The ABLE Act

The federal ABLE Act, passed in 2014, adds section 529A to the Internal Revenue Code of 1986 to encourage and assist individuals and families in saving private funds for the purpose of paying for disability-related expenses. Funds in qualified ABLE accounts are exempt from consideration of the individual's eligibility for federal means-tested programs up to $100,000, at which point eligibility for Supplemental Security Income would be suspended; an individual's Medicaid benefits would not be affected by this limit. States can also decide to exempt the funds from consideration of local means-tested programs.

The provisions for ABLE accounts are modeled after college savings plans (often called "529 plans" because they are Section 529 in the Internal Revenue Code), which allow people to save money for college in tax-benefitted accounts. (See comparison chart on the last page.)

Federal Requirements of State ABLE Programs

The Internal Revenue Service and the U.S. Department of Treasury have issued proposed regulations and guidance on the requirements a state program must satisfy in order to be a "qualified" ABLE program.

- **Eligibility:** Eligibility is limited to individuals with significant disabilities (as defined by Social Security) which began prior to age 26. Individuals older than age 26 may establish an account, but need documented proof of the onset of disability prior to age 26. **States have been given discretion in developing a system for verifying that individuals have a qualifying disability.** Most states are considering a simple process, such as accepting a copy of an eligibility determination from Social Security or a standard form signed by a doctor verifying the individual meets Social Security's definition of disability.

- **Use of Funds:** Funds in ABLE accounts may only be used for "qualified disability expenses," which include education, housing, transportation, employment training and support, assistive technology, health, financial, and other expenses related to the individual's disability. **It has been left to the states' discretion to develop safeguards to ensure that funds are being used appropriately.** Most states are considering a process of self-certification mirroring those found in college savings plans or health savings accounts, by which a person agrees, sometimes under penalty of perjury, that they will use the funds appropriately, and then must save documentation or receipts showing how the funds are spent in case of a tax audit.

- **Limit on Accounts and Account Holders:** ABLE beneficiaries can only have one account. An account can only have one account holder or "designated beneficiary," and one signature authority. The signature authority is limited to one person: the designated beneficiariy or their power of attorney or legal guardian. (This is different from 529 college savings plans, which allow multiple accounts to be set up on behalf of the beneficiary.)

- **Limit on Contributions:** Anyone may contribute to an ABLE account. Aggregated annual contributions from all sources are limited to the federal annual gift tax exclusion (currently $14,000) for each ABLE account. (This is different from 529 college savings plans, which does not place restrictions on annual contributions beyond the total account balance limit set by the state.)

- **Administrative Fees:** As with college savings plans, the success of ABLE Programs will depend on the level of program adoption; ABLE Programs can collect reasonable administrative fees to cover the cost of program administration.

- **Tax Benefits:** Money placed in ABLE accounts is exempt from federal income tax. There are no federal tax incentives (such as deductions) for contributions to ABLE accounts. States may choose to offer state tax incentives for contributions as a way of incentivizing participation in the program. **(Similar incentives are offered by many 529 college savings plans, including in Maryland.)**

- **Medicaid Reimbursement:** Upon the death of an ABLE account holder, any outstanding debts for qualified disability expenses must be paid. After those debts have been cleared, state Medicaid programs may file claims for reimbursement for Medicaid payments made on behalf of the individual while he or she was an ABLE account holder.

- **Reporting:** States must make monthly reports on distributions and account balances to the Commissioner of Social Security and report annually on distributions and other aggregated information to the Secretary of the Treasury.

Maryland ABLE Legislation

In addition to adopting the federal requirements, SB355/HB431 requires Maryland to:

- **Create an ABLE Program run by the Board of Directors of the College Savings Plans of Maryland**, which will change its name to Maryland 529. It adds a seat to the Board for the Secretary of the Department of Disabilities and authorizes the Board to issue Requests for Proposals and collaborate with other entities, including other states, to develop, administer, manage and promote the program.

- **Offer tax benefits to those who contribute** to an individual's Maryland ABLE account comparable to tax deductions currently offered to participants in the College Savings Plan of Maryland programs**,** and

- Provide that **money in ABLE accounts will not affect eligibility for Maryland's state or local means-tested programs** (in addition to federal means-tested programs.)

ABLE Programs (529A) versus College Savings Programs (529)

*unless otherwise noted, the information is based on federal program guidelines or regulation

	ABLE Program	College Savings Program
Who is eligible to be a beneficiary?	A person with a disability (as defined by Social Security) who acquired the disability before the age of 26	A person who intends to go to college
Certification of eligibility required?	Yes – must have some form of disability documentation, subject to annual review	No
How may the funds in the accounts be used?	Qualified disability expenses: education, housing, assistive technology, transportation, employment training, health, financial management, legal fees, funeral, others as set by U.S. Treasury Dept.	Qualified tuition expenses: tuition, books, supplies, room and board
Proof of "qualified expenses"	Proposal in Maryland: follow the same model as 529 investment accounts;	In Maryland, for Prepaid Accounts, CSPM sends money directly to college; for 529 Investment Accounts, account holders withdraw funds at their own discretion and must save receipts showing the funds were used appropriately, which they would produce in a tax audit
Who can contribute?	Anyone, including beneficiary	Anyone, including beneficiary
Annual contribution limit	$14,000 (aggregated) per beneficiary	None
Maximum account balance	Same as the State limit for 529 programs; in Maryland: $350,000	In Maryland: $350,000
Beneficiaries and account holders	There can only be one account opened for a beneficiary, and the beneficiary or their legal guardian/power of attorney is the only account holder/signatory.	There can be multiple accounts opened for a single beneficiary. (e.g. the "beneficiary" is the student, the account holder may be a parent or other relative.)
Tax deduction for contributions	Maryland proposal: similar to what is available to 529 account holders - a deduction of up to $2,500 a year for contributions to the account.	In Maryland: up to $2,500 a year for contributions made by the account holder to the account.
Tax penalties	If funds are improperly used, those funds become taxable with an additional 10% penalty.	If funds are improperly used, those funds become taxable with an additional 10% penalty.
State recapture provision	Yes – to Medicaid after death (if beneficiary used Medicaid)	None
Reporting requirements	Regular reports to account holders and federal government	None

Questions may be directed to Anne Blackfield, Director of Interagency Affairs, Maryland Department of Disabilities
anne.blackfield@maryland.gov / 410-767-3652