

## **I. Introduction**

This memorandum provides several updates regarding the design and implementation of Delaware's Achieving a Better Life Act ("ABLE") and follows the last such memorandum issued in October of 2015 (the "October Memo"). Specifically, this memo summarizes some meaningful legislative changes to federal ABLE legislation, outlines four paths that Delaware can consider for ABLE's implementation and provides feedback from Delaware's LIFE conference relating to the disability community's awareness of and potential interest in ABLE. Together with information set out in the prior memoranda, this analysis represents a comprehensive overview for decision makers to ascertain how to best move forward in making ABLE's benefits available to Delaware's disability community.

At this time, the Office of the State Treasurer's ("OST") is providing this memorandum to key sponsoring members of the State's ABLE legislation, members of each of the State's Deferred Compensation Council ("DCC") and members of the Delaware College Investment Plan Board ("DCIP"). A threshold question to be addressed by the legislators and council/board members is whether to proceed with the formation of an ABLE board or whether to offer an amendment to Delaware's ABLE statute that would commit that authority to a subset of members of the DCC and DCIP. Given the uncertainty surrounding the best manner to move forward with ABLE, OST believes that an advisory board structure is both necessary and desirable at this time, but questions the need for the formation of a dedicated ABLE board, particularly in the likely event that Delaware ultimately chooses an ABLE implementation path with limited State responsibility.

## **II. Legislative Update**

The federal landscape is much altered since the October Memo. Material changes to ABLE have removed much complexity from the administration of the program while adding some uncertainty to the implementation path. These developments also have accelerated the pace of many states implementation of ABLE, requiring Delaware to consider its current options carefully and make near-term design decisions.

In the first set of meaningful legislative changes, the IRS issued advance guidance on November 20, 2015 substantially adopting all of the recommendations made by the College Savings Plan Network ("CSPN") to simplify and streamline ABLE administration and conform the program administratively to the 529 College Savings Plan regulations. As a result, states will not be required to collect taxpayer identification numbers for every contributor,<sup>1</sup> will not have to track distributions and qualified expenses,<sup>2</sup> and will not be responsible for certifying and recertifying that individual applicants are disabled.<sup>3</sup> These regulatory changes will reduce ABLE's administrative costs significantly and make ABLE programs much more attractive to administer for both states and vendors/recordkeepers.

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<sup>1</sup> Collection of TINs will still be required in cases where a state does not utilize technology to automatically reject contributions in excess of the statutory limit.

<sup>2</sup> The burden of tracking expenditures will now fall on the plan participant. States will still have to track overall distribution amounts and classify them as earnings or return of contributions.

<sup>3</sup> Participants will have to "self-certify" eligibility. Details on annual recertification are pending, but the guidance indicates that states will not be required to annually recertify participants.

A second major amendment to ABLE further enhances the attractiveness of the program to third party providers while potentially reducing the number of states that will sponsor ABLE programs. On December 18, 2015, Congress passed an annual “tax extender” bill that included a provision eliminating the requirement that ABLE participants join the plan of their home state (or another state plan with which their home state has contracted).<sup>4</sup> This is a substantial change to ABLE that will likely have many states reconsidering their need and/or desire to launch ABLE programs.<sup>5</sup> Just as with 529 College Investment Plans, eligible participants now will be able to choose any state program for their ABLE account. The elimination of the “home state rule” will be to the advantage of states that can launch ABLE plans early and/or that already have a large 529 College Investment Plan infrastructure. These early-moving states likely will garner participants from other states and amass a critical amount of investment assets to retain investment managers at an attractive cost ratio for program participants. Eventually, the ABLE universe might be dominated by a handful of large plans, greatly impairing the ability of many other states to have viable, stand-alone ABLE programs.

### **III. Four Potential Paths for Implementation**

Prior to the elimination of the “home state rule”, each of the fifty states was likely to design its own ABLE program or at a minimum contract with another state for participation in that host state’s program. Due to what were perceived as fairly onerous administrative regulations and relatively small participant pools, states were already contemplating joint venturing or partnering with other states to obtain “critical mass” and attract a single vendor to administer the combined program. Following rescission of the “home state” requirement, states now have a viable fourth choice: take no action and allow the eligible participants from their state to choose from among the ABLE programs being offered by other states.

At this point, several states are planning to launch ABLE programs in a bid to become magnets for ABLE-eligible participants from around the country. In addition to those states launching their own programs, a fairly large number of states are banding together to form a consortium, offering ABLE under a “white-label” program that each participating state can market to its own residents. States not launching their own program or joining a consortium will be left to either contract out to a host state to “piggy-back” on the host’s program or do nothing and let in-state participants choose a plan from another state.<sup>6</sup>

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<sup>4</sup> The “home state” provision was in the original ABLE law to make it easier for states to enforce ABLE’s Medicaid “clawback” provision, which allows states to use a deceased participant’s ABLE funds to recoup costs incurred on Medicaid coverage during the participant’s lifetime. The revision also removed any reference to a “contracting state.”

<sup>5</sup> At this early juncture, it remains unclear how many states will forego adopting ABLE program. In discussions with our counterparts in other states. We have heard that Georgia, Arkansas, and North Dakota are now considering this option.

<sup>6</sup> In all cases, participants are free to choose the plan of any state. If Delaware chose no course of action, Delawareans would be able to “shop” for a plan offered by another state. This would require legislative action by the General Assembly as the current Delaware ABLE statute was developed at the time when the federal legislation required each state to have a plan under the “home state rule”.

For purposes of this analysis, the advantages and disadvantages of the various ABLE implementation paths are evaluated using four key criteria: (i) cost, (ii) time, (iii) customization and control and (iv) branding and marketing. Cost relates to both account fees charged to participants as well as design, implementation and administration expenses borne by the state. Time is used to compare the paths in terms of their relative speed of implementation and readiness. Customization and control refer to how much authority a state will have to tailor the design and administration of an ABLE program to the needs of its own disabled population. Finally, branding covers whether a state would be able to have its name associated with a plan and how much marketing a state would commit to an ABLE program.

### Comparing the Four Implementation Paths

<b>Implementation Path (Responsibility)</b>	<b>Cost</b>	<b>Time Required</b>	<b>Customization/ Control</b>	<b>Branding</b>
I. Develop In-house (full responsibility)	<ul style="list-style-type: none"> <li>• High cost for participants</li> <li>• High cost for State</li> </ul>	Longer implementation time	<ul style="list-style-type: none"> <li>• Full control</li> <li>• Full customization</li> </ul>	Delaware branding
II. Parter/Joint Venture (shared responsibility)	<ul style="list-style-type: none"> <li>• Low cost for participants</li> <li>• Low cost for State</li> </ul>	Shorter implementation time	<ul style="list-style-type: none"> <li>• Minimal control</li> <li>• Moderate customization</li> </ul>	Delaware branding
III. Contract Out (outsourced responsibility)	<ul style="list-style-type: none"> <li>• Low cost for participants</li> <li>• Low cost for State</li> </ul>	Shortest implementation time	<ul style="list-style-type: none"> <li>• No control</li> <li>• No customization</li> </ul>	Dependent on the host state allowing Delaware branding
IV. Take No Action (no responsibility)	<ul style="list-style-type: none"> <li>• Variable cost for participants</li> <li>• No cost for State</li> </ul>	N/A	N/A	N/A

Of the four variables considered in evaluating the range of implementation paths, cost likely represents the single most significant consideration to both participants and states. The principal factor in determining the level of account charges and amount of administration expenses is the size of the asset base of the plan. Time to implementation may be the second most important criterion. In all likelihood, the choice of an implementation path will not result in a difference of program readiness of more than 1-2 years, but this may be a large enough window to allow early moving states and/or consortiums to attract a large percentage of eligible participants from around the nation. States opting for a slower program launch will need to be mindful that a longer implementation path may result in many of their in-state eligible participants choosing another state's offering. Program customization and control constitute a third set of variables to consider in choosing an implementation path. States using taxpayer dollars to start up and administer plans will want accountability for such investments, and participants likely value the ability to interact closely with program designers and administrators in their home state who will likely be more responsive to their needs. Branding and marketing may appear to be the least significant

considerations, but the level of promotional effort undertaken by a state may have a significant long-term impact on the degree of outreach to disability communities and the ultimate level of program enrollment by eligible participants.

As set out in the table above, Delaware has four choices for consideration of an ABLE implementation path. Each choice involves some trade-offs among the four parameters considered most critical to program design and implementation. In all cases, however, three background factors must be considered: (i) Delaware's relatively small eligible participant base, (ii) the State's lack of a robust 529 College Investment Plan infrastructure and (iii) the lack of resources currently appropriated by the General Assembly to the State's ABLE initiative.<sup>7</sup> These factors as well as the general pros and cons of each implementation path are discussed below and ordered from fullest to least level of plan responsibility.<sup>8</sup>

#### Full Responsibility: Developing ABLE In-house

Due to Delaware's small size and its lack of a robust 529 College Investment Plan infrastructure, an in-house program represents both the most costly implementation path as well as the option requiring the longest time frame to launch. Since a Delaware ABLE program would have relatively few eligible in-state participants, and a correspondingly small amount of assets under management, administrative fees charged by vendors would have to be high.<sup>9</sup> In addition, as the State has no meaningful 529 College Investment Plan infrastructure, launch costs to Delaware would be significant in contrast to the very modest amount of funds presently appropriated to the program. While overall expenses could be mitigated if Delaware became a "host state" and attracted participants from outside its borders, Delaware's small size and minimal 529 infrastructure make this outcome unlikely.

Time is also not on Delaware's side in considering development of an in-house program. The State's lack of any existing 529 plan personnel and minimal infrastructure would lead to a reasonably long implementation timeline for an ABLE program. While it is unclear how much longer launching a program would take relative to other options, the delay would certainly be many months if not a year or more. To the extent that there is immediate demand for ABLE from Delaware's disability community, the State's already small base of eligible participants might be further eroded as such individuals could choose other state offerings launched prior to Delaware's plan. A shrinking base would only further compound the cost concerns articulated above, and a longer timetable would make attracting outside participants that much less likely.

An in-house program does offer the most benefits to Delaware in terms of the capacity to control and customize program features as well as the greatest ability to brand and market the State's plan. Under other approaches, Delaware would have to cede or share control over ABLE

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<sup>7</sup> Currently no funds have been allocated for out-of-pocket costs to launch ABLE. OST is requesting \$75,000 for contractual services in the FY17 budget and will need one full-time position to provide administrative support for ABLE and the Delaware College Investment Plan in the coming fiscal year.

<sup>8</sup> Note that the elimination of the "home state" rule allows Delaware's ABLE-eligible population to choose any plan in the nation, regardless as to whether Delaware has its own plan, a joint offering or a program contracted with another state. Indeed, as with the College Investment Plan network, many in-state residents will choose plans offered by other states or groups of states.

<sup>9</sup> Refer to the October Memo for a detailed discussion of potential costs of a Delaware program.

program features and assets, presenting some risk that current or future needs of Delaware’s disabled community would not be adequately met. Moreover, branding and marketing of an in-house program can be most uniquely adopted to Delaware’s ABLE-eligible population so long as the program is adequately resourced by the State.

Overall, development of an in-house program represents a major challenge for Delaware as the state lacks sufficient scale and existing infrastructure to support the administration. To avoid losing its own in-state eligible participants, any launch of a viable program would need to proceed in an expeditious manner with considerably more resources than have been appropriated to date. Even if the State Legislature made the necessary resources available, the time to develop the infrastructure to launch a program would put Delaware’s offering at a significant disadvantage to other state plans. Moreover, there is no present indication that Delaware’s disability community has needs and/or concerns that would be meaningfully different than the needs and concerns of disabled persons in other states. Absent a substantial difference in such populations, there is little basis to justify the incursion of time and costs to promote greater control and customization of a Delaware program. Finally, any loss of branding and marketing opportunities are probably of tertiary concern relative to the expense and delay involved in launching an in-house plan.

#### *Shared Responsibility: Joining an ABLE Consortium*

Delaware is one of several states participating in discussions regarding an ABLE plan “consortium”.<sup>10</sup> Modeled on the fourteen-state EZ-Pass collaboration, each participating state would receive one vote on matters affecting the design and operation of the joint plan. The multi-state model would overcome the chief impediment to local ABLE programs – scale. By pooling assets from participants in many states, the consortium would be in the best position to attract a vendor who could offer attractive administrative fees and participate in the program’s launch costs. While this approach would offer each state only a modest amount of control and customization, each state would be able to fully brand and market the program at the state level, possibly with some support from the vendor. The consortium’s timeframe for ABLE plan implementation will likely lag the launch of the earliest state programs by a few months, but could become drawn out if member states fail to reach agreement on key program features.

The chief advantage of the consortium option is the low cost to participants and participating states. Due to its relatively large size, the consortium should be able to draw the most competitive bids from prospective vendors. In addition, any state share of program costs would be spread proportionately among the participating members.<sup>11</sup> Branding and marketing are also advantages of the consortium plan. As the program will be jointly developed as a “white-label” offering, member states will have full branding rights in-state and may receive some share of marketing rebates/credits from the administrative vendor.

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<sup>10</sup> While other consortiums could emerge in the future, currently there is only one being led by Illinois and Pennsylvania and likely joined by the following six states: Iowa, Kansas, Minnesota, Nevada, Oregon and Wisconsin. Other states, including Delaware, California, Texas, New York, North Carolina and neighboring Maryland are part of an expanding “discussion group” that is participating in calls and meetings with the consortium states. The consortium is also actively recruiting other states such as New Jersey and Alabama.

<sup>11</sup> At this point it is unclear what the specific costs of joining the consortium will be. Both the vendor costs and the formula for allocating costs among states are unknown.

Timing is also likely a favorable attribute of the consortium model. The current member states are targeting an October 2016 launch. This would be later than the earliest forecasted state program launches,<sup>12</sup> but would not place the consortium's plan at a material disadvantage in accumulating early participants and assets if implemented on schedule. As with all collaborations, however, there exists the chance for delay in the consortium's program implementation if member states cannot fully agree on plan design. The consortium is attempting to mitigate this risk by requiring designing member states to sign on to the joint plan by March 1, 2016.<sup>13</sup>

The principal drawback of the consortium model relative to an in-house program revolves around the lack of control and customization of the plan's assets, design and administration. Participation in the consortium would include serving on the committee governing the consortium (presumably via monthly or quarterly conference calls) and coordinating with vendors on state-specific issues (i.e., customized marketing materials and potentially yearly investment performance presentations). However, given the number of states participating in the consortium, Delaware's sole vote would provide only a modicum of say in the development and operation of the joint offering. Delaware could, of course, align itself with other members who share common views on ABLE program matters, but ultimately, Delaware's small size might relegate its role to something less than its proportional vote. As noted above, however, there is currently little reason to believe that Delaware's ABLE-eligible population differs materially from the disability community members in other states. This commonality suggests that a participant-centric process should produce few meaningful areas for disagreement in terms of plan design and administration that would negatively impact Delaware's ABLE participants.

#### *Outsourced Responsibility: Contracting for ABLE*

The outsourced approach was one of two options originally available to states wishing to convey the benefits of ABLE to their residents under the "home state rule". With elimination of that provision, this implementation path holds significantly less attraction. This option promises the possibility of a low-cost, early launch to participants, but offers no capacity for contracting states to customize/control or market/brand a plan. As a consequence, this path is clearly inferior to the consortium model on the latter aspects while offering slim benefits on cost and timing to that option. Conversely, contracting with one state plan when participants are free to choose any plan provides no upside on cost or timing and is equivalent in terms of control/customization and branding/marketing. In general, the concept of "participation without representation" seems to be the worst of all worlds unless a state wants to expend minimal time and expense on a program but still be able to appear to have taken some action.

Prior to elimination of the home state rule, only Virginia, Nebraska, and Ohio appeared to be moving ahead with their own programs that would be offered to out-of-state residents.<sup>14</sup> With

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<sup>12</sup> Currently Florida will be the first state to launch its ABLE program on July 1, 2016.

<sup>13</sup> If Delaware wants a vote in the consortium model, a commitment would need to be made by this date. Delaware could still join at a later date without voting rights but this would diminish the control/customization benefits inherent in this path. In the event that lack of control or customization became a concern, Delaware would have a right to withdraw from the consortium at any point.

<sup>14</sup> The rise of the consortium option is reducing the pool of potential host states. Five of the six most populous states are either in the consortium or considering joining. (Florida, which is opting for a stand-alone program, is the exception.)

the change in the legislation, more states opting to develop their own plans will presumably offer them to residents from outside their borders, but the total number of such “host states” cannot be readily predicted at this time.<sup>15</sup> Regardless of how many such states emerge, there is little reason to see a basis for contracts among host states and states foregoing their own ABLE plans. There is simply no material benefit that either host state or contracting state can supply the other via agreement that would not be available to their ABLE populations in the absence of such an arrangement.

Host states wishing to amass as many assets as possible may find it worthwhile to reach out to other states to co-brand a plan or offer some marketing incentives or unique program features to states that contract with them. This approach may veer towards the consortium model and/or share some features with that option. While such hybrid plans might emerge, the parameters of such offerings are difficult to assess without greater time and study. Ultimately, states will need to act in the best interests of their ABLE-eligible populations and there is presently little reason to see contracting as a form of implementation that will achieve that goal in a manner superior to the consortium model (above) or the opt-out model (below).

#### *No Responsibility: Foregoing ABLE*

The fourth approach for states to consider in “implementing” ABLE is to do nothing and allow eligible residents to shop across the nation for the plan that best suits their needs. As the elimination of the home state requirement no longer requires a state to adopt an ABLE program (or contract with another “host state”) in order for the residents of that state to enjoy the benefits of ABLE, many states are indicating a probability of doing just that.<sup>16</sup> Clearly, a state foregoing ABLE would have no ABLE costs as well as no control or capacity to customize or brand the plans chosen by its residents. In all likelihood, such states would do no direct marketing for other state plans and provide minimal promotion of ABLE. Participants would be able to choose among plans offering low cost and early implementation, but would need to do their own research and investigation of the various state offerings.

As a state with a small ABLE-eligible population, a minimal College Investment Plan footprint and no significant appropriation of funds to launch ABLE, Delaware should strongly consider the option of foregoing an ABLE plan and simply allow the marketplace to develop. In this case, the State could operate a website directed at its disability community with links to other state and/or consortium websites as well as third party resources that discuss ABLE and compare and contrast the variety of program offerings. With its relatively small allocation of resources, the State could sponsor an ABLE information phone line and/or e-mail account to handle inquiries and provide guidance to in-state residents and engage in a modest campaign to promote ABLE. In all likelihood, such a “concierge effort” could be wound down after a few years as the market matures and the vendor community fully evolves to support and promote ABLE.

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<sup>15</sup> One issue that is being raised is whether states which received legislative appropriations for ABLE can be allowed to use those funds partially to the benefit of residents of other states who join their ABLE programs. For this reason, some states may limit access to their programs to residents of their state.

<sup>16</sup> North Dakota has stated this position on a conference call and our colleagues in other states have told us that both Georgia and Arkansas are considering this option as well.

There are, however, downsides to opting out of ABLE. Lacking a clearly-defined Delaware offering and being forced to choose among a variety of plans might have some negative consequences on Delawareans' enrollment in ABLE. In addition, opting out of ABLE might be received as a "step backwards" from the perspective of legislators who sponsored ABLE and who have close ties to Delaware's disability community as the Delaware General Assembly would be required to repeal or otherwise amend the ABLE legislation to permit the State to forego implementation. Even a well-administered "concierge approach" might be considered an insufficient commitment to some of Delaware's most vulnerable citizens.

#### **IV. LIFE Conference Feedback**

On January 20, 2016, the Office of the State Treasurer participated in the LIFE conference sponsored by members of Delaware's disability community. Treasurer Simpler served on a four-member panel discussing Delaware's ABLE legislation and the implementation paths outlined above. In addition, several members of the office set up and staffed an ABLE information table with FAQs and a Survey (attached hereto as Appendices 1 and 2).

While conference attendance was substantial and the ABLE break-out session drew a large crowd, the limited anecdotal and formal feedback suggests that many Delawareans are unaware of ABLE and/or have reservations about their need for or use of an ABLE account. When Treasurer Simpler asked the 150 or so audience members who listened to the ABLE presentation how many were interested in opening an account, roughly 10-12 hands were raised. Similarly, only a handful of participants filled out the ABLE survey at the information table and few expressed any immediate interest in opening an account. In the time since the conference, none of the attendees have sent a request or comment to the email address disseminated at the event.

The information and insight gained at the conference is clearly anecdotal and quite limited. The solid turnout for the presentation suggests that interest in and/or curiosity concerning ABLE may be fairly broad, but the casual interactions and feedback from the audience and conference members do not reflect a broad or urgent level of interest in ABLE at this time. Coupled with the uncertainty as to which ABLE design path may be optimal for Delaware's disability community, this limited feedback may tip the scales towards a slower approach to program implementation that allows the State to gather feedback and insight from early adopters before settling on a definitive program design course.

## V. Conclusion

Based on the extensive research conducted to date, OST recommends that Delaware forego development of its own ABLÉ program in favor of one of the other three implementation paths described in this memorandum: (i) a Delaware-branded plan offered through a consortium of states, (ii) a plan offering that may or may not be branded for Delaware contracted through a single host state or (iii) no plan offering but a meaningful promotion of the general benefits of ABLÉ and its availability to Delawareans through the variety of programs of other states. OST will continue to research and evaluate the pros and cons of these three options and make a final recommendation in April of this calendar year.<sup>17</sup>

The path of implementation proposed by OST ultimately must be approved by the board established pursuant to Delaware's ABLÉ statute. The members of that board have not yet been appointed as its composition and authority would ideally be informed by the scope of Delaware's ABLÉ offering. When Delaware's ABLÉ law was passed, the federal legislation's "home state rule" virtually ensured that Delaware would need to have its own plan. If, as recommended above, however, Delaware determines not to launch its own program and instead pursues an implementation path requiring significantly less or even no plan responsibility, the need for and requirements of an ABLÉ board could be minimal and the Delaware legislation could be amended to reflect such change.

As a consequence, OST recommends that the formation of an ABLÉ board be delayed for the next two months to determine if the likely program offering for ABLÉ could be overseen by a newly-created board reflecting the merger of the DCC and the DCIP. As the administrative arm of both councils/boards, OST has recommended their combination into a single board with two sub-committees. The combined plan design and management expertise of the members of such a board would be substantial, and could be levered toward the final choice of an optimal ABLÉ implementation path for Delaware. As the special needs of the disabled community would not be reflected in the membership of the new board, OST further recommends that the new board would have the power to form an advisory group composed of members of Delaware's various ABLÉ-eligible disability organizations.

Over the next two months, OST will actively work with each of the DCC and the DCIP to facilitate their consideration of combining to form a new "Plans Management Board". In addition, OST will gather feedback from members of Delaware's disability community as to their recommendations regarding the ultimate nature and scope of Delaware's ABLÉ offering. Assuming all relevant stakeholders concur on the appropriate plan offering and the requisite level of board support for such program, OST will participate in drafting legislation to amend Delaware's ABLÉ statute to properly reflect the implementation path and oversight responsibility. OST will work with the relevant parties to introduce such legislation to the General Assembly on or prior to May 1, 2016.

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<sup>17</sup> Ongoing evaluation will include participation (but not voting membership) in the current consortium of states being lead by Illinois and Pennsylvania.

## Appendix 1

# ABLE FAQ's

### **Who can be the beneficiary of an ABLE account?**

A beneficiary of an ABLE account (“designated beneficiary”) must be an eligible individual, which means an individual whose severe disability has been certified by a doctor’s diagnosis, or who meets the definitions of disability or blindness under the Social Security Disability Insurance or Supplemental Security Income programs. In either case, onset of the disability or blindness must have occurred before age 26.

### **Who can be the owner of an ABLE account?**

Federal regulations require the designated beneficiary to be the owner of an ABLE account.

### **Who can open an ABLE account?**

An eligible individual, the parent or legal guardian of an eligible individual, or the holder of the power of attorney of an eligible individual can set up an ABLE account.

### **How many ABLE accounts can a beneficiary have?**

Eligible individuals can have only one ABLE account.

### **Who can contribute to an ABLE account?**

Anyone can contribute to an ABLE account, including the account owner, family members and friends.

### **How much can be contributed annually to an ABLE account?**

Currently, an ABLE account can only receive total contributions from all contributors of \$14,000 per year, which is the amount of the annual federal gift tax exclusion (which is revised annually by the rate of inflation).

### **Is there a maximum balance for an ABLE account?**

Yes, currently the maximum balance for a Delaware ABLE account is \$350,000, which is the maximum balance for an account under the Delaware College Investments Plan, also known as the Delaware 529 plan.

### **Who controls the funds in an ABLE account?**

The designated beneficiary is considered the account owner. However, the account owner, the parent or legal guardian, or the designated power of attorney can control the funds in the account, depending on who has been authorized.

### **What are the tax advantages of an ABLE account?**

Contributions are made on an after-tax basis (after taxes have been deducted from the contributor’s taxable income). Earnings on funds deposited in an ABLE account accumulate tax-deferred and are tax-free when withdrawn, so long as funds are used for “qualified disability expenses.”

**What are “qualified disability expenses?”**

Qualified disability expenses include any expenditures made for the benefit of an eligible individual that are related to the individual’s disability or blindness. Examples of qualified disability expenses include education, housing, transportation, job training and support, assistive technology and personal support services, health services, preventive care, wellness programs, financial management and administrative services, legal fees, expenses for oversight and monitoring, and funeral and burial costs.

**Could use of ABLE funds for qualified housing expenses impact SSI eligibility?**

SSI benefits can be affected if ABLE funds are used for any housing expenses. Designated beneficiaries will need to check if their SSI benefit will be impacted.

**Are there consequences for using ABLE account funds for nonqualified expenses?**

Yes. Account earnings used for nonqualified disability expenses are subject to federal income tax plus an additional 10 percent federal tax penalty. These consequences do not apply to withdrawals made after the beneficiary dies.

**Do my ABLE account savings affect my eligibility for federal disability benefits?**

The first \$100,000 in an ABLE account will not affect SSI benefits. If the ABLE account balance exceeds \$100,000, the designated beneficiary’s SSI benefits will be suspended, but not terminated, for the period where the account balance exceeds \$100,000.

**Is Medicaid eligibility impacted by opening an ABLE account?**

No. Medicaid benefits are not affected by ABLE accounts.

**Can I change investments in an ABLE account?**

Yes. The account owner may re-direct/re-invest the assets in an ABLE account to another investment option in an ABLE program twice per calendar year, or when there is a change of beneficiary (only to another family member who is disabled). New contributions can be directed to be invested in a new investment any time a contribution is made.

**Can I roll over or transfer my college savings account into an ABLE account?**

No. A withdrawal from a 529 college savings account to fund an ABLE account would not be deemed to be a qualified college savings withdrawal and would be subject to all the applicable taxes and penalties of a nonqualified college savings withdrawal.

*If you have further questions, please send them to [ABLE@state.de.us](mailto:ABLE@state.de.us) or call 302-672-6700.*

Appendix 2

# ABLE Survey

## *Help Us Design Your Program!*

This survey will provide us with a better idea of how you plan to use your ABLE account. The information that you provide us will be used to design a program that best suits the needs of Delawareans.

**Would you like to receive updates regarding ABLE? If so, the following information will allow us to stay in touch with you.**

Name: \_\_\_\_\_  
Phone number: \_\_\_\_\_  
E-mail address: \_\_\_\_\_  
City or town of residence: \_\_\_\_\_

**Which of the following best describes you? (Check all that apply)**

\_\_\_\_ Individual with a disability  
\_\_\_\_ Parent or sibling of an individual with a disability  
\_\_\_\_ Disability related professional  
\_\_\_\_ Other: \_\_\_\_\_

**Under what category do you believe you or your family member would be qualified to open an ABLE account?**

\_\_\_\_ Entitled to benefits under SSDI (Social Security Disability Insurance)  
\_\_\_\_ Entitled to benefits under SSI (Social Security Income)  
\_\_\_\_ Entitled to benefits via a disability certification

**How old is the intended beneficiary?**

\_\_\_\_ Years old

**Will the beneficiary be contributing to his/her own account?**

\_\_\_\_ Yes  
\_\_\_\_ No  
\_\_\_\_ Unsure

**Is the beneficiary employed?**

\_\_\_\_ Yes (If yes, in what capacity? \_\_\_\_\_ )  
\_\_\_\_ No

**Do you expect that individuals other than the beneficiary (i.e., siblings, grandparents, employers, etc.) will be contributing to the ABLE account?**

- Yes
- No
- Unsure

**Provided that the current annual limit for all contributions is \$14,000, how much would you expect to be contributed in total on an annual basis from all contributors to your account?**

- \$2,500 or Less
- \$2,501-\$5,000
- \$5,001-\$7,500
- \$7,501-\$10,000
- \$10,001-\$12,500
- More than \$12,500

**How long do you anticipate keeping funds in the ABLE account before withdrawing all or some of them?**

- Short Term, roughly:
  - Less than 3 months
  - 3 to 6 months
  - 6 to 12 months
  - 1-2 years
- Long Term, roughly:
  - 2-5 years
  - 5-10 years
  - More than 10 years

**If withdrawn, how often do you think the beneficiary will be making disbursements from the ABLE account?**

- Weekly
- Monthly
- Quarterly
- Bi Annually
- Annually
- Less than once per year

**For what type of expenses do you anticipate using the ABLE account? (Check all that apply)**

- Routine, daily living expenses and recurring disability expenses (food, transportation, etc.)
- Recurring monthly expenses other than housing costs
- Monthly housing costs (rent, utility bills, etc.)
- Large expenses or purchases (e.g., a modified van or wheelchair)
- Long term support once parents or others are no longer able to provide financial aid

**What type of investment vehicles are you most interested in?**

- Zero or low growth but safe (e.g., a bank account, certificate of deposit or money market fund)
- Low growth, low risk (e.g., bonds or bond funds)
- Medium growth, medium risk (e.g., balanced funds with a mix of stocks and bonds)
- High growth, high risk (e.g., all stock funds)

**What benefits of an ABLÉ account would you find significant? (Check all that apply)**

- Maintaining federal benefits
- Qualifying for federal benefits
- Less expensive than a special needs trust
- Tax-free earnings on contributions
- An estate planning tool
- To have an account in the name of the beneficiary for savings, investments, and gifts
- Providing a means to aid a beneficiary's current needs
- Increasing financial security for the beneficiary's future

**Having now read through all the above questions, how likely are you to open an account?**

- Very likely
- Somewhat likely
- Somewhat unlikely
- Very unlikely
- Unsure

**If you have further questions or comments, please contact us at [ABLE@state.de.us](mailto:ABLE@state.de.us) or call 302-672-6700.  
Thank you for your participation.**