



Background

Many families have been searching for a way to plan for the future of a child with severe disabilities. While they are able to save for the educational needs of their other children through “529” college tuition plans, they find those plans do not fit the needs of their child with severe disabilities, since their children may now, or in adulthood, need the long term services and supports of the Medicaid program and the income assistance of the Supplemental Security Income (SSI) program. Some families have found it too expensive to establish a trust which meets the requirements of the Medicaid and SSI programs, yet they recognize that their loved ones may live for many decades beyond the ability of the parents to supplement the services they receive through Medicaid. Others want to ensure the financial security of family members who have the level of disability required for Medicaid eligibility, but for now, are managing to function without the use of those benefits. Still others want to ensure that their family member can exercise control over the funds in the account without endangering the Medicaid and SSI benefits on which they may rely. The ABLE Act (S.313 / H.R.647) would give individuals with disabilities and their families access to accounts that would allow individual choice and control while protecting eligibility for Medicaid, SSI, and other important federal benefits for people with disabilities.

Key Issues

A Form of 529 Account: The ABLE Act creates a new subsection (f) ABLE account within Section 529 of the Internal Revenue Code. ABLE accounts follow all the requirements and regulations of a traditional 529 qualified tuition program. They are intended to be easy to open and available in any state. Like other 529 accounts, residents of one state may establish accounts in another state.

The same rules that govern other 529 accounts will govern ABLE accounts, including limits on the size of the account; rules for tax treatment of annual contributions, earnings, and withdrawals; and reporting requirements. Rollovers would be allowed from an ABLE account to a traditional 529 if the beneficiary is no longer deemed disabled. Also, rollovers would be allowed to another family member’s ABLE account or their traditional 529. Rollovers would also be allowed to a trust which qualifies under Medicaid rules.

Qualified Disability Expenses Include:

- **Education** - Tuition for preschool thru post-secondary education, books, supplies, and educational materials related to such education, tutors, and special education services.
- **Housing** - Expenses for a primary residence, including rent, purchase of a primary residence or an interest in a primary residence, mortgage payments, home improvements and modifications, maintenance and repairs, real property taxes, and utility charges.
- **Transportation** - Expenses for transportation, including the use of mass transit, the purchase or modification of vehicles, and moving expenses.
- **Employment Support** - Expenses related to obtaining and maintaining employment, including job-related training, assistive technology, and personal assistance supports.
- **Health and Wellness** - Expenses for health and wellness, including premiums for health insurance, mental health, medical, vision, and dental expenses, habilitation and rehabilitation services, durable medical equipment, therapy, respite care, long term services and supports, nutritional management, communication services and devices, adaptive equipment, assistive technology, and personal assistance.

- **Miscellaneous Expenses** - Financial management and administrative services, legal fees, expenses for oversight, monitoring, and funeral and burial expenses.

Eligibility: Any individual who is receiving SSI or disability benefits under Title II of the Social Security Act would be eligible to use an ABLE Account, as well as individuals who would otherwise meet the Social Security definition but who are not currently eligible for benefits.

Federal Treatment of ABLE Account under Supplemental Security Income Program & Medicaid:

Supplemental Security Income (SSI): If the assets in an ABLE account reach \$100,000 and the beneficiary is receiving Supplemental Security Income (SSI) benefits, 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 monthly SSI benefits resume. The beneficiary will not have to reapply for SSI benefits once the account drops back below the \$100,000 threshold.

Medicaid Eligibility: A beneficiary will not lose eligibility for Medicaid based on the assets held in the ABLE account, even during the time that SSI benefits are suspended (as described above for an account with over \$100,000).

Medicaid Payback Provision: When the qualified beneficiary dies (or if he/she is no longer disabled) with remaining assets in an ABLE account:

- The assets in the ABLE Account are used to “payback” any state Medicaid plan up to the value of Medicaid services provided to the beneficiary.
- The amount of any Medicaid payback is calculated based on amounts paid by Medicaid after the creation of the ABLE Account.

Recommendations

Members of Congress are urged to co-sponsor the ABLE Act and to urge Committee action and passage of the bills as soon as possible in this Congress.

Relevant Committees

Senate Finance Committee
House Ways and Means Committee
House Energy and Commerce Committee

For more information, please contact The Arc at (202) 783-2229, United Cerebral Palsy at (202)776-0406, Association of University Centers on Disability at (301) 588-8252, American Association on Intellectual and Developmental Disabilities at (202) 387-1968, National Association of Councils on Developmental Disabilities at (202) 506-5813, or Self-Advocates Becoming Empowered at SABEnation@gmail.com