

# ABLE Act

## Achieving a Better Life Experience

*How to save money and keep your benefits*

State Council on Developmental Disabilities  
Los Angeles Office



Rev: 10/16

# Introduction

In 2014, the United States Congress passed a law called the ABLE Act. It stands for Achieving a Better Life Experience. The purpose of this law is to create a way for people with disabilities to be able to save money easily without losing their public benefits.

In this booklet you will learn the basic information about the ABLE Act. There are parts of it that are still being worked out. We will update the booklet as needed. You will find on-line resources in the back that will have the most current information as well.

If there are words in this booklet that you don't understand, please go to the Glossary on page 22 for a simple definition of the word or term as it relates to the ABLE Act.

All of the amounts of money discussed in this booklet may change in the future. Go to the California State Treasurer's website for the most current information.<sup>1</sup>

The information in this booklet is accurate as of October 2016. Revisions will be made as new information is available.

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<sup>1</sup> [www.treasurer.ca.gov/able](http://www.treasurer.ca.gov/able)

# Right now

Some people living with disabilities and their families rely on a variety of public benefits provided by state and federal governments to make ends meet. Public benefits include Supplemental Security Income (SSI), Medicaid, CalFresh, Section 8 and other state programs. These programs provide important support for people with disabilities but often do not allow individuals to save more than a total of \$2,000, or earn more than \$680 a month.

This means that people who have these benefits cannot save money so they stay poor. Instead, people are forced to “spend down” any extra money they have leading to unnecessary purchases of things they don’t need or want.

Before the ABLE act was passed, the only method available for saving money without reducing benefits was to set up a special needs trust. Such trusts are useful, but they are expensive, complicated and do not give the beneficiary any control of the money.



# Huge improvement

The ABLE Act gives eligible people a simple way to save without the risk of losing their public benefits. It also permits them to grow their savings through investments without being taxed on that growth.

These accounts are also called 529(A) accounts. They are similar to College Savings Plans called 529 plans. Earnings and distributions are not taxed as long as they are used for qualified expenses.<sup>2</sup>

Within some limits, a person can save money and still receive their full benefits!

In addition to being able to save money, the beneficiary owns the account thus giving them control over their own money.



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<sup>2</sup> We will discuss qualified expenses later in the handbook.

# Eligibility

To be eligible a person must be disabled before the age of 26. You can establish an account if you are older than that, as long as your disability started before age 26.

You are automatically eligible if you receive Supplemental Security Income (SSI) or Social Security Disability Insurance (SSDI) and meet the age requirement.

You can also be made eligible if you have a disability with “marked and severe” functional limitations that will last at least one year. This will require a physician’s certification.



# Establishing an account

ABLE account administration will be set up by each state. In California, the State Treasurer will be responsible along with a board that is appointed to manage the ABLE account system.

Every person may have only one account at any given time. The account may be set up in any state. However, some states may limit their accounts to their residents only.

Several states have already started permitting people to set up ABLE accounts. In California, the CalABLE board has been meeting to develop the ABLE system which they expect to be operational in the summer of 2017.

# Contributions



Anyone, including the beneficiary, can make contributions to the ABLE account. These are made after taxes are paid. There is no tax benefit for the person making the contribution.

In California, a maximum of \$14,000<sup>3</sup> a year may be contributed to an ABLE account. This is also known as the Annual Limit.

The maximum amount you can have in an account at any time is decided by the state. Right now it is \$371,000<sup>4</sup> in California. This is known as the Aggregate Account Limit.

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<sup>3</sup> This amount may be adjusted in the future.

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# Over the limit

If contributions push the account over the annual limit of \$14,000, contributions will be returned to the contributor. The last money put into the account will be the first money returned. The beneficiary will be notified when this happens.





# Using your money

You can use ABLE funds to pay for Qualified Disability Expenses (QDE). QDEs are expenses that are related to one's disability, are for the benefit of the beneficiary and will permit that person to maintain or improve **health, independence** or **quality of life**.

The ABLE Act is clear that the requirements on what a QDE is should be applied loosely meaning that most types of expenses should be allowed as QDEs.

You should keep good records of how you use your ABLE funds. It will be possible for the IRS to audit your use of your ABLE money.

- ABLE account money may be used to pay for basic living expenses
- Expenses do not have to be medically necessary
- Expenses are still a qualified even if there is some benefit to others
- Money used from an ABLE account for QDEs is not taxable

# QDEs include.....

- Education
- Housing
- Transportation
- Employment supports and training
- Assistive technology
- Personal supports
- Health
- Financial management
- Legal assistance
- Oversight/monitoring
- Basic living expenses
- Funeral/burial

This is the current list of qualified disability expenses permitted. This may be modified in the future.<sup>5</sup>

Using money from the ABLE account for expenses that do not qualify will be very costly . They will be taxed and have an additional penalty of 10% of the amount taken out. They could also impact your eligibility for MediCal in the same way that regular income can affect your MediCal eligibility.

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<sup>5</sup> For a more extensive list, go to the end of this booklet, page 24.

# Investing your money

It is important to know that the money in an ABLÉ account will be invested by the ABLÉ Board. In addition to contributions you make, this is how your account can grow. The other side of investment is that there is a risk that your account will lose money. Usually investments do some of both. One month you will see your account increase while another month it might decrease. Over time usually money that is invested increases more than it decreases.

When you have an account, you will be offered choices in how you want your money invested. Some options will have the possibility of a lot of growth; these options also have a higher risk of losing money. Other options will have a low risk of losing money but these also will have lower growth.

How you invest your ABLÉ account will be an important decision. We cannot cover all of the information you need to know about investing here. Be sure to ask the person who is helping you establish your account what each investment option is so you can decide what you are comfortable with.

# Account management

In California, the State Treasurer and ABLE board will set up various investment options for ABLE accounts. If you have your account here, you will be able to select which one suits you for the growth and risk you want. You can change your investment option up to twice a year.

If you choose to set up your account in a different state, you will have to learn the rules for that state's ABLE accounts.

The ABLE account managers will report information about your account to Social Security every month.



# ABLE and Social Security

Probably the best feature of ABLE accounts is that account funds will not impact your public benefits such as Social Security until you reach a certain level in your account.

In the case of social security, you can have up to \$100,000 in your account and still get your full social security check each month. Once you pass that amount of money in your ABLE account, your Social Security checks will stop, but you will still remain eligible. If your account goes below \$100,000, then you will start getting your Social Security checks again.

## A note on housing

SSI benefits can be affected if you use ABLE funds for any housing expenses and don't spend the money right away. To avoid any impact to your SSI benefits, be sure to spend housing money within the same calendar month that you withdraw the money. As long as you do not hold housing funds over from one calendar month to the next, the funds will not affect your SSI benefits.



# ABLE and Medicaid

ABLE accounts do not affect your eligibility for Medicaid – called MediCal in California. However, if you take distributions that are not qualified expenses, this could affect your eligibility the same way that regular income would.

When a beneficiary dies, the ABLE Act permits states to use the funds leftover from the account to pay back the state's Medicaid program. If a beneficiary uses Medicaid (MediCal in California) after establishing an ABLE account, once the person dies, the remaining ABLE account funds would go to reimburse MediCal after all bills are paid.



# Whose account is it?

While it is clear in the law that the ABLE account belongs to the beneficiary, there are provisions made for those adults that cannot manage an account on their own. These provisions allow a parent or legal guardian to establish and manage an ABLE account for the benefit of the person.

It is also possible for someone to manage an account through the Power of Attorney process.



# Maintaining eligibility

States are given flexibility in how they will make sure a person is eligible to have an ABLE account. For some disabilities that are clearly life-long such as Down syndrome or cerebral palsy, they may determine eligibility once for the person's lifetime, or they might go through the process every few years.

For others where the disability may come and go, such as in the case of disability due to cancer, they will probably require an annual disability determination.





# What if the disability subsides?

For disabilities that may come and go such as those due to a chronic illness that flares up then subsides, ABLE accounts are frozen during periods when the person does not have an eligible disability. This means no money can be contributed and no money can be withdrawn.

If the person becomes disabled again and eligibility is reestablished, the account is unfrozen and can be used.



# A few other details

If you move to a different state, you can keep your account. While the details are still being worked out, at this time it looks like you can choose to keep your account in the original state or roll it into the new state's ABLE system.

You cannot roll 529 (college) funds into a 529(A) (ABLE account).

You can rollover funds from a 529(A) into another 529(A) for an eligible sibling. This rollover does not count towards the \$14,000 annual contribution limit.

# Examples

Joe receives SSI and MediCal. Joe needs significant levels of support.

- He currently has no money saved
- Joe received an inheritance from his grandfather of \$18,000
- He can roll \$14,000 into an ABLE account (the annual limit) and “spend down” the remaining \$4000 to maintain eligibility for SSI and MediCal
- Without ABLE Joe can only save \$2000 and would be forced to spend the other \$16,000 immediately to maintain his benefits
- With his ABLE account he can use the money to get extra support not covered by his state’s disability services. He could use it to purchase equipment such as a computer or hire people to help him do activities he enjoys. He could also choose to save it for future needs.

Sarah receives SSI, MediCal and Section 8

- She has a part time job and has already saved the maximum amount of money, \$2000, and still maintain eligibility for these benefits
- She opens an ABLE account and puts all of her earnings into it
- She can use her ABLE account to save up for an accessible van or other big ticket item she really needs

# What now?

The Federal law was passed in Dec. 2014. Since then states have been working on passing their own laws in order to enact ABLE accounts within their state.

California's law is in place now and all the details are being worked out by the CalABLE board to get it up and running. We expect it to be available in the summer of 2017.

Several other states are operational and are accepting out of state account holders. You can find the current list and compare programs at the ABLE National Resource Center.

Whether you want to establish an ABLE account out-of-state or wait until California has its system in place, it is a good idea to explore the ways in which saving money through an ABLE account could be useful in planning your financial future. Think about how to build this account and set goals for how it might be used to help you establish or maintain your independence throughout your adult life.

# Compare programs

If you are considering opening an account in another state, make sure to compare the programs. Questions you should get answers to include:

- How does one enroll?
- Is there a minimum deposit to open it?
- Are there any fees for maintaining the account?
- Does the cost differ for in-state and out-of-state residents?
- What are the limits on contributions?
- Are there any limits on withdrawals? Can you withdraw using a debit card?
- Regarding investments, can you choose the level of risk you are willing to live with?
- When can you change your investment options?

Go the National ABLE Resource Center to compare programs and get your questions answered.<sup>6</sup>

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<sup>6</sup> [www.ablenrc.org](http://www.ablenrc.org)

# Glossary of terms

**529** – A college savings plan

**529(A)** – ABLE account

**Beneficiary** – a person who is eligible for and has opened an ABLE account

**Contribution** – money that is put into an ABLE account

Annual Contribution – the total amount that can be put into an ABLE account each year

Aggregate Account Limit – the total amount that can be in your account at any time

**Distributions/withdrawals** – money that is paid out of an ABLE account

**Earnings/growth** – money that is added to an ABLE account through investments

**Functional limitations** – Activities that a person cannot do because of their disability

**Power of Attorney** - the authority to act for another person in legal or financial matters

**Public benefits** – money set aside by government from taxpayer funds that are used to assist people who need extra support to live. Examples include Social Security, Section 8 housing, food stamps, in-home support services, regional center services etc.

**Qualified Disability Expense (QDE)** – Any expenditure made from an ABLE account that is permitted under the ABLE act

**Rollover** – Moving money from one account to another account

**Special needs trust** – a legal process used to set aside money in a special account for a person with a disability

**Spend down** – the process of spending money in order to reduce the amount of cash you have

**SSI/SSDI** – Social security programs established specifically for people with disabilities

## Examples of Qualified Disability Expenses

Qualified Disability Expenses do not have to be merely medical expenses. They can include basic living expenditures. While the following list is not exhaustive, some examples of Qualified Disability Expenses are:

### Education

- Tuition for preschool through post-secondary education
- Books
- Supplies and educational materials

### Housing

- Expenses for a primary residence
- Rent
- Purchase of a primary residence
- Mortgage payments
- Real property taxes
- Utility charges

*As long as you spend the housing funds within the same calendar month that you withdraw the money, the housing payments will not affect your SSI benefits.*

### Transportation

- Use of mass transit
- Purchase or modification of vehicles
- Moving expenses



### **Employment Support**

- Expenses related to obtaining and maintaining employment
- Job-related training

### **Health, Prevention and Wellness**

- 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
- Personal assistance

### **Assistive Technology and Personal Support**

- Expenses for assistive technology and personal support (e.g., a smart phone for a child with autism)

### **Miscellaneous Expenses**

- Financial management and administrative services
- Legal fees
- Oversight and monitoring
- Home improvement, modifications, maintenance and repairs
- Funeral and burial expenses

# Resources

ABLE National Resource Center:

[www.ablenrc.org](http://www.ablenrc.org)

[www.realeconomicimpact.org](http://www.realeconomicimpact.org)

Federal law: [www.federalregister.gov](http://www.federalregister.gov)

CA law: [www.treasurer.ca.gov/able](http://www.treasurer.ca.gov/able) - scroll to the bottom for links to the California bills

Information on Special Needs Trusts:

[www.specialneedsanswers.com/what-is-a-special-needs-trust-13601](http://www.specialneedsanswers.com/what-is-a-special-needs-trust-13601)