

# Partnerships in Employment ABLE Update



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# ABLE Act

- ▶ The Stephen Beck, Jr. Achieving a Better Life Experience (ABLE) Act
  - became law on December 19, 2014
  - creates a new option for *some* people with I/DD and their families to save for the future, while protecting eligibility for public benefits.
  - The Consolidated Appropriations Act of 2016 eliminates the requirement that ABLE accounts be established only in the ABLE account owner's state of residence.

# ABLE Act

- ▶ ABLE accounts:
  - Are established in the new Section 529A Qualified ABLE Programs
  - Are qualified savings accounts that receive preferred federal tax treatment, similar to 529 college savings accounts
  - Enable eligible individuals to save for disability related expenses
  - Are NOT yet available, and there are still some unknowns
  - Have advantages and disadvantages over other savings options

# ABLE Act

- ▶ Distributions from ABLE accounts for qualified disability related expenses will not count as income to the beneficiary or the contributor (but contributions are not tax deductible)
- ▶ Assets in and distributions for qualified disability expenses will be disregarded or given special treatment in determining eligibility for most federal means-tested benefits

# ABLE Act

- ▶ To be eligible, individuals must meet two requirements:
  - Age requirement: must be disabled **before age 26**
  - Severity of disability:
    - Have been determined to meet the disability requirements for Supplemental Security Income (SSI) or Social Security disability benefits,  
OR
    - Have a certification that meets criteria (essentially equal to Social Security level of disability), including a physician's diagnosis.

# ABLE Act

- ▶ Each eligible individual may have only one ABLE account.
- ▶ “Designated beneficiary” is the account owner.
- ▶ Account must be established in the designated beneficiary’s state of residence, or in a contracting state.
- ▶ Total annual contributions may not exceed the federal gift tax limit, which is currently \$14,000.

# ABLE Act

- ▶ Multiple individuals may make contributions to the one ABLE account.
- ▶ Aggregate contributions may not exceed the state limit for 529 savings accounts.
- ▶ Distributions from an ABLE account may be made for qualified disability expenses, related to the individual's disability or blindness and made for his/her benefit, including:

# ABLE Act



- 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
  - Any other expenses approved by the Secretary of the Treasury
- Expenditures for non-qualified expenditures will be penalized (tax and potential SSI penalties).

# ABLE Act

- ▶ ABLE assets will be disregarded or receive favorable treatment when determining eligibility for most federal means-tested benefits:
  - Only the first \$100,000 in ABLE account assets will be disregarded
  - SSI payments will be suspended if the beneficiary's account balance exceeds \$100,000 but SSI benefits (eligibility) will not be terminated. Funds above \$100,000 will be treated as resources.
  - Housing expenses will receive the same treatment as all housing costs paid by outside sources (SSI benefits subject to reduction of 1/3 federal SSI payment, as applicable).

# ABLE Act

- ▶ Medicaid: ABLE assets are disregarded in determining Medicaid eligibility – Medicaid benefits are NOT suspended if the ABLE account balance exceeds \$100,000
- ▶ Medicaid Payback: Any assets remaining in the ABLE account when a beneficiary dies, subject to outstanding qualified disability expenses, will be used to reimburse a state for Medicaid payments made on behalf of the beneficiary after the creation of the ABLE account – For purposes of this section, the state is considered a creditor of the ABLE account, not a beneficiary
- ▶ Could ABLE impact amount of Medicaid services?

# ABLE Act



- ▶ IRS issued proposed regulations on June 19, 2015
- ▶ Nov. 20, 2015 Notice indicates three changes to the proposed rules that'll be included in the final regulations:
  - ABLE programs won't be required to determine which distributions are for qualified disability expenses.
  - ABLE programs won't be required to request the taxpayer identification number (TIN) of ABLE contributors.
  - ABLE programs will not need to receive, retain, or evaluate detailed medical records. Designated beneficiaries can open an ABLE account by certifying, under penalties of perjury, that they meet the necessary requirements. This means they have a signed physician's diagnosis and will provide it to the program or the IRS upon request.

# ABLE Act

- ▶ On March 17, 2016, three bills were introduced to improve ABLE
  - ▶ The ABLE to Work Act (HR 4795 / S 2702) will enable ABLE beneficiaries who work to save up to the Federal Poverty Level in addition to the \$14,000 annual maximum contribution and be eligible for the Saver's Credit, which low and middle-income individuals can currently claim when they make contributions to a retirement account.
  - ▶ The ABLE Financial Planning Act (HR 4794 / S 2703) will enable ABLE beneficiaries to roll over regular 529 accounts to 529A (ABLE) accounts up to the annual maximum contribution
  - ▶ The ABLE Age Adjustment Act (HR 4813 / S 2704) will raise the age of onset of disability from 26 to 46 -

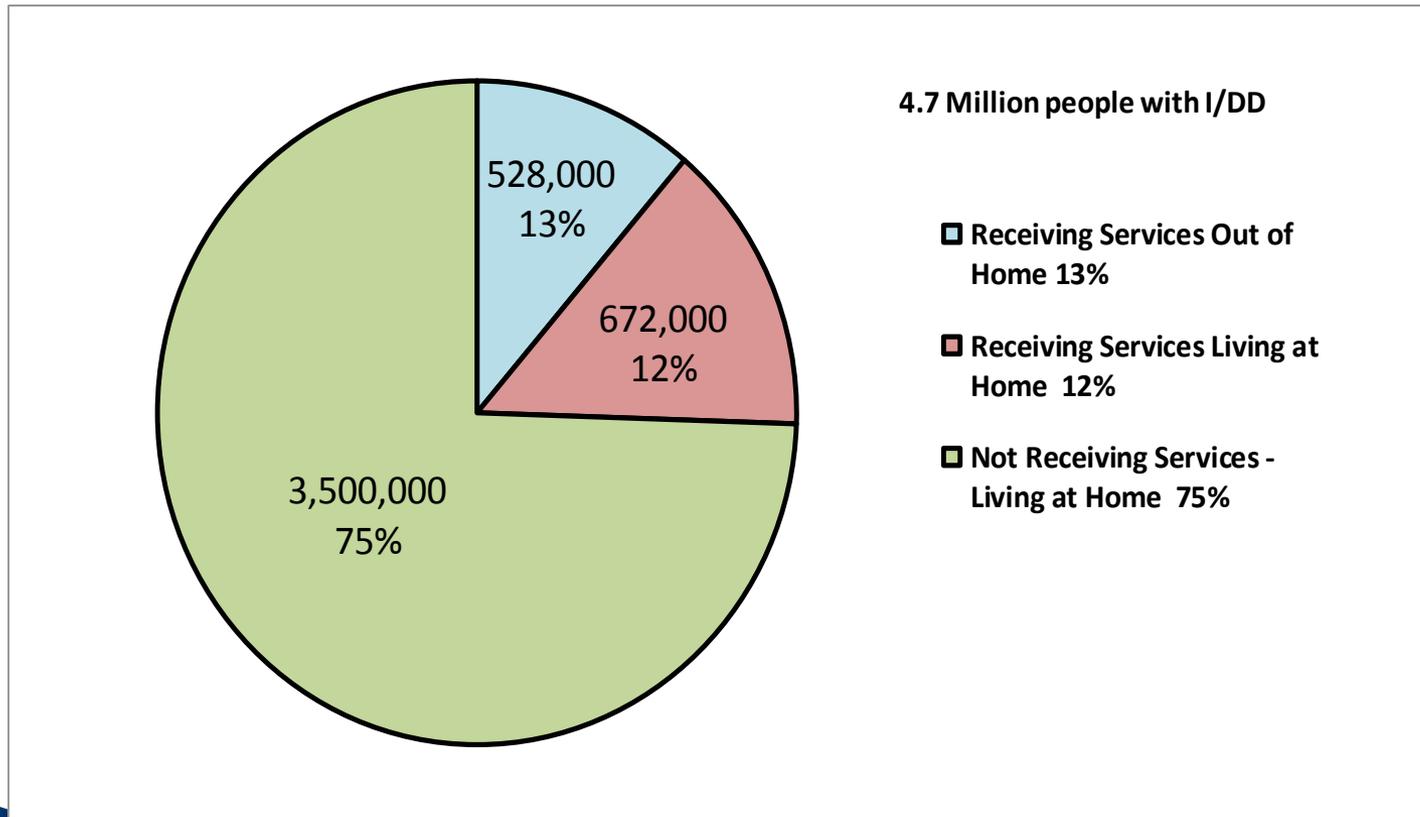
# Some Considerations

- ▶ People may want to have an ABLE account, a special needs trust or both. It is highly individualized with tax considerations, dollar thresholds and other decision points.
- ▶ Medicaid eligibility is not impacted by ABLE accounts. Less clear is any impact on scope, intensity or duration of services due to having an ABLE account. We believe that is the intent-but it isn't specified.

*Discussion: In 1915c, person centered plan must reflect full range of person's service needs & include both Medicaid and non-Medicaid services along with informal supports necessary to address needs. The service plan commits state to provide Medicaid services/ supports in the plan.*

# Considerations- It is Unknown How Many People Will Open Accounts

- ▶ Hard to Predict- example of people with I/DD



Many people with I/DD are not in the formal Medicaid system- might be waiting, might be unknown, or might not meet the income eligibility requirements.

# Considerations-What ABLE Qualifying Purchases Might People Make?

Many of the same services/supports that Medicaid might cover

Many additional services that Medicaid does not cover at all, might not cover in a specific state, or a person desires to purchase in addition to that which they receive in their state

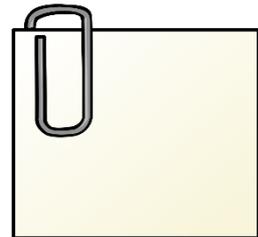
As such, are there any implications for Post Eligibility Treatment of Income?

Any impact on state benefits that are covered through general fund dollars?



# Homework is Needed

- ▶ Is it best to open an account in another state or in one's home state? Are there tax benefits or other income based programs that are in one's home state that the person wouldn't qualify for if an ABLE account is opened in another state?
- ▶ Did the legislation cover that? If not, is it covered by rule or regulation in one's home state?
- ▶ In an person's individual situation, does it make a difference and is it still best to open in another state because of what that state offers?
- ▶ Where to go for assistance?



## In Summary

ABLE can assist many people and is another tool for people with disabilities to work, save, spend money on important expenses for a good life in the community, and plan for the future.

There are unknowns and considerations and everyone in the disability community needs to keep each other informed, share resources and keep learning!

# Thank You!

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thank you

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