



Achieving a Better Life Experience Program

Progress Update to the Legislature per ESHB 2323 Section 6(1)

Background

Creation of the Washington ABLE Program

The U.S. Congress created the federal Achieving a Better Life Experience Act (ABLE Act) in 2014.¹ The 2016 Washington State Legislature created the Washington Achieving a Better Life Experience (ABLE) program at the Department of Commerce (Commerce),² and appropriated \$572,000 to support the program during state fiscal year 2017.

ABLE Program Accounts

The federal ABLE Act allows eligible individuals with disabilities to create tax-advantaged savings accounts with contributions of up to \$14,000 annually, pursuant to section 529A of the Internal Revenue Service code.³ ABLE accounts allow more individual control over spending and investing, while protecting eligibility for Medicaid, Supplemental Security Income (SSI), Social Security Disability Insurance (SSDI), and other means-tested public benefits.

Qualified disability expenses include any expenses made for the benefit of the designated beneficiary related to his or her disability or that improve their quality of life. Eligible expenses include those related to the following:

- Education
- Housing
- 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

¹ United States Congress, *H.R. 647 – ABLE Act of 2014, (2014)*, <https://www.congress.gov/bill/113th-congress/house-bill/647>

² Washington State Legislature, “Individuals with disabilities – Savings and investments - Achieving a Better Life Experience Act,” (2016), <http://lawfilesexternal.wa.gov/biennium/2015-16/Pdf/Bills/Session%20Laws/House/2323-S.SL.pdf>

³ Internal Revenue Service, *Tax Benefit for Individuals With Disabilities: IRS Section 529A, (2016)*, <https://www.irs.gov/government-entities/federal-state-local-governments/tax-benefit-for-disability-irc-section-529a>

ABLE Program Eligibility

The federal ABLE Act limits eligibility to individuals with significant disabilities that began before age 26. Individuals who meet this age criteria and also receive benefits under SSI, SSDI, or both are automatically eligible to establish an ABLE account. Individuals who do not receive SSI or SSDI, but still meet the age of onset disability requirement may still be eligible to open an ABLE account if they meet the Social Security Administration's definition and criteria regarding significant functional limitations, and receive a letter of certification from a licensed physician.

An estimated 130,000 to 180,000 children and adults with disabilities in Washington may be eligible for the ABLE program. An estimated 35,000-50,000 have enough financial resources to make participation feasible.⁴

Projected Enrollments

Commerce expects 1,000 new enrollments each year during state fiscal years 2018-2021. ABLE accounts could reach 4,000 by State Fiscal Year 2022 – almost twice the current Developmental Disabilities Endowment Trust Fund (DDETF) program enrollment. This significant difference in projected enrollments for the ABLE program compared to the DDETF program is due to differences in eligibility.⁵ DDETF program eligibility is restricted to those with developmental disabilities, which are physical, learning, language, or behavior impairments that begin during the developmental period.⁶ Federal ABLE program eligibility includes physical disabilities, mental health disabilities, and military service-induced disabilities not allowed under the DDETF program. Future federal legislative changes to the ABLE program may expand eligibility to even more citizens.

Progress to Date

Appointment of the ABLE Governing Board

The Governor appointed ABLE governing board members beginning in November 2016, and completed the process in March 2017. The governing board started meeting monthly in December 2016. Board membership statutorily includes a representative from the state Treasurer's Office, the Guaranteed Education Tuition Program, and the Office of Financial Management. The remaining four board members have financial, legal, or disability program experience. The board is responsible for making decisions about program management and providing oversight of program implementation.

2017 ABLE Board Members

Jeffrey Manson, Chair

Brad Hendrickson, Office of the State Treasurer

Betty Lochner, Guaranteed Education Tuition Program, Washington Student Achievement Council

Gwen Stamey, Office of Financial Management

Nathan Loose

Carole McRae

Amy Patterson

⁴ Washington State Office of Financial Management, "Multiple Agency Fiscal Note Summary, 2323 EESHB, Better life experience program," (2016), <https://fortress.wa.gov/ofm/fnspublic/FNSPublicSearch/Search/2323/64>

⁵ Washington State Department of Commerce, "ABLE compared to DDETF," (2017), <http://www.commerce.wa.gov/wp-content/uploads/2017/03/ABLE-compared-to-DDETF-new-1-15-16.docx>

⁶ Centers for Disease Control and Prevention, *Facts About Developmental Disabilities*, (2015), <https://www.cdc.gov/ncbddd/developmentaldisabilities/facts.html>

Creation of the Disabilities Workgroup at Commerce

With the addition of the ABLE program, Commerce developed a new Disabilities Workgroup⁷ to manage its disability programs, which include ABLE, Developmental Disabilities Endowment Trust Fund (DDETF), and the Office of Developmental Disabilities Ombuds. Commerce hired a manager and staff for the disabilities workgroup in fall 2016.

ABLE Program Management

The ABLE governing board determined how to best manage the program, which includes record keeping, investment and operations management, and marketing. Neither the Washington State Achievement Council, which runs the Guaranteed Education Tuition account program, or Commerce can independently manage an ABLE program more cost effectively than contracting for record keeper and investment program management services. In 2015, Congress eliminated the requirement that individuals must establish ABLE accounts in their state of residence, opening the door for another state to manage Washington's ABLE program on contract. Currently, 25 states offer ABLE programs, and several of those offer contracting services to manage other states' ABLE programs.⁸

The ABLE governing board evaluated three options for management of the ABLE program in Washington:

- A competitive solicitation to contract with a vendor.
- Contracting with either Ohio or Oregon.
- Contracting with the consortium (a collaboration of 15 states).

After several months of research, including presentations from the leading states, and hearing from constituents and stakeholders on program design features, the governing board decided to contract with Oregon. Commerce posted a sole source notification on Washington Electronic Business Solutions (WEBS) and the Commerce website. No challenges were received. Commerce provided DES a sole source justification for a no-cost contract with the Oregon 529 Savings Network governing board. DES approved the sole source contract on May 1, 2017. Commerce executed a contract with Oregon 529 Savings Network in May 2017.

Moving Forward

ABLE Program Management and Outreach

Due to the delay in enacting a biennium operating budget, all ABLE contracts terminated on June 30. Commerce executed new contracts with Oregon 529 Savings Network and its ABLE subcontractors of Sundry/BNY Mellon, Sellwood Consulting, and TGF Productions. Sundry/BNY Mellon will develop the Washington State ABLE marketing website, marketing materials, user portal website, and perform record keeper and custody services. Sellwood Consulting will provide financial advisor services, including designing the investment portfolio options offered to ABLE account users. TGF Productions will produce advertising, marketing, and outreach services to promote the program within the state.

⁷ Washington State Department of Commerce, *Disabilities Workgroup*, (2017), <http://www.commerce.wa.gov/about-us/boards-and-commissions/disabilities-workgroup/>

⁸ The Arc, *ABLE Program Implementation*, (2017), <http://www.thearc.org/what-we-do/public-policy/issues/able-program-implementation>

Lt. Gov. Cyrus Habib, Rep. Christine Kilduff, and Washington State Treasurer Duane Davidson will be featured in filmed public service announcements for use in TV broadcast and on the web. Additionally, the program is filming testimonies from Washington residents who are eligible for ABLE accounts to explain the benefits of using the Washington State ABLE Savings Plan. Commerce staff will continue to travel the state promoting the program through public presentations, state agency staff trainings, and conferences. Multiple launch and outreach events are being planned. Washingtonians will be able to enroll in the ABLE Washington State Saving Plan before Jan. 1, 2018.

Rulemaking

Washington Administrative Code (WAC) rule changes will be required by state agencies that perform means testing for program eligibility to exempt the ABLE account assets from their calculations:

- The Washington State Health Care Authority completed rulemaking regarding eligibility for the Apple Health medical program in WAC 182-560.
- The Department of Social and Health Services filed proposed rulemaking for Temporary Assistance for Needy Families and Supplemental Nutrition Assistance Program. Commerce is awaiting permanent rules to be filed for WAC 388-450 and WAC 388-470.
- Commerce recommended that the Department of Early Learning adjust its childcare subsidy program rules in WAC 170-290 to account for ABLE. Because of the merger with the Children's Administration, Department of Early Learning has tabled this review.

Commerce does not foresee a need to promulgate rules for the operation of the ABLE program.

Legislative Recommendation

Commerce recommends that the Legislature change the ABLE statute to specify that only state legislative appropriations, revenue from fees on ABLE accounts, and donations to the program must be deposited into the Office of State Treasurer's Account 799. Currently the statute indicates that all contributions must be deposited in the account.

Individuals with ABLE accounts should be able to make their contributions electronically from their banking accounts, which is how ABLE programs in other states handle contributions. Contributions would be processed by vendor Sumday/BNY Mellon almost immediately to purchase the designated Vanguard investment portfolio shares.

Rerouting those contributions to Account 799, as currently written into statute, disrupts the financial solutions used by the ABLE marketplace. It would necessitate that a state employee reconcile the contribution and then disburse it back to Sumday/BNY Mellon for investment into the Vanguard portfolios. This would add costs, slow down the process, and inject errors. The Washington State ABLE program would be at a competitive disadvantage to other state ABLE programs.

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