



## 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.<sup>1</sup> The 2016 Washington State Legislature created the Washington Achieving a Better Life Experience (ABLE) program at the Department of Commerce (Commerce),<sup>2</sup> 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.<sup>3</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), 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. 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

#### ABLE Program Eligibility

The federal ABLE Act limits eligibility to individuals with significant disabilities that began at age 25 or younger. Individuals who meet this age criteria and also receive benefits under SSI, SSDI, or both are

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

<sup>2</sup> 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.L.pdf>

<sup>3</sup> 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>

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.<sup>4</sup>

### **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.<sup>5</sup> DDETF program eligibility is restricted to those with developmental disabilities, which are physical, learning, language, or behavior impairments that begin during the developmental period.<sup>6</sup> 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 Office of the State Treasurer, 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

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<sup>4</sup> 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>

<sup>5</sup> 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>

<sup>6</sup> 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 Workgroup<sup>7</sup> to manage its disability programs, which include ABLE, DDETF, 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 and administrating investment programs. Commerce has successfully supported the DDETF program since it was created in 1999, and is applying its experience supporting governing boards and the DDETF investment program to the ABLE program.

The ABLE governing board was tasked with deciding how to best manage the program, which will require records, investment, operations, and marketing management. Neither the Washington State Achievement Council, which runs the Guaranteed Education Tuition account program, nor Commerce can independently manage an ABLE program more cost effectively than by contracting for investment program management services.

In 2015, Congress eliminated the requirement that individuals establish ABLE accounts in their state of residence, opening the door for another state to manage Washington's ABLE program on contract. Currently, 20 states offer ABLE programs, and some of those offer contracting services to manage other states' ABLE programs.<sup>8</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 the states of Ohio or Oregon, both of which already operate successful ABLE programs.
- Contracting with a consortium of 15 states that market their ABLE programs regionally, and provide management services.

After several months of research, including evaluating leading state programs that offer ABLE management services, and compiling feedback from constituents and stakeholders on program design features, the governing board decided to contract with the Oregon 529 Savings Network.

Oregon was selected because it shares a similar program philosophy, offers the lowest fees to individual account holders, has the best and most accessible website and user portal interface, and shares some media markets for synergistic and efficient outreach campaigns. The Bank of New York Mellon (BNY Mellon) provides Oregon's ABLE program with records management services, and works with The Vanguard Group, Inc. to provide investment management services. By contracting with

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

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

Oregon, Washington is able to more quickly and easily access the services of BNY Mellon and Vanguard.

Contracting with Oregon also provides Washington the benefit of Oregon's experience and lessons learned in launching its ABLÉ program with BNY Mellon. It also benefits account holders in Oregon and Washington because the more assets enrolled through BNY Mellon and Vanguard, the cheaper the fees become to account holders.

In April, Commerce posted a sole source notification on Washington's Electronic Business Solution site<sup>9</sup> and on the Commerce website. After no challenges were received, Commerce provided the Department of Enterprise Services (DES) a sole source justification for a "no-cost" contract with the Oregon 529 Savings Network.<sup>10</sup> The DES approved the sole source contract on May 1, 2017.

The contract is considered "no-cost" because the investment and records management services are paid by percentage-based fees on individual account assets. The state does not pay the state of Oregon or the vendors for these services.

## **Moving Forward**

### **Launching the ABLÉ Program**

Commerce expects to have a contract in place with the Oregon 529 Savings Network by the end of May. Commerce and the ABLÉ governing board intend to contract with Oregon's vendor, BNY Mellon, to launch the ABLÉ website, its content and backend services, marketing materials, and user portal by July 1, 2017.

An outreach campaign to announce the availability of Washington ABLÉ accounts is being planned. In addition to the website, the campaign will likely include events; traditional and social media; direct outreach to community agencies; radio, transit, and web advertising; and broadcast media talk shows.

Washingtonians will be able to enroll in the ABLÉ Washington State Saving Plan starting July 1, 2017, although some components of the marketing plan may still be under development. Outreach and marketing efforts will continue through December 2017.

### **Rulemaking**

Rule changes will be required by the following state agencies that perform means testing for program eligibility:

- The Washington State Health Care Authority has initiated rulemaking regarding eligibility for the Apple Health medical program.
- The Department of Social and Health Services plans to start rulemaking for Temporary Assistance for Needy Families and Supplemental Nutrition Assistance Program.

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<sup>9</sup> Washington State Department of Enterprise Services, *Washington's Electronic Business Solution WEBS for Vendors*, <https://fortress.wa.gov/ga/webs/home.html>

<sup>10</sup> Oregon 529 Savings Network, *Oregon 529 Savings Network*, <http://www.oregon529network.com/>

- Commerce is researching whether the Department of Early Learning needs to adjust its childcare subsidy program rules.

**Legislative Recommendations**

Commerce has no recommendations for legislative changes to implement the ABLE program.

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