



# Achieving a Better Life Experience Program

## *Final 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.<sup>1</sup> The 2016 Washington State Legislature (Legislature) created the Washington Achieving a Better Life Experience (ABLE) program at the Department of Commerce (Commerce).<sup>2</sup> In 2018, the Legislature revised the ABLE program statute to allow for contracting out account management services to create a more competitive investment product (see page 5, 2018 Agency Request Legislation).<sup>3</sup>

#### ABLE Program Accounts

The ABLE Act allows eligible individuals with disabilities to create tax-advantaged savings accounts with contributions of up to \$15,000 annually (the gift tax exclusion amount for 2018), pursuant to section 529A of the Internal Revenue Service code.<sup>4</sup> ABLE accounts allow more individual control over spending and investing, while protecting eligibility for:

- Medicaid
- Supplemental Security Income (SSI)
- Social Security Disability Insurance (SSDI)
- Other federal, state, and local means-tested public benefits

Qualified disability expenses include any expenses made for the benefit of the designated beneficiary related to his or her disability. Eligible expenses include those related to:

- 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

<sup>1</sup> U.S. Congress, *H.R. 647 – ABLE Act of 2014*, <https://www.congress.gov/bill/113th-congress/house-bill/647>

<sup>2</sup> Washington State Legislature, *Achieving a Better Life Experience Act*, (2016), <http://lawfilesexternal.wa.gov/biennium/2015-16/Pdf/Bills/Session%20Laws/House/2323-S.SL.pdf>

<sup>3</sup> Washington State Legislature, *Chapter 76, Laws of 2018*, <http://lawfilesexternal.wa.gov/biennium/2017-18/Pdf/Bills/Session%20Laws/Senate/6221-S.SL.pdf>

<sup>4</sup> Internal Revenue Service, "Tax Benefit for Individuals With Disabilities: IRS Section 529A," (2018), <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.<sup>5</sup> 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 of them have enough financial resources to make participation feasible.<sup>6</sup>

## **Projected Enrollments**

Commerce projects 1,000 new enrollments each year during state fiscal years 2018-2021, reaching 4,000 by state fiscal year 2022 – almost twice the current enrollment in the Developmental Disabilities Endowment Trust Fund (DDETTF) program.<sup>7</sup> This significant difference in projected enrollments for the ABLE program compared to the DDETTF program is due to differences in eligibility.

DDETTF program eligibility is restricted to those with developmental disabilities, which are physical, learning, language, or behavior impairments that begin during the developmental period.<sup>8</sup> ABLE program eligibility includes physical disabilities, mental health disabilities, and military service-induced disabilities not allowed under the DDETTF 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 ABLE governing board is composed of representatives from three state agencies specified in statute,<sup>9</sup> and four governor-appointed members with financial, legal, or disability program experience.<sup>10</sup> The state agencies represented on the board are the Office of the State Treasurer, the Guaranteed Education Tuition (GET) Program, and the Office of Financial Management. The board is responsible for making decisions about program management and providing oversight of program implementation.

The governor began appointing ABLE governing board members in November 2016, and completed the process in March 2017. The governing board started meeting monthly in December 2016.

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<sup>5</sup> See footnote 1.

<sup>6</sup> Washington State Office of Financial Management, *Multiple Agency Fiscal Note Summary, 2323 ESHB, Better life experience program*, (2016), <https://fortress.wa.gov/ofm/fnspublic/FNSPublicSearch/Search/2323/64>

<sup>7</sup> Washington State Office of Financial Management, *Multiple Agency Fiscal Note Summary, 2323 ESHB, Better life experience prog.*, <https://fortress.wa.gov/FNSPublicSearch/GetPDF?packageID=43996>

<sup>8</sup> Centers for Disease Control and Prevention, "Facts About Developmental Disabilities," (2015), <https://www.cdc.gov/ncbddd/developmentaldisabilities/facts.html>

<sup>9</sup> Washington State Legislature, "RCW 43.330.466 (Chapter 39, Laws of 2016 Sec. 4)," (2016), <http://app.leg.wa.gov/RCW/default.aspx?cite=43.330.466>

<sup>10</sup> Washington Governor Jay Inslee, "Achieving a Better Life Experience Governing Board," <https://www.governor.wa.gov/boards-commissions/board-and-commissions/profile/Achieving%20a%20Better%20Life%20Experience%20Governing%20Board>

## **2018 ABLE Board Members**

Jeff Manson, chair, member of the public, Puget Sound region  
Betty Lochner, GET Program, Washington Student Achievement Council  
Brenda Snyder, Office of the State Treasurer  
Gwen Stamey, Office of Financial Management  
Nathan Loose, member of the public, northwest region  
Carole McRae, member of the public, Puget Sound region  
Amy Patterson, member of the public, northwest region

## **Creation of the Disabilities Workgroup at Commerce**

With the addition of the ABLE program, Commerce developed a new Disabilities Workgroup<sup>11</sup> to manage its disability programs, which include ABLE, Developmental Disabilities Endowment Trust Fund (DDEF), and the Office of Developmental Disabilities Ombuds. Commerce hired a manager and staff for the disabilities workgroup in fall 2016.

## **ABLE Program Management**

Commerce has significant experience leading competitive solicitations, as well as administering investment programs, such as the successful DDEF program that Commerce has overseen since it was created in 1999. Commerce is modeling the ABLE program on the DDEF program.

The ABLE governing board determined how to best manage the program, which will require record keeping, investment and operations management, and marketing. Neither the State Investment Board, the Washington State Achievement Council, which runs the Guaranteed Education Tuition (GET) account program, nor Commerce can independently manage an ABLE program more cost effectively than contracting for record keeping 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, 32 states offer ABLE programs, and several of those offer contracting services to manage other states' ABLE programs.<sup>12</sup>

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<sup>13</sup> or Oregon.<sup>14</sup>
- Contracting with the national ABLE alliance<sup>15</sup> (a consortium of 15 states).

After several months of acquiring information, listening to presentations from the leading states, and hearing from constituents and stakeholders on program design features, the governing board

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<sup>11</sup> Washington State Department of Commerce, "Disabilities Workgroup," (2017), <http://www.commerce.wa.gov/about-us/boards-and-commissions/disabilities-workgroup/>

<sup>12</sup> The Arc, "ABLE Program Implementation," (2017), <http://www.thearc.org/what-we-do/public-policy/issues/able-program-implementation>

<sup>13</sup> Josh Mandel, Treasurer of Ohio, "Stable Account," <https://www.stableaccount.com/faq/>

<sup>14</sup> Sumday|BNY Mellon, "Oregon ABLE Savings Plan," <http://oregonablesavings.com/>

<sup>15</sup> Sumday|BNY Mellon, "ABLE For All Savings Plan," <http://ableforall.com/>

determined to go with Oregon. Commerce posted a sole source notification on Washington's Electronic Business Solution and the Commerce's website. No challenges were received. Commerce provided Department of Enterprise Services (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.

### **2018 Agency Request Legislation**

During the 2017 interim, with the assistance of legal counsel, Commerce determined that two primary statutory changes were required in order to launch the ABLE program:

- Allowing for a more efficient model: The original ABLE legislation assumed that the State Investment Board (SIB) would run the investment portion of the program. After careful deliberation with SIB, it was determined that this option was prohibitively more expensive than other state models, and the board decided the best option would be to contract with Sumday|BNY Mellon, following the model Oregon uses. However, the authorizing statute did not allow for investments to go through an outside investment firm.
- Automating account deposits: This change removed the requirement of routing individual ABLE contributions through a state account, streamlining the individual contribution process so that Commerce will not manually send contributions to the online portal system. Removing this routing will avoid delays from extra staff work that would have a direct impact on program participants.

The 2018 Washington State Legislature passed Commerce's agency request legislation (Chapter 76, Laws of 2018).<sup>16</sup> The legislation will allow the ABLE program to launch with the Oregon 529 Savings Network and subcontractor Sumday|BNY Mellon managing program accounts.

### **Rulemaking**

The following rule revisions are, or were 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 (HCA) completed rulemaking regarding eligibility for the Apple Health medical program in WAC 182-560.<sup>17</sup> The rule went into effect July 1, 2017. HCA initiated rule revisions in April 2018 to conform with changes to the ABLE annual contribution amounts related to the ABLE to Work Act (see changes on page 5).
- The Department of Social and Health Services completed rulemaking for Temporary Assistance for Needy Families in Chapter 388-450 WAC<sup>18</sup> and Supplemental Nutrition Assistance Program in Chapter 388-470 WAC.<sup>19</sup> The rule went into effect Sept. 19, 2017.
- Commerce recommended the Department of Early Learning adjust its childcare subsidy program rules in WAC 170-290<sup>20</sup> to account for ABLE. Because of the merger with the new Department of Children, Youth, and Families, the Department of Early Learning has tabled this review. Commerce does not anticipate rulemaking for operation of the ABLE program.

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<sup>16</sup> See footnote 3.

<sup>17</sup> Washington State Health Care Authority, "WAC 182-560-100 Achieving a Better Life Experience (ABLE) Act" <http://apps.leg.wa.gov/wac/default.aspx?cite=182-560-100>

<sup>18</sup> Washington State Department of Social and Health Services, Chapter 388-450 WAC INCOME," <http://app.leg.wa.gov/wac/default.aspx?dispo=true&cite=388-450>

<sup>19</sup> Washington State Department of Social and Health Services, "Chapter 388-470 WAC RESOURCES," <http://apps.leg.wa.gov/wac/default.aspx?cite=388-470>

<sup>20</sup> Washington State Department of Early Learning, "Chapter 170-290 WAC Working Connections and Seasonal Child Care Subsidy Programs," <http://apps.leg.wa.gov/wac/default.aspx?cite=170-290>

## Moving Forward

### ABLE Program Management and Outreach

Due to the delay in enacting a biennial operating budget, all ABLE contracts terminated on June 30, 2017. Commerce executed new contracts with Oregon 529 Savings Network and its ABLE subcontractors of Sumday|BNY Mellon, Sellwood Consulting, and TGF Productions, Inc.

Sumday|BNY Mellon will develop the Washington State ABLE marketing website, marketing materials, user portal website, and will provide record keeping and custody services. Sellwood Consulting will provide financial advisor services, including designing the investment portfolio options offered to WA ABLE account users. TGF Productions, Inc. will produce advertising, marketing, and outreach services to promote the program within the state.

Lt. Gov. Cyrus Habib, Rep. Christine Kilduff, and Washington State Treasurer Duane Davidson will star in filmed public service announcements for use in broadcast and social media. Additionally, testimonies from state residents who are eligible for ABLE accounts will be filmed 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 events and outreach are being planned. Washingtonians will be able to enroll in the ABLE Washington State Saving Plan starting in the summer of 2018.

### Changes at the National Level for ABLE Programs

Modifications to federal tax law in 2017<sup>21</sup> brought the following changes to the ABLE program:

- **Annual Contribution Limit:** The annual contribution limit is periodically adjusted for inflation. For the 2018 tax year, the annual contribution limit was increased from \$14,000 to \$15,000.
- **Retirement Savings Contributions Tax Credit:** ABLE account owners who contribute to their own account may be eligible for the Retirement Savings Contributions Tax Credit, also known as the Saver's Tax Credit.
- **ABLE to Work Act:** This act allows an ABLE beneficiary to contribute additional money from their earnings up to the Federal Poverty Level, which is currently at \$12,140 for an individual in 2018,<sup>22</sup> in addition to their annual contribution limit of \$15,000.
- **ABLE Financial Planning Act:** This allows for rollovers from a 529 College Savings account to a 529A ABLE Savings account, but still maintains the annual contribution limit of \$15,000.

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<sup>21</sup> ABLE National Resource Center, "Big Changes on the Horizon for ABLE in 2018," (2018), <http://ablenrc.org/news/big-changes-horizon-able-2018>

<sup>22</sup> U.S. Centers for Medicare & Medicaid Services, "Federal Poverty Level (FPL)," <https://www.healthcare.gov/glossary/federal-poverty-level-FPL/>

### **Legislative Recommendations**

Commerce looks forward to the launch of the ABLÉ program in summer 2018. The department has no current recommendations for legislative changes needed to implement the ABLÉ program, and will evaluate program effectiveness after launch.

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