

# ABLE Account Planning Insights for Special Needs Individuals and their Families

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# What is an ABLE Account?

- Achieving a Better Life Experience (**ABLE**) Act was authorized in the tax code by President Obama on December 19<sup>th</sup>, 2014.
- This Act added Section 529A to allow for the creation of a new type of qualified tax-advantaged savings account, similar to, but distinct from, Section 529 college savings accounts.
- These accounts allow individual choice and control over spending on qualified disability expenses and investment options, while protecting eligibility for Medicaid, Supplemental Security Income (SSI), and other important federal benefits for people with disabilities.



# Why the Need for ABLE Accounts?

- Individuals with disabilities face significant challenges in finding and sustaining employment, as well as living independently, since their access to safety net programs, such as SSI and Medicaid, can be lost once they establish resources.
- ABLE Accounts provide a mechanism to increase Medicaid \$2,000 asset limitation so individuals with disabilities and their families can save money for future and improve quality of life.
- Eligible individuals and families may establish ABLE savings accounts that will not affect eligibility for SSI up to \$100,000.



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# Who is Eligible to Open an ABLE Account?

- Eligible individuals must meet two requirements to be eligible for an ABLE Account
  - **Age:** Must be disabled before age 26.
  - **Severity of Disability:** Must have been determined to meet the disability requirements for Supplemental Security Income (SSI) or Social Security disability benefits OR must submit a “disability certification” from their physician.
- Essentially, eligible individuals need not be under the age of 26 to qualify to open an ABLE Account, but must have the documentation of disability that indicates age of onset was before the age of 26.



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# Designated Beneficiary

- The eligible individual with a disability is the ABLE account owner and is known as the “designated beneficiary.”
- Designated beneficiaries MUST have only one account. They control their accounts and decide how money should be spent.



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# Designated Beneficiary Assistance

- If designated beneficiary is not able, or chooses not, to “exercise signature authority” over the account, others may have the authority:
  1. Agent under power of attorney
  2. If none, then parent or legal guardian
- Contributions may be made to an ABLE account created for the purpose of meeting the qualified disability expenses of the account’s designated beneficiary.
- Qualified disability expenses are any expenses related to the beneficiary’s disability or blindness and which are made for the benefit of the designated beneficiary.



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# Types of Qualified Disability Expenses

- Housing
- Education
- 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
- Basic living expenses and other expenses which may be approved by IRS in future regulations





# Where Does ABLE Account Funding Come From?

- Contributions to ABLE accounts are private savings from the individuals, family, or gifts from other sources.
  - Considered a completed gift of present interest.
- Contributions may **only** be made in cash, **not** securities, real estate, or other non-cash property.
  - Funding does **not** come from government programs.



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# Are There Limits on ABLE Accounts?

- Annual limits on contributions: total contributions from all ABLE account contributors cannot exceed the current annual gift tax exclusion limit (2017: \$14,000).
- Excess contributions above this current annual gift exclusion amount are subject to adjustment for inflation in future years and to a 6% excise tax.
- Total overall contributions may not exceed the limit imposed on accounts under the state's Qualified Tuition program (Section 529) maintaining the qualified ABLE program.
  - Many states have set this limit at more than \$300,000 per plan (maximum contribution limit for Florida plan is \$418,000).
- If ABLE account reaches aggregate limit and is partially spent down, it can be replenished to the limit again.



# How do Assets in ABLE Accounts Affect Eligibility for SSI?

- The first \$100,000 in ABLE accounts will be exempted from the SSI \$2,000 individual resource limit.
- Above \$100,000 in ABLE account, SSI cash benefit will be suspended and designated beneficiary will no longer receive monthly income.
  - Eligibility for SSI benefits will not be terminated.
- The suspension will be indefinite and the SSI benefits will be reactivated after the beneficiary spends down the account to under \$100,000.



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# How do Assets in ABLE Accounts Affect Eligibility for Medicaid?

- Medicaid eligibility will remain intact, even if funds exceed \$100,000 in the ABLE account.
- **Medicaid payback** provision at death: Any remaining funds in an ABLE Account at death of designated beneficiary must be used to repay the state for any Medicaid assistance received by the beneficiary after the account was created.
  - State is creditor of ABLE account and may file claim to extent of prior Medicaid assistance expended on behalf of beneficiary.
  - If any funds remain after state is repaid, the remainder goes to the beneficiary's estate, subject to income tax on the earnings, but not subject to the 10% penalty.



# When to Count ABLE Account Balances - Examples

- **Example** - Pat is an ABLE account designated beneficiary with a balance as of \$101,000 on the first of the month. Pat's only other countable resource is a checking account with a balance of \$1,800. *What happens to his SSI and cash benefits?*
- **Example** – Patricia is ABLE account designated beneficiary with a balance as of \$101,000 on the first of the month. Patricia's only other countable resource is a checking account with a balance of \$4,000. *What happens to her SSI and cash benefits?*



# ABLE Account Distributions

- ABLE account distributions to the designated beneficiary are excluded from income to the extent *they do not exceed* the beneficiary's qualified disability expenses.
- If the amount distributed exceeds the beneficiary's qualified disability expenses, a portion of the distribution is included in the beneficiary's income.
- Calculating taxable portion of the distribution follows annuities tax treatment under IRC Section 72 rules (10% penalty tax on early withdrawals before age 59 ½).



# When to Count ABLE Account Distributions - Examples

- **Example** - Andrea takes a distribution of \$800 from her ABLE account in May to pay her rent for June. She deposits the \$800 into her checking account in May, withdraws \$800 in cash on June 2, and pays her landlord. *Is this qualified disability expense a countable resource in June?*
- **Example** – Saul takes a distribution of \$26,000 from his ABLE account to modify a specially equipped van in May. He pays a \$10,000 deposit. While waiting for delivery of the van, Saul takes a trip to a local casino in July where he loses \$2,000 of his ABLE distribution gambling. *How much of \$26,000 ABLE account assets is excluded as resource in July?*



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# Are ABLE Programs Nationwide?

- Qualified ABLE Program is established by federal law and set up and administered by the individual states.
- Some states run programs available nationwide. Eligible individuals have the choice to open an account in their own state (if available) or with one of the nationwide plans .
- ABLE program is managed by a financial institution, similar to the Section 529 higher education plan savings.
  - ABLE program limits investment changes by the account holder to two times per year.



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# ABLE Account Income Tax Implications

- Qualified ABLE account assets are not subject to the current income tax and thus accumulate on a tax-free basis.
  - Helps individuals save tax-free for future expenses, like a Roth IRA or a 529 college savings plan.
- Even though contributions to an ABLE account are not tax deductible for federal income tax purposes, they may be deductible for state income tax purposes.



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# ABLE Account Rollovers

- **Rollover benefit:** Amounts in one ABLE account may be rolled over tax-free to another ABLE account for same beneficiary
  - For example, if a beneficiary moves from one state to another.
- No more than one such rollover may be made within a continuous 12 month period.
- The funds must also be deposited into the new ABLE account within 60 days of being distributed from the prior account.
- Qualified Tuition Plan 529 account cannot be rolled over into an ABLE account under current law. Advocates are working to amend Federal ABLE Act to allow for these types of rollovers.



# Rollover Rules for Family Members

- A tax-free rollover may also be made to another ABLE account with a different designated beneficiary, if the new designated beneficiary is the brother, sister, stepbrother, or stepsister of the original designated beneficiary.
- New designated beneficiary must also be an “eligible individual.”
  - Blind or disabled before age 26



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# How is an ABLE Account different than a Special Needs Trust?

- An ABLE account may provide more choice and control for the beneficiary and family as funds can be used for a broad list of expenses and can be accessed without prior approval.
- Cost of establishing an ABLE account is considerably less than setting up a Special Needs Trust (SNT) because an attorney is not needed to open an ABLE account, no trustee is necessary, and the administrative fees are relatively low.
- **Third-Party SNT Advantage:** There is no Medicaid payback requirement to repay the state for any aid provided upon the death of the disabled beneficiary.



# Taxation of ABLE Accounts Versus SNTs

- ABLE account has a total annual contribution limit, which is currently only \$14,000, from all sources combined.
- SNT has no maximum annual contribution limit or dollar limits on amounts accumulated and can be established for a beneficiary at any age during life or at grantor's death.
- SNTs are subject to income tax at compressed trust tax rates with a top 39.6% rate beginning at \$12,500 of income in 2017.
- Conversely, ABLE Accounts allow families to accumulate funds for disabled beneficiaries while enjoying tax-free growth.



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# Comparing ABLE Act Accounts and Special Needs Trusts (SNTs)

	ABLE Account	1 <sup>st</sup> Party SNT	3 <sup>rd</sup> Party SNT
Who May Create / Fund	Any individual (but beneficiary owns account)	Individual with disability, but trust can be established by parent, grandparent, guardian, or court	Anyone, other than person with disability
Medicaid Payback	Yes	Yes	No
Beneficiary Eligibility	Individual entitled to Social Security benefits (or otherwise disabled) before age 26	Under age 65 at time of trust creation and disabled by Social Security definition	No limits or requirements
Tax Issues	No tax on earnings; distributions taxed unless used for qualified disability expenses	Trust earnings taxed to beneficiary under grantor trust rules; no separate tax on distributions	Trust earnings taxed at higher trust rates. Distributions to or for beneficiary may carry out income tax liability
Asset Management	State program provider; account owner may choose state	Someone other than beneficiary; court often supervises	Someone selected by grantor (family members, professional)
Countable Resource	Yes for SSI if balance exceeds \$100,000	No	No
Maximum Contribution	\$14,000 from all contributors	No limit	No limit
Account Number Limit	1 per beneficiary	No limit	No limit



# Special Needs Trust (SNT) Caveats

- Rules governing SNTs are complicated and differ by state and by the source of the funds
- Educate third-party fund trustees to be prudent when making distributions as they need to avoid paying money directly to the disabled beneficiary in order to preserve eligibility for government programs.
- Ascertain that parents, relatives, and trusted allied professionals coordinate beneficiary designations on retirement accounts and life insurance policies, so that gifts or inheritances should also pass to the SNT.



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# Evaluating Viability of Savings Options

- Parents may provide for their special needs child at the death of the second parent by funding a **3<sup>rd</sup> party SNT** with money saved in their own name for their child.
- Parents may fund **Roth IRAs** to provide contributions to help plan for their child's long-term supplemental needs. Roth IRAs provide tax benefits similar to those of the ABLÉ accounts, but is not an irrevocable gift nor are there restrictions on how the money may be used.
  - An issue with the Roth IRA is that a parent needs to be at least age 59½ to take money out of account without tax implications.



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# Planning Insights for Using ABLE Accounts

- The ABLE accounts are likely to be most appealing for those with disabilities who work and seek to save more than \$2,000, as well as for families who need a place to deposit gifts or inheritances from family members.
- **ABLE Account can be used in conjunction with a Special Needs Trust (SNT) to enhance a family's ability to provide for a disabled child's care.**
- ABLE account can allow for more choice for the beneficiary and family. The owners of an ABLE account will have the flexibility to control their funds, and if circumstances change, still have the SNT available to them.



# Who Will Most Likely Benefit from ABLE Act Accounts?

- The beneficiary who saves money.
- The beneficiary with a small inheritance or personal injury lawsuit.
- The parent (or grandparent) with a small estate and a fear of lawyers.
- The family very interested in giving their child more autonomy and control.
- The special needs trustee who wants to give a beneficiary more control.



# Are ABLE Accounts Currently Available?

- **Yes.** 28 ABLE programs have officially launched as of August 23, 2017, with 9 in-state ABLE programs (Florida, New York).
- More states will launch their ABLE programs over the next year, but you do not have to wait for your state to launch an ABLE program to open an ABLE account.
- Most states provide online applications for ABLE accounts through their ABLE program websites. Families may also work with a financial advisor to open an account under certain ABLE programs.



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# ABLE United Program in Florida

- Florida opened the Qualified ABLE program on July 1<sup>st</sup>, 2016.
- The **ABLE United Program** is the qualified ABLE program offered by the State of Florida and *currently only open to state residents*. The Program is administered by Florida ABLE, Inc., a direct support organization of Florida Prepaid College Board.
- Three eligibility criteria for opening an ABLE United account:
  1. Individual must be Florida resident at the time of application
  2. Individual must be blind or have disability that meets severity requirements for SSI or Social Security Disability Insurance (SSDI)
  3. Disability onset before individual's 26<sup>th</sup> birthday. Current age is not considered, except that ABLE account must be opened by an adult 18 years of age or older



# Opening an ABLE United Account

- You may open an ABLE United account quickly (less than 15 minutes) and easily online at [www.ableunited.com](http://www.ableunited.com)
  - Call 888-524-ABLE (2253) for comprehensive list of common questions and answers or if you cannot find what you need.
  - Follow @ABLEUnited on Facebook
- Florida program charges \$2.50 / month (\$30.00 / year) fee with eDelivery. **This account fee is waived until July 1<sup>st</sup>, 2018.**
- Enrollment may be completed by the individual with a disability, who owns the ABLE account, or someone with legal authority over the individual, such as a parent, legal guardian, or a person acting under a power of attorney.
  - No documentation to upload







# Start Saving Like Never Before

The Achieving a Better Life Experience (ABLE) Act allows individuals with disabilities and their family and friends to save for future expenses, like popular Roth IRA and 529 college savings plans, while maintaining government benefits.

[Watch Video ▶](#)

# How are ABLE United Funds Invested?

- ABLE United Program offers seven different savings and investment options with varying degrees of risk. An individual with a disability, or an authorized person on their behalf, may choose and manage the most appropriate option(s).
- The underlying savings and investment products for each investment option are managed by professional investment management firms selected by the ABLE United Program based on investment philosophy and strategy; performance history; and organizational experience and financial stability.
  - Current nonrefundable Investment Administration Fee for all Investment Options, except the Money Market Fund (0.035%), is up to 0.29% of the Account Balance.



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# ABLE United Fund Options

## **MONEY MARKET FUND**

Manager: Florida PRIME



The Money Market Fund invests in short-term, high-quality fixed income securities rated in the highest short-term rating category to provide stable returns with less risk. The fund seeks to provide, in priority order, safety, liquidity and returns comparable to short-term instruments with minimized risks.

## **U.S. BOND FUND**

Manager: Vanguard



The U.S. Bond Fund is a passively managed bond fund which tracks the performance of a benchmark index. Investments include U.S. Treasury and U.S. Government Agency obligations, as well as, corporate debt and securitized instruments. The fund seeks to provide investors with exposure to the broad fixed income market in the United States.

## **U.S. STOCK FUND**

Manager: Vanguard



The U.S. Stock Fund is a passively managed stock fund which tracks the performance of a benchmark index that measures the investment return of the overall U.S. equities market. The fund seeks to provide investors with exposure to the overall U.S. equities market.

## **INTERNATIONAL STOCK FUND**


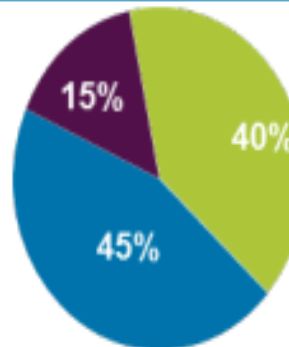
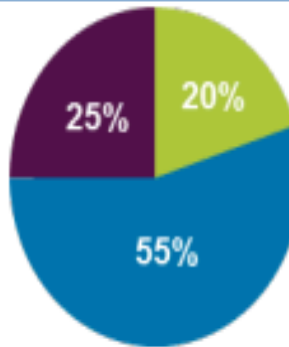
Manager: BlackRock



The International Stock Fund is a passively managed stock fund which tracks the performance of a benchmark index of international developed markets. The fund seeks to provide investors exposure to international equities in developed markets.

# ABLE United Predesigned Portfolios

- Program has three fully diversified and professionally managed investment portfolios, constructed from individual fund options and rebalanced periodically to maintain allocations.

Predesigned Portfolio Allocations			
Portfolio Option	Conservative	Moderate	Growth
Components			
● Money Market Fund	10%	-	-
● U.S. Bond Fund	50%	40%	20%
● U.S. Stock Fund	30%	45%	55%
● Int'l Stock Fund	10%	15%	25%

# ABLE United Housing Expenses and Retained Withdrawals

- ABLE United housing expenses are not a countable resource for SSI if they are
  - Paid directly from the ABLE United account to a third party
  - Withdrawn and paid in the same month
- Withdrawals retained for Qualified Disability Expenses, **other than housing**, are not a countable resource for SSI.
  - Must remain unspent and identifiable
  - Excluded in the months leading up to the actual expenditure



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# Additional ABLE United Factoids

- ABLE United Program does not approve withdrawals from an ABLE United account. Money may be withdrawn from an ABLE United account **at any time** and **for any reason**.
  - Request for FREE electronic transfer (ACH) to a bank account OR
  - Request a paper check to pay expenses, such as rent, directly from ABLE account to 3<sup>rd</sup> party (two free checks per month)
- No submission of documentation is required. Retain documentation to justify the nature of expenses to the Social Security Administration (SSA) and the IRS.
  - ABLE United Program will report the date and amount of each distribution from an ABLE account to the SSA monthly.
  - ABLE United Program will report the total amount of distributions to IRS as part of annual tax reporting.



Questions? Please Contact Me. Thank You.



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