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ABLE Act Information

The Achieving a Better Life Experience (ABLE) Act was enacted by Congress in 2014. Funds held in ABLE accounts are generally excluded when determining eligibility for federal means-tested benefits such as SSI and Medicaid. The intended purpose of an ABLE account is to supplement benefits provided through Medicaid, SSI, private insurance, employment, and other sources.

The original law required individuals to open an ABLE account in their home state. In December 2015, the residency requirement was eliminated. Therefore, an individual can open an ABLE account in any state that establishes a program and opens the program to out-of-state residents. To establish a program, states must enact enabling legislation. Each state has some latitude in the development and implementation of their program. There are key components of the federal law that will remain consistent in each state program.

In December 2022 the Omnibus Spending Bill was signed into law which included the ABLE Age Adjustment Act. Under this new Act the age limit for a qualifying disability will increase from 26 to 46. This change will not go into effect until January 1, 2026. Until January 1, 2026 individuals will still need to be found disabled before the age of 26 to qualify for an ABLE account.

Current Law in Wisconsin

On March 31, 2016, the 2015 law authorizing Wisconsin to create its program was repealed. This means that Wisconsin will not have an ABLE account program. Wisconsin residents can open an ABLE account in any state that establishes a program and opens it to out-of-state residents. Wisconsin residents will still receive preferential tax treatment for ABLE accounts created in other states.
States that have established ABLE Accounts:

- Go to this link for a link to compare ABLE accounts by state: https://www.ablenrc.org/compare-states/
- https://www.ablenrc.org/select-a-state-program/

Compare ABLE Programs by State

The National Downs Syndrome Society has developed a chart comparing the details and features of each ABLE program to help consumers determine which program is best for them. The chart was last updated on April 6, 2020. The chart can be found here:

https://docs.google.com/spreadsheets/d/1hr7DIlg-RltigvNdB_o6mzOAiVwUK94epc3AHkGCR_M/edit#gid=1598328082

Eligibility Requirements

- Eligibility is limited to individuals with significant disabilities that began before age 26. An eligible beneficiary must be:
  - Someone already on SSI or SSDI, who had an onset of disability before turning 26 years of age.
  - Someone who is not on SSI or SSDI, but who has an onset of disability before turning 26 years of age. This would have to be certified by a licensed physician.
    - https://www.ablenow.com/uploads/documents/ABLEnow_Physician_Diagnosis_Form.pdf?v=1642513057
      - This is one example form that can be used, but there are others available through different ABLE accounts in other states.
  - You can establish an ABLE account after the age of 26, but your disability onset had to be before your 26th birthday.

Basic Features of ABLE Accounts

- An ABLE account is a tax-advantaged savings account established by or on behalf of an individual with a disability for the purpose of saving for disability-related expenses.
- The beneficiary must be blind or disabled by a condition that began before age 26.
- An eligible beneficiary can own only one ABLE account.
- Multiple individuals may make contributions to an ABLE account.
- Total annual contributions (by all participating individuals) may not exceed $18,000 in 2024 (periodically adjusted for inflation).
  - In addition to the annual contribution limit of $18,000, an ABLE account owner who works may also contribute his or her compensation up to the federal poverty level (FPL) amount for a one-person household, as defined the previous calendar year.
    - The FPL amount (household size 1) for 2024 is $15,060.
    - A beneficiary cannot contribute this additional amount if the employer has made a contribution for him or her to a 401(a) defined contribution plan or 403(a) annuity contract, a 403(b) annuity contract or a 457(b) eligible deferred compensation plan within the calendar year.
    - Earnings that are the result of employment are still counted in terms of earned income or substantial gainful activity and taken into consideration when determining eligibility or continued eligibility for certain public benefits.
- The aggregate contribution limit that could be made to an ABLE account over time is capped at the state's limit for education-related 529 savings accounts (typically around $300,000-$400,000).
- The income earned on amounts contributed to an ABLE account is tax exempt, which means ABLE accounts grow tax free.
- Contributions are made using post-tax dollars and are not tax deductible, although some states may allow for state income tax deductions on contributions.
- Assets in an ABLE account and distributions from the account for qualified disability expenses are not counted for purposes of determining eligibility for federal means-tested benefits (Medicaid and SSI).
- For SSI, only the first $100,000 in the ABLE account is disregarded from the $2,000 asset limit. After $100,000, the beneficiary's SSI is suspended (but not terminated).
- Assets in an ABLE account are disregarded when determining eligibility for Medicaid. Medicaid benefits are not suspended if the account exceeds $100,000.
- Any assets remaining in the ABLE account when a beneficiary dies will be used to reimburse the state for Medicaid payments made on behalf of the beneficiary after the creation of the ABLE account.

Qualified Disability Expenses

- The designated beneficiary or the person with signature authority determines when a distribution is made.
- Distributions must be for a qualified disability expenses (QDE).
- Qualified disability expenses are related to the blindness or disability of the beneficiary to maintain or improve an individual's health, independence and quality of life. In general, these include, but are not limited to:
  - <u>Education</u> – tuition, books, supplies, tutors, special education services.
  - <u>Housing</u> – expenses for a primary residence, rent, mortgage, home improvements, modifications, maintenance and repairs, property taxes, utility charges.
  - <u>Transportation</u> – bus passes, other mass transit, purchase or modification of a vehicle.
  - <u>Employment training and support</u> –job related training, assistive technology.
  - <u>Health</u> – insurance premiums, vision, dental, rehab expenses, durable medical equipment, therapy, respite care, nutrition management, personal assistance, communication devices, assistive technology, prevention and wellness.
  - <u>Other:</u> financial management and administrative services, legal fees, funeral/burial, and other basic living expenses.
  - The proposed regulations emphasize that the definition of a QDE "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
    - provide no benefits to others in addition to the eligible individual.
- As long as the distribution is made for a qualified disability expense, the amount disbursed will not be counted as taxable income to the beneficiary.
- Distributions made for a nonqualified expense are subject to tax implications, a 10% penalty, and may affect the beneficiary's eligibility for public benefits programs. If the distribution adversely impacts eligibility, it would be appealable.

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vs.

Special Needs Trust (SNTs) and Pooled Trusts	ABLE Accounts
• SNT can be established by anyone with a disability • No limit on the number of trusts • If the beneficiary is receiving MA, there is no repayment after the beneficiary dies, unless it is a first-party trust • Funds in SNT are not counted for SSI or MA • Requires financial and legal professionals to establish • No limit on contributions • Trust fund earnings are taxable and requires annual tax returns	• Must have a disability with onset before age 26 • Only one ABLE account per person • MA benefits must be paid back to the state after the beneficiary dies • Special rules apply to SSI benefits -- assets over $100,000 are counted • Establishing less complicated and less expensive • Contributions cannot exceed $18,000 per year (in 2024). The maximum limit set by each state (typically $300,000-$400,000) • Earnings in the account are tax-exempt

Signing up for an ABLE account

- The ADRC can give general information about ABLE Accounts, but cannot assist in choosing or signing up for an ABLE Account.
- As the states roll out details about their varied ABLE programs, families should consult their financial advisors and special needs or elder law attorneys to determine what planning tool will be meet their individual situation.
    - A person can sign up for an ABLE Account without the assistance of a financial advisor or attorney; however it is the ADRC's recommendation that you consult with a professional first as there are many deciding factors when choosing what is best for you or the beneficiary.

*Information courtesy of ADRC of Dane County. The ADRC does not endorse or recommend specific agencies. This list is provided with the best available information as of March 2024.