

# **Minnesota’s Achieving a Better Life Experience (ABLE) Plan**

This information brief describes Minnesota’s ABLE plan, which was enacted in 2015 in response to the federal ABLE Act of 2014. The federal ABLE Act allows individuals with disabilities and their families to save money in tax-preferred accounts in order to pay for the disabled individual’s expenses. This information brief describes plan administration, eligibility requirements, qualified disability expenses, account limitations, tax provisions, investments, fees, reporting requirements, and proposed federal regulations.

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## Overview of the Federal ABLE Act of 2014

The federal ABLE Act of 2014 allows individuals with disabilities and their families to save money in tax-preferred accounts<sup>1</sup> in order to pay for the disabled individual's expenses. Amounts in ABLE accounts are disregarded from asset limits used to determine eligibility for certain means-tested federal programs such as Medicaid and Supplemental Security Income (SSI). The asset limit is \$3,000 for an aged, blind, or disabled individual receiving Medicaid and \$2,000 for an individual receiving SSI (certain exemptions to these asset limits apply).

Congress established the federal ABLE program as Title 26 section 529A of the Internal Revenue Code. The program was enacted on December 19, 2014.

The federal law:

- establishes the ABLE program and defines the parameters for state ABLE plans;
- provides for uniform administration of ABLE plans;
- sets limits on accounts and contributions;
- provides tax exemptions for ABLE accounts;
- requires reporting;
- specifies treatment of ABLE account balances on the death of a beneficiary; and
- requires the Secretary of the Treasury to issue regulations.

Under federal law, each state is responsible for establishing and maintaining a qualified ABLE program. In response to the federal law, Minnesota established the Minnesota ABLE plan in 2015 (see [Minn. Stat. ch. 256Q](#)). The Commissioner of Human Services will administer the Minnesota ABLE plan, which will be implemented after the U.S. Secretary of the Treasury issues final regulations; proposed regulations were issued on June 19, 2015.

The purpose of the Minnesota ABLE plan is “to encourage and assist individuals and families in saving private funds for the purpose of supporting individuals with disabilities to maintain health, independence, and quality of life, and to provide secure funding for disability-related expenses on behalf of designated beneficiaries with disabilities that will supplement, but not supplant, benefits provided through private insurance, the Medicaid program under title XIX of the Social Security Act, the Supplemental Security Income program under title XVI of the Social Security Act, the beneficiary's employment, and other sources.” ([Minn. Stat. § 256Q.01](#))

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<sup>1</sup> The federal ABLE program is modeled on the federal section 529 qualified tuition program that was established in 1996 to provide tax incentives to save for postsecondary education and training if the funds are used for the qualified education expenses of the designated beneficiary.

## Plan Administration

### Federal Administration

The Secretary of the Treasury administers the ABLE program at the federal level.

### State Administration

In Minnesota, the Commissioner of Human Services administers the ABLE program in consultation with the executive director of the State Board of Investment and the Commissioner of the Office of Higher Education. The commissioner is responsible for:

- accepting and processing applications;
- verifying state residency;
- verifying eligibility;
- maintaining account records;
- making payments; and
- undertaking any other necessary tasks to administer the plan.

## Eligibility Requirements

A Minnesota resident<sup>2</sup> who became blind or disabled before age 26 is eligible to establish a Minnesota ABLE account if:

- the individual is receiving SSI or Social Security Disability Insurance (SSDI) benefits; or
- the individual certifies to the Secretary of the Treasury that he or she has a medically determinable physical or mental impairment. The impairment must be shown to result in marked and severe functional limitations and can be expected to result in death or has lasted or can be expected to last for a continuous period of not less than 12 months. Or the individual is blind and meets the criteria for blindness under the SSI program.

## Qualified Disability Expenses

“Qualified disability expenses” means any expenses related to the qualified beneficiary’s blindness or disability including the following:

- education
- housing

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<sup>2</sup> A resident of another state that has entered into a contract with Minnesota to provide its residents access to the Minnesota ABLE plan may also open a Minnesota ABLE account. ([26 U.S.C. § 529A\(b\)\(1\)\(C\)](#) and [Minn. Stat. § 256Q.04](#), subd. 1)

- 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
- other expenses, which are approved by the Secretary of the Treasury under regulations

## **Account Limitations**

### **Single Account Requirement**

Each designated beneficiary is limited to one ABLE account, except when an account is established for purposes of a rollover as long as the transfer or account is closed within 60 days.

### **Contribution and Account Limits**

Total annual contributions to an ABLE account are limited to \$14,000.<sup>3</sup> This limit is annually adjusted for inflation.

The total account balance of an ABLE account is limited to the maximum account balance limit imposed under the Minnesota College Savings Plan, which is currently \$350,000. However, the federal law sets an additional limit with regard to the SSI program. Any amount over \$100,000 in an ABLE account is considered an asset of the designated beneficiary's for purposes of determining eligibility under the SSI program. If a designated beneficiary has an ABLE account balance in excess of \$100,000, SSI benefits are suspended due to excess resources.

### **Authority of the Designated Beneficiary over the Account**

The account owner is defined as the designated beneficiary and is the only person with the authority to:

- request distributions;
- request rollover distributions; or
- change the beneficiary of the ABLE account to a member of the family of the current beneficiary, but only if the beneficiary to whom the account is transferred is an eligible individual.

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<sup>3</sup> The \$14,000 annual contribution limit, adjusted annually for inflation, is based on the federal gift tax exemption.

However, the proposed federal regulations allow an eligible individual's agent under a power of attorney, or his or her parent or legal guardian, to establish and manage an ABLE account for that eligible individual.

## **Tax Provisions**

Income earned on amounts in ABLE accounts is not taxed at either the federal or state level, and distributions from an account are not taxed as long as the funds are used for qualifying disability expenses. Contributions to an ABLE account are not tax deductible and are treated as completed gifts to the designated beneficiary.

An account owner may request a nonqualified distribution from an account at any time. However, the earnings portion of a nonqualified distribution is subject to a federal additional tax. There are additional tax provisions related to rollovers<sup>4</sup> from ABLE accounts and changes in designated beneficiaries.<sup>5</sup>

## **Opening an Account**

According to the Department of Human Services, it is unclear when eligible individuals will be able to open Minnesota ABLE accounts. The Secretary of the Treasury is required to issue regulations governing the ABLE program (see below for proposed federal regulations). Once the final federal regulations are issued, the Commissioner of Human Services will review the regulations and begin implementation activities.

## **Investments and Fees**

The State Board of Investment must invest the money deposited in Minnesota ABLE accounts in statutorily permitted investments. The board has the authority to contract with one or more third-parties for investment management, recordkeeping, or other services related to investing the accounts.

Designated beneficiaries may not direct the investment of assets in their ABLE accounts more than twice per calendar year.

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<sup>4</sup> A rollover distribution is a transfer of funds made: (1) from one account in another state's qualified ABLE program to an account for the benefit of the same designated beneficiary or an eligible individual who is a family member of the former designated beneficiary; or (2) from one account to another account for the benefit of an eligible individual who is a family member of the former designated beneficiary. ([Minn. Stat. § 256Q.03](#), subd. 24)

<sup>5</sup> The designated beneficiary of an ABLE account may be changed without any tax repercussions if the new designated beneficiary is an eligible individual and a member of the family of the former designated beneficiary. ([26 U.S.C. § 529A\(c\)\(1\)\(C\)](#))

The commissioner and the executive director of the State Board of Investment are required to establish an annual fee, equal to a percentage of the average daily net assets of the plan, to be imposed on account owners to recover the costs of administering the plan. The commissioner is required to “keep the fees as low as possible, consistent with efficient administration, so that the returns on savings invested in the plan are as high as possible.” ([Minn. Stat. § 256Q.05](#), subd. 5)

## **Distribution Upon Death of a Designated Beneficiary**

Upon the death of a designated beneficiary, all amounts remaining in the ABLE account are includable in the designated beneficiary's estate.

Under federal law, subject to any outstanding payments due for qualified disability expenses, upon the death of the designated beneficiary, all amounts remaining in the qualified ABLE account not in excess of the amount equal to the total medical assistance paid for the designated beneficiary after the establishment of the account, net of any premiums paid from the account or paid by or on behalf of the beneficiary to a Medicaid Buy-In program,<sup>6</sup> shall be distributed to the state upon filing of a claim.

## **Reporting Requirements**

The Secretary of the Treasury must make available to the public reports containing aggregate information on contributions and distributions from the qualified ABLE program.

The commissioner must submit the following information:

- a notice to the Secretary of the Treasury upon the establishment of each ABLE account; and
- monthly electronic statements to the Commissioner of Social Security on relevant distributions and account balances from all ABLE accounts.

## **Proposed Federal Regulations**

The Secretary of the Treasury issued proposed regulations on June 19, 2015, related to:

- enforcing the limit of one ABLE account per eligible individual;
- providing for the information required to be presented to open an ABLE account;
- defining qualified disability expenses;
- disability certifications and determinations;
- preventing fraud and abuse;
- necessary tax reporting documentation; and

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<sup>6</sup> Minnesota does not currently administer a Medicaid Buy-In program.

- allowing for transfers from one ABLE account to another ABLE account ([26 U.S.C. § 529A\(g\)](#)).

## **Eligible Minnesotans**

The Minnesota Department of Human Services estimates 30,000 to 50,000 Minnesotans with disabilities may be eligible to establish a Minnesota ABLE account.

*For more information about programs for people with disabilities, visit the health and human services area of our website, [www.house.mn/hrd/](http://www.house.mn/hrd/).*