligibility would be lost – but as long as the account remains below \$412,000 – Medicaid eligibility continues.



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What can be Contributed to an ABLE Account

(2) **CASH CONTRIBUTIONS.**—A program shall not be treated as a qualified ABLE program unless it provides that no contribution will be accepted—

- (A) unless it is in cash, or“
- (B) except for *rollovers to another beneficiary*

if such contribution to an ABLE account would result in aggregate contributions from all contributors to the ABLE account for the taxable year exceeding the amount in effect under section 2503(b) for the calendar year in which the taxable year begins.



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ACHIEVING INDEPENDENCE

Transfers of the Account during the Beneficiaries Lifetime or Upon the Beneficiaries Death

- The ABLE Act allows in transfers of an ABLE Account during the lifetime of the ABLE Account beneficiary or the beneficiaries death in very limited situations to other family members that are disabled **if the new beneficiary is an eligible individual for such taxable year and a member of the family of the beneficiary** as listed in IRC (ii) Section 102(c.)(1)(C).

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ACHIEVING INDEPENDENCE

Change in Designated Beneficiaries

- THAT IS BROTHER - SISTER - STEP BROTHER OR STEP SISTER
- So for example - if the beneficiary upon death of the ABLA Account is the brother or step brother of the ABLA Account beneficiary then it can pass to them with no Medicaid lien.
- If instead the account passes to the beneficiaries spouse, then there is a Medicaid lien.

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Qualified Disability Expenses


- 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.

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Limited Investment Direction

- **Beneficiaries may direct the investment of any contributions to the program (or any earnings thereon) no more than 2 times in any calendar year.**
- **As with 529 college savings accounts, the range of investment options available for ABLA accounts would be determined by the States.**




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Tax Free Growth and Penalties if Used for Non Qualified Expenses

- **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 earning portion would be subject to regular income tax and a 10% penalty** (state penalties could also apply).




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Tax Free Growth and Penalties if Used for Non Qualified Expenses


- **Example – Bob over a decade saves \$50,000, and over that period the account earns \$10,000 for a total of \$60,000.**
- **If Bob were to use the \$60,000 for a down payment on a home, no taxes would be due**
- **If instead Bob were to use \$5,000 to pay for a trip to Disneyland – the \$5,000 would be taxable, plus a 10% penalty.**



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ABLE Accounts Must Be Opened in the State Beneficiary Resides



- **Qualified individuals or their families must open ABLE account in the state in which the beneficiary resides or in a state that has a memorandum of understanding with another state to provide accounts.**
- **There is a limit of one ABLE account per eligible individual**

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Comparing ABLE Accounts to Special Needs Trust



- To make an intelligent decision about what tool to use – it is important to understand the basics of special needs trusts.

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Third-Party Trust

Social Security says

SS 91120.200 - 17

- A **third-party trust** is a trust established by someone other than the beneficiary as grantor. For example, a third-party trust may be established by a grandparent for a grandchild.

Third Party Special Needs Trust

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Third-Party Trust

- A third-party trust can have great latitude, and upon the death of the beneficiary can be left to anyone you wish (except for the drafting attorney) with no payback to the state.
- There are no limits to how much can be placed in a third party special needs trust
- A third-party trust had no age limit for the beneficiary

Third Party Special Needs Trust

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ACHIEVING INDEPENDENCE

LET'S TALK ABOUT PAYBACKS AND MEDICAID LIENS

Medicaid

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ABLE and the Medicaid Payback

- In the event the qualified beneficiary dies with remaining assets in an **ABLE** account:
 - The assets in the **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



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Medicaid Payback

- While the Medicaid Payback should be a major consideration when selecting what tool to use, it is only one factor.
- Basically –this is a 529 plan with a lien for any Medicaid used by the beneficiary **from the time the account was created**.
- Compare this with a traditional 529 plan where there are no liens.

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 Medicaid Payback 			
Medi-Cal Recovery	ABLE Account	3 rd Party SNT	D4A Trust
Medi-Cal used for medical purposes after age 55	The amount of any such Medicaid payback is calculated based on amounts paid by Medicaid after the creation of the ABLE Account	No Lien	All Medicaid paid during lifetime


Medicaid Payback



PLAN FOR LIEN UPON DEATH

- If family are using this as a savings tool – ideally the funds will be expended before death. This is a 529 plan with a lien.

MAKE SURE THAT THE PAYBACK IS EVEN AN ISSUE


- No every person with a disability uses Medicaid. Some use massive amounts of Medicaid.
- Many folks do not realize they are using Medicaid – for instance Medicaid waivers

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Example

The \$10,000 Inheritance Dilemma

- Bob has a disability that occurred before the age of 26 and is on SSI and Medicaid
- Bob inherited \$10,000.
- He has the following options
 - Spend down the assets in the month of receipt
 - Join a pooled trust or have parents or grandparents establish a self settled trust
 - Put the funds in an ABLE Account
 - Keep in mind that Bob has to have the capacity to transfer the funds into the ABLE Account.




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Example

Difficulty Remaining Below Resource Limit

- Jane has a disability that occurred before the age of 26 and is on SSI and Medicaid
- She has a job – receives Section 8 – lives very frugally – and has difficulty staying below the \$2,000 resource limitation




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Example


Difficulty Remaining Below Resource Limit

- She could transfer up to \$14,000 a year of his excess wages to her ABLE Account to be used at a later date.





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ACHIEVING INDEPENDENCE



ABLE Act – Review of Proposed IRS Regs

Proposed IRS Regulations

The IRS recently released a notice that provides advance notification of a provision anticipated to be included in the proposed regulations to be issued under section 529A of the Internal Revenue Code.

A public hearing has been scheduled for **October 14, 2015**, beginning at **10:00 am** in the Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, DC.

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Proposed IRS Regulations

For purposes of this presentation – if the slide has this in the corner – this is copied straight out of the proposed regulation.




If it doesn't – it is commentary

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To download materials related to this program go to www.achievingindependencetexas.com/ABLE



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ACHIEVING INDEPENDENCE

WHAT HAPPENS IF ACCOUNT HOLDER NO LONGER MEETS THE DEFINITION OF BEING DISABLED?

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ACHIEVING INDEPENDENCE

Change in eligible individual status

Example

- Erica has been on SSI for many years and has set up an ALE Account that Uncle Steve and Aunt Terri has been contributing into annually. This year they contributed \$10,000 and the account now has \$80,000.
- Erica gets a job, and is being paid a salary of \$34,000 a year.
- Therefore she no longer meets the definition of being disabled under the first category because no longer receiving supplemental security income benefits or disability benefits under Title II of the Social Security Act.


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ACHIEVING INDEPENDENCE

Who Qualifies?

- 1. Persons Diagnosed as Disabled Before Age 26 and Receiving SSI or SSDI**
 - 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.
- 2. Persons Diagnosed as Disabled Before Age 26 and Certified as Meeting Conditions Similar to that Required by SSI or SSDI**
 - 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.



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Change in eligible individual status

She **MAY** qualify under the second category as Certified as eligible if she 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.



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Change in eligible individual status

Therefore, if at any time a designated beneficiary no longer meets the definition of an eligible individual, his or her **ABLE account remains an ABLE account** to which all of the provisions of the ABLE Act continue to apply, **and no (taxable) distribution of the account balance is deemed to occur.**


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Change in eligible individual status


In this way, the Treasury Department and the IRS intend to prevent a deemed distribution of the ABLE account (and preserve the account's qualification as an ABLE account for all purposes) if, **for example, the disease that caused the impairment goes into a temporary remission, and to preserve the ABLE account with its tax-free distributions for qualified disability expenses if the impairment resumes and once again qualifies the designated beneficiary as an eligible individual.**


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Change in eligible individual status


Note that expenses will not be qualified disability expenses if they are incurred at a time when a designated beneficiary is neither disabled nor blind within the meaning of §1.529A-1(b)(9)(A) or §1.529A-2(e)(1)(i).






Change in eligible individual status


However, the proposed regulations provide that, beginning on **the first day of the taxable year following the taxable year** in which the designated beneficiary ceased to be an eligible individual, **no contributions to the ABLE account may be accepted.**






Change in eligible individual status

If the designated beneficiary subsequently again becomes an eligible individual, then additional contributions may be accepted subject to the applicable annual and cumulative limits






Change in eligible individual status



- What this tells us is that that the ABLE Account does not automatically become taxable just because she does not meet the definition of being disabled.
- Uncle Steve can no longer make contributions to the ABLE Account next year IF ERICA DOES NOT QUALIFY UNDER A CERTIFICATION, but she could contribute \$4,000 this year – assuming no one else contributed

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What Happens if A State Passes Laws Before Regs are Implemented?

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What Happens if State Passes Laws Before Regs are Implemented?


The Treasury Department and the IRS reiterate that States that enact legislation creating an ABLE program in accordance with section 529A, and those individuals establishing ABLE accounts in accordance with such legislation, **will not fail** to receive the benefits of section 529A **merely because the legislation or the account documents do not fully comport with the final regulations when they are issued.**


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What Happens if State Passes Laws Before Regs Issue?

The Treasury Department and **the IRS intend to provide transition relief** to enable those State programs and accounts to be brought into compliance with the requirements in the final regulations, including **providing sufficient time after issuance of the final regulations in order for changes to be implemented.**







Who is in Charge of the ABLE Account?





Who Owns the ABLE Account?

The proposed regulations also presumes that the designated beneficiary is the owner of that account and manages the distributions.

 **What if Account Holder Lacks Capacity?** 



The Treasury Department and the IRS recognize, however, that **certain eligible individuals may be unable to establish an account themselves.**

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 **What if Account Holder Lacks Capacity?** 


Therefore, the proposed regulations clarify that, if the eligible individual cannot establish the account, **the eligible individual's agent under a power of attorney or, if none, his or her parent or legal guardian may establish the ABL account for that eligible individual.**

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 **What if Account Holder Lacks Capacity?** 


For purposes of these proposed regulations, because each of these individuals would be acting on behalf of the designated beneficiary, **references to actions of the designated beneficiary, such as opening or managing the ABL account, are deemed to include the actions of any other such individual with signature authority over the ABL account.**

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What if Account Holder Lacks Capacity?

The proposed regulations also provide that, consistent with Notice 2015-18, a person other than the designated beneficiary with signature authority over the account of the designated beneficiary **may neither have, nor acquire, any beneficial interest in the account during the designated beneficiary's lifetime and must administer the account for the benefit of the designated beneficiary.**




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Definition of Designated Beneficiary

If the designated beneficiary is not able to exercise signature authority over his or her ABLE account or chooses to establish an ABLE account but not exercise signature authority, references to the designated beneficiary with respect to his or her actions include actions by the designated beneficiary's **agent under a power of attorney or, if none, a parent or legal guardian of the designated beneficiary.**




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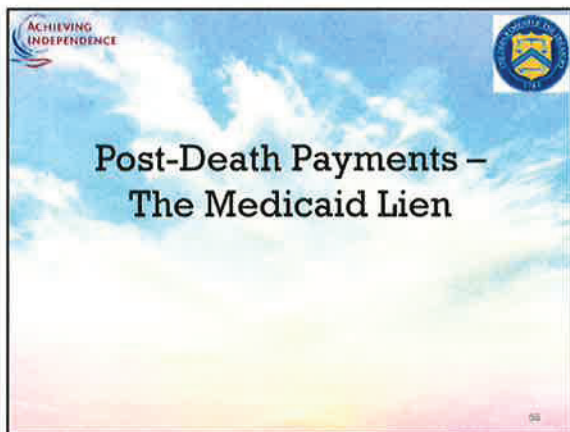


Practice Tip

- If the eligible individual under an ABLE Account has capacity – it is best to have the individual sign a power of attorney immediately.
- Also – if these rules are adopted and the eligible individual want for instance a to have a sibling have signature authority – then the power of attorney is the method to make this happen.



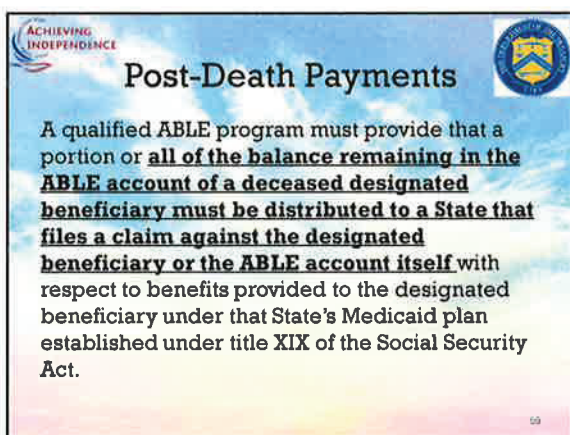
57



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Post-Death Payments –
The Medicaid Lien

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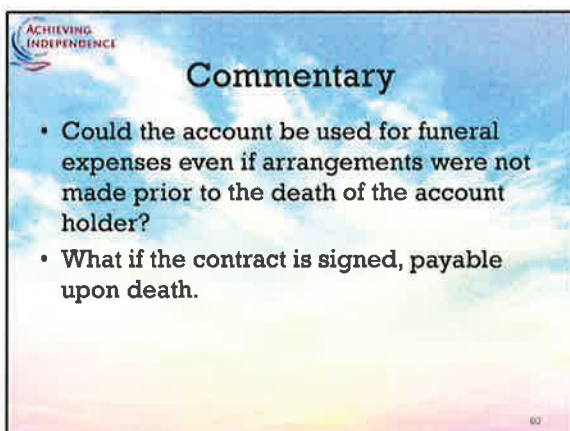


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Post-Death Payments

A qualified ABLE program must provide that a portion or **all of the balance remaining in the ABLE account of a deceased designated beneficiary must be distributed to a State that files a claim against the designated beneficiary or the ABLE account itself** with respect to benefits provided to the designated beneficiary under that State's Medicaid plan established under title XIX of the Social Security Act.

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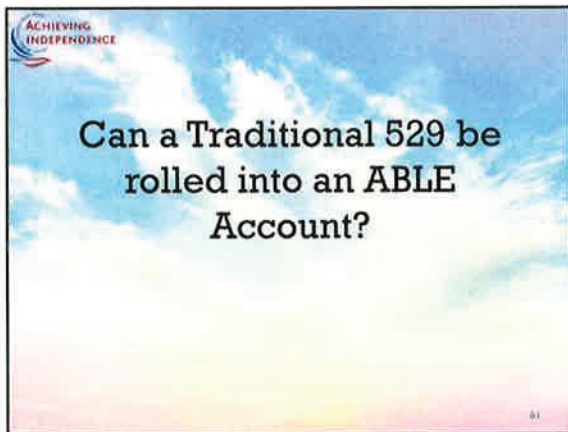


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Commentary

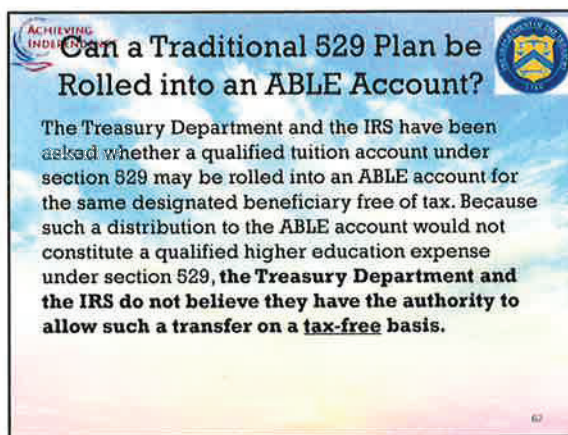
- Could the account be used for funeral expenses even if arrangements were not made prior to the death of the account holder?
- What if the contract is signed, payable upon death.

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**Can a Traditional 529 be
rolled into an ABL
Account?**

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**Can a Traditional 529 Plan be
Rolled into an ABL Account?**

The Treasury Department and the IRS have been asked whether a qualified tuition account under section 529 may be rolled into an ABL account for the same designated beneficiary free of tax. Because such a distribution to the ABL account would not constitute a qualified higher education expense under section 529, **the Treasury Department and the IRS do not believe they have the authority to allow such a transfer on a tax-free basis.**

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**Issues Concerning Qualified
Disability Expenses, Cell
Phones and Housing
Examples**

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Qualified Disability Expenses

- 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

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Qualified Disability Expenses

In order to implement the legislative purpose of assisting eligible individuals in maintaining or improving their health, independence, or quality of life, the Treasury Department and the IRS conclude that 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.**

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ACHIEVING INDEPENDENCE

Qualified Disability Expenses

For example, expenses for common items such as smart phones could be considered qualified disability expenses if they are an effective and safe communication or navigation aid for a child with autism.

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Housing

- One question we all have is whether utilization of expenses for housing will cause a reduction in SSI.
- Currently under SSI – payments from a trust for housing from a family member or a trust cause a reduction in benefits by \$264.66
- There are POMS that go the other direction.

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Residency Requirements

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The ABLE Accounts Must Be Opened in the State Beneficiary Resides


- Qualified individuals or their families **must open ABLE account in the state in which the beneficiary resides or in a state that has a memorandum of understanding** with another state to provide accounts.
- There is a limit of one ABLE account per eligible individual



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Residency Requirements




If a State does not establish and maintain a qualified ABLE program, it may contract with another State to provide an ABLE program for its residents. **The statute is silent as to whether a designated beneficiary must move his or her existing ABLE account when the designated beneficiary changes his or her residence.**

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Residency Requirements



The Treasury Department and the IRS are concerned about imposing undue administrative burdens and costs on designated beneficiaries who frequently change State residency, such as members of military families. Therefore, **the proposed regulations provide that a qualified ABLE program may permit a designated beneficiary to continue to maintain his or her ABLE account that was created in that State, even after the designated beneficiary is no longer a resident of that State.**

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Comments and Public Hearing

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Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any comments that are timely submitted to the IRS as prescribed in this preamble under the "Addresses" heading. The Treasury Department and the IRS request comments on all aspects of the proposed rules.

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Comments and Public Hearing

A public hearing has been scheduled for **October 14, 2015**, beginning at **10:00 am** in the Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, DC.

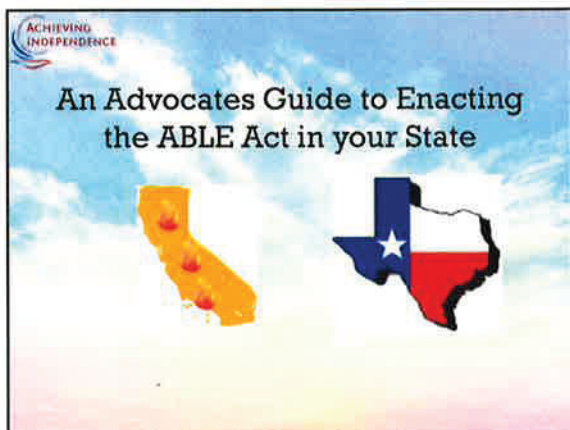
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What's Next?

- SSA for SSI and CMS for Medicaid are working on new regulations for ABLE Account.
- This will be a good opportunity to look at all rules of distributions for persons with disabilities, be it from family and friends, special needs trusts, or ABLE Accounts.

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Summary of Enactment by States

Summary:

Total Number of States with Pending ABLE Legislation: (Note: Four have adjourned and legislation will not be reconsidered until 2016)	10/51 (19.6%)
Total Number of States with Signed ABLE Legislation:	31/51 (60.8%)
Total Number of States with ABLE Legislation (Pending or Signed):	41/51 (80.4%)
Number of States Which Have Not Introduced ABLE Legislation: (Note: All have adjourned their 2016 legislative session)	8/51 (15.7%)
Number of States Where All ABLE Legislation Has Died Due to Adjournment:	2/51 (3.9%)
Total Number of States with No Current ABLE Legislation	10/51 (19.6%)

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The Opportunities Presented by the ABLE Act

- The ABLE Act is another tool and though it will seldom replace the need for a special needs trust, in specific situations it is a good tool.
- Most states as they roll this out are going to need to do a great amount of education for the public and professionals.
- There are many opportunities to work with the entities that are creating policies and procedures to collaborate and provide guidance and education.

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Where Can You Learn About Your State?
<http://www.thearc.org/>

ABLE Legislation By State
 Current as of August 31st, 2015

STATE	ABLE ACT	SPONSOR	ADOPTED DATE	PROGRAM ADOPTION	TEXT URL	LEGISLATION URL	LAST ACTION
Alabama	2015	Sen. Jeff Davis	2015	Yes	Alabama	Alabama	2015
Alaska	2015	Sen. Mark Pappas	2015	Yes	Alaska	Alaska	2015
Arizona	2015	Sen. Mark Pappas	2015	Yes	Arizona	Arizona	2015
Arkansas	2015	Sen. Mark Pappas	2015	Yes	Arkansas	Arkansas	2015
California	2015	Sen. Mark Pappas	2015	Yes	California	California	2015
Colorado	2015	Sen. Mark Pappas	2015	Yes	Colorado	Colorado	2015
Connecticut	2015	Sen. Mark Pappas	2015	Yes	Connecticut	Connecticut	2015
Delaware	2015	Sen. Mark Pappas	2015	Yes	Delaware	Delaware	2015
District of Columbia	2015	Sen. Mark Pappas	2015	Yes	District of Columbia	District of Columbia	2015
Florida	2015	Sen. Mark Pappas	2015	Yes	Florida	Florida	2015
Georgia	2015	Sen. Mark Pappas	2015	Yes	Georgia	Georgia	2015
Hawaii	2015	Sen. Mark Pappas	2015	Yes	Hawaii	Hawaii	2015
Idaho	2015	Sen. Mark Pappas	2015	Yes	Idaho	Idaho	2015
Illinois	2015	Sen. Mark Pappas	2015	Yes	Illinois	Illinois	2015
Indiana	2015	Sen. Mark Pappas	2015	Yes	Indiana	Indiana	2015
Iowa	2015	Sen. Mark Pappas	2015	Yes	Iowa	Iowa	2015
Kansas	2015	Sen. Mark Pappas	2015	Yes	Kansas	Kansas	2015
Kentucky	2015	Sen. Mark Pappas	2015	Yes	Kentucky	Kentucky	2015
Louisiana	2015	Sen. Mark Pappas	2015	Yes	Louisiana	Louisiana	2015
Maine	2015	Sen. Mark Pappas	2015	Yes	Maine	Maine	2015
Maryland	2015	Sen. Mark Pappas	2015	Yes	Maryland	Maryland	2015
Massachusetts	2015	Sen. Mark Pappas	2015	Yes	Massachusetts	Massachusetts	2015
Michigan	2015	Sen. Mark Pappas	2015	Yes	Michigan	Michigan	2015
Minnesota	2015	Sen. Mark Pappas	2015	Yes	Minnesota	Minnesota	2015
Mississippi	2015	Sen. Mark Pappas	2015	Yes	Mississippi	Mississippi	2015
Missouri	2015	Sen. Mark Pappas	2015	Yes	Missouri	Missouri	2015
Montana	2015	Sen. Mark Pappas	2015	Yes	Montana	Montana	2015
Nebraska	2015	Sen. Mark Pappas	2015	Yes	Nebraska	Nebraska	2015
Nevada	2015	Sen. Mark Pappas	2015	Yes	Nevada	Nevada	2015
New Hampshire	2015	Sen. Mark Pappas	2015	Yes	New Hampshire	New Hampshire	2015
New Jersey	2015	Sen. Mark Pappas	2015	Yes	New Jersey	New Jersey	2015
New Mexico	2015	Sen. Mark Pappas	2015	Yes	New Mexico	New Mexico	2015
New York	2015	Sen. Mark Pappas	2015	Yes	New York	New York	2015
North Carolina	2015	Sen. Mark Pappas	2015	Yes	North Carolina	North Carolina	2015
North Dakota	2015	Sen. Mark Pappas	2015	Yes	North Dakota	North Dakota	2015
Ohio	2015	Sen. Mark Pappas	2015	Yes	Ohio	Ohio	2015
Oklahoma	2015	Sen. Mark Pappas	2015	Yes	Oklahoma	Oklahoma	2015
Oregon	2015	Sen. Mark Pappas	2015	Yes	Oregon	Oregon	2015
Pennsylvania	2015	Sen. Mark Pappas	2015	Yes	Pennsylvania	Pennsylvania	2015
Rhode Island	2015	Sen. Mark Pappas	2015	Yes	Rhode Island	Rhode Island	2015
South Carolina	2015	Sen. Mark Pappas	2015	Yes	South Carolina	South Carolina	2015
South Dakota	2015	Sen. Mark Pappas	2015	Yes	South Dakota	South Dakota	2015
Tennessee	2015	Sen. Mark Pappas	2015	Yes	Tennessee	Tennessee	2015
Texas	2015	Sen. Mark Pappas	2015	Yes	Texas	Texas	2015
Utah	2015	Sen. Mark Pappas	2015	Yes	Utah	Utah	2015
Vermont	2015	Sen. Mark Pappas	2015	Yes	Vermont	Vermont	2015
Virginia	2015	Sen. Mark Pappas	2015	Yes	Virginia	Virginia	2015
Washington	2015	Sen. Mark Pappas	2015	Yes	Washington	Washington	2015
West Virginia	2015	Sen. Mark Pappas	2015	Yes	West Virginia	West Virginia	2015
Wisconsin	2015	Sen. Mark Pappas	2015	Yes	Wisconsin	Wisconsin	2015
Wyoming	2015	Sen. Mark Pappas	2015	Yes	Wyoming	Wyoming	2015

Examples

CALIFORNIA

TEXAS

Texas ABLE Timeline

- May 30, 2015 - Texas unanimously passes Texas ABLE Act
- Sept. 21, 2015* - 90 days comment or suggestion period for the proposed guidance rules
- Oct. 14, 2015* - Public hearing in Washington DC for verbal comments on the proposed rules
- Dec. 01, 2015* - Texas Comptroller appoints the "ABLE program advisory committee" members
- Ongoing - The Prepaid Higher Education Tuition Board creates rules to implement, manage and govern the program as soon as possible.
- Mid 2016* - Texas ABLE account applications are available and ready for business
- *estimated - based on current implementation discussions

ACHIEVING INDEPENDENCE

POWERS AND DUTIES OF BOARD

From page 4 of SB 1664

To establish and administer the ABLE program, the board shall:

- (1) develop and implement the program;
- (2) adopt rules and establish policies and procedures to implement this subchapter to:
 - (A) permit the program to qualify as a qualified ABLE program under Section 529A, Internal Revenue Code;
 - (B) make changes to the program as necessary for the participants in the program to obtain or maintain federal income tax benefits or treatment provided by Section 529A, Internal Revenue Code, and exemptions under federal securities laws; and
 - (C) make changes to the program as necessary to ensure the program's compliance with all other applicable laws and regulations;

ACHIEVING INDEPENDENCE

POWERS AND DUTIES OF BOARD

From page 4 of SB 1664

- (3) either directly or through a contractual arrangement for investment or plan manager services with a financial institution or plan manager or another qualified entity, develop and provide information for participants and their families necessary to establish and maintain an ABLE account;
- (4) enter into agreements with any financial institution or any state or federal agency or contractor or other entity as required to administer the program under this subchapter

ACHIEVING INDEPENDENCE

POWERS AND DUTIES OF BOARD


From page 5 of SB 1664

- (7) Engage the services of private consultants, trustees, records administrators, managers, legal counsel, auditors, and other appropriate parties or organizations for administrative or technical assistance;
- (10) Develop marketing plans or promotional materials or contract with a consultant to market the program;
- (14) Establish other policies, procedures, and eligibility criteria to implement this subchapter.

ACHIEVING INDEPENDENCE

Advisory Committee

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- **Sec. 84.917. ABLE PROGRAM ADVISORY COMMITTEE.**
 (a) The ABLE program advisory committee is established to review rules and procedures related to the ABLE program, to provide guidance, suggest changes, and make recommendations for the administration of the program, and to provide assistance as needed to the board and comptroller during the creation of the program.

ACHIEVING INDEPENDENCE

Advisory Committee

Page 15



- (b) The comptroller shall appoint at least five and not more than seven members to the advisory committee, including at least one member from each of the following groups:
 - (1) persons with a disability who qualify for the program;
 - (2) family members of a person with a disability who qualifies for the program;
 - (3) representatives of disability advocacy organizations; and
 - (4) representatives of the financial community.
- (c) The comptroller shall appoint a presiding officer.
- (d) The advisory committee shall meet quarterly or more frequently as the presiding officer determines is necessary to carry out the responsibilities of the committee.
- (e) A member of the advisory committee is not entitled to compensation or reimbursement for travel expenses.

ACHIEVING INDEPENDENCE

California



- *California's legislation for the ABLE Act basically mirrors the federal legislation except that it creates an advisory board.*

ACHIEVING INDEPENDENCE

California



- 4876. There is hereby created the **ABLE Act Board** that consists of the **Treasurer, the Director of Finance, the State Controller, the Director of Developmental Services, the chairperson of the State Council on Developmental Disabilities, or their designees.**

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ACHIEVING INDEPENDENCE

The State Council on Developmental Disabilities

<http://www.scdd.ca.gov/>



Welcome to SCDD

The State Council on Developmental Disabilities (SCDD) is established by state and federal law as an independent state agency to ensure that people with developmental disabilities and their families receive the services and supports they need.

SCDD

ACHIEVING INDEPENDENCE

The State Council on Developmental Disabilities

<http://www.scdd.ca.gov/>

- The State Council has 13 Regional Offices throughout California and will be coordinating trainings across the state for the community as well as for persons with disabilities and their families.

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ACHIEVING INDEPENDENCE

In Conclusion

- The ABLE Act is a new tool – and in limited situations can be an easy way to shelter assets and still remain qualified for SSI and Medicaid.
- ABLE in most cases is not a substitute for a special needs trust.
- There is a great need for broad education about all the different options for setting aside assets for persons with disabilities to ensure quality of life.

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