



529 ABLÉ Savings Accounts & Financial Planning for Families of Individuals with Special Needs



Presented by: Kathleen Oberneder



What you will learn:

- Understanding of the importance of Special Needs Planning
- What a 529 ABLÉ (Achieving a Better Life Experience Act) savings account is
- Who is eligible to open an ABLÉ account and what it can be used for
- How it compares with a Special Needs Trust (SNT) and how an individual may use both an ABLÉ Account and an SNT
- The role of professional advice in a comprehensive special needs plan



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Kathleen Oberneder ChSNC® Financial Advisor

- Over 18 years experience in financial industry
- Chartered Special Needs Consultant®
- Frequent writer and speaker on Special Needs Financial Planning and ABLE Accounts
- Master's in Speech Language Pathology
- 7 year old with Down syndrome
- Opportunity to service clients the way I believe they need help
- Comprehensive – insurance, investments, cash flow/budgeting, retirement, professional referrals
- IRIS Approved
- No client qualification– anyone can work with me



Understanding Special Needs Planning

- I help parents and caregivers to manage *assets and resources* which will be there to provide and protect the individual with special needs ***now and when you can no longer provide for them.***
- You are ***“Planning for two generations”***
- I work with families creating their financial plan ***understanding the entire family scenario*** with a special focus on your loved one with special needs.
- Completed Estate Planning – only half way there....

Understanding Special Needs Planning

Questions that I help my clients answer:

- Have you set up your Estate Plan?
- Do you understand what will fund the Special Needs Trust?
- Are you using Life Insurance to fund the Trust? If so, do you have the appropriate the type, amount, etc.
- Are you comfortable with your selected Trustee? Have you communicated your Estate Plan to the Trustee?
- As a parent, how will you take care of yourself first?

The ABLE Act is Law

The Stephen Beck, Jr. Achieving a Better Life Experience (ABLE) Act

- became Federal law on **December 19, 2014** as I.R.C. section 529A
- creates a new option for *some* people with disabilities and their families to save for current and future expenses, while protecting eligibility for means-tested public benefits.
- Governor Walker signed into Wisconsin State Law on *July 12, 2015*
- Federal Tax Bill approved in **December 2015** permitting individuals with disabilities to open accounts in **any** state, regardless of where they reside.
- *AB 731 - ABLE Technical Fix* (The Wisconsin State Assembly) *February 2016*, Wisconsin will not create its own ABLE program, but will allow you to open account in another state's program
- First state programs launched **Summer 2016**



Why is the ABLE Act Significant?

- The ABLE Act formally recognizes the extra and significant costs of living for a person with disabilities.
 - Dependent on public benefits for assistance with health care, food, housing assistance, etc.
 - Medicaid and SSI eligibility is based on having **no more than \$2,000** in cash savings, retirement funds, and other countable assets at any one time.
 - ABLE savings accounts are **not** countable assets affecting eligibility for SSI, Medicaid and other means-tested public benefits.

Who is eligible to be an ABLE account beneficiary?

To be eligible, individuals must meet two requirements:

- 1) Age requirement: must be disabled **before age 26**
- 2) Severity of disability:
 - Determined to meet Social Security Admin's **disability requirements** for Supplemental Security Income (SSI) or Social Security Disability Insurance benefits (SSDI) and are receiving those benefits,
OR
 - Submit a **“disability certification”** assuring that the individual holds documentation of a physician's diagnosis and signature, and confirming that the individual meets the functional disability criteria in the ABLE Act (related to the severity of disability described in Title XVI or Title II of the Social Security Act).

What are the Tax Implications of an ABLE Account?

- Contributions to an ABLE account are made with After-Tax Dollars
- ABLE Account earnings grow tax-free and are federal income tax-exempt
- A Wisconsin subtraction from federal AGI is allowed for a Wisconsin resident's ABLE account contributions - ABLE Technical Fix AB 731.



How do ABLE account assets impact eligibility for federal benefits?

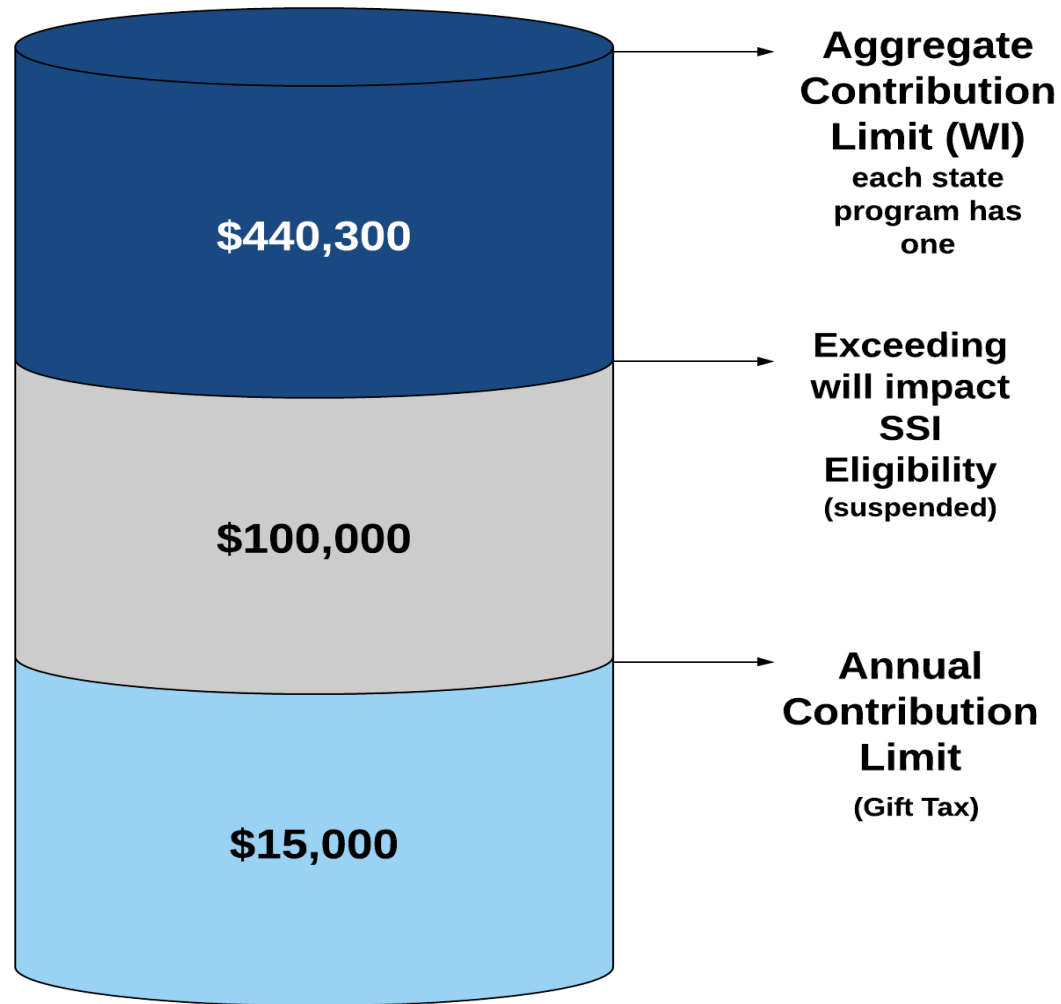
ABLE assets will be disregarded or receive favorable treatment when determining eligibility for *most* federal means-tested benefits:

- Supplemental Security Income (SSI): For SSI, only the first \$100,000 in ABLE account assets will be disregarded.
 - SSI payments (monthly cash benefit) will be *suspended* if the beneficiary's ABLE account balance exceeds \$100,000, but SSI benefits (eligibility) will not be terminated.
 - *Funds above \$100,000 will be treated as countable resources for SSI purposes.*

Impact on Federal Benefits

- Medicaid: ABLÉ assets are disregarded in determining Medicaid (MA) eligibility
 - MA benefits are NOT suspended if the ABLÉ account balance exceeds \$100,000 (limit is **only** applicable to the SSI cash benefit)
 - MA Payback: Any assets remaining in the ABLÉ account when a beneficiary dies, after payment of outstanding qualified disability expenses, are subject to MA estate recovery to reimburse state(s) for all MA payments made on behalf of the beneficiary after the creation of the ABLÉ account (the state would have to file a claim for those funds)
 - For purposes of I.R.C. section 529A, the state is considered a creditor of the ABLÉ account, not a beneficiary

How much can be contributed to an **ABLE** Account?



****Aggregate Contribution Limit and Annual Gift Tax Exclusion Amount – subject to change each year.***

Source: What are ABLE Accounts?, 2017,
www.ablenrc.org/about/what-are-able-accounts



Setting up an ABLE Account

- Each eligible individual (the “designated beneficiary”) may have only one ABLE account.
- An ABLE account can be created by the designated beneficiary or his/her “authorized legal representative” (agent under Durable Power of Attorney, court-appointed guardian of estate, or parents).
- Multiple individuals may make contributions to an ABLE account (designated beneficiary, parents, grandparents, other relatives, friends)
- Contributions are made into the savings account which will have investment options to choose from.

What may funds from an ABLE account be used for?

- Distributions from an ABLE account may be made for “qualified disability expenses” (QDEs).
- QDEs are expenses that relate to the designated beneficiary’s blindness or disability and are for the benefit of that person in maintaining or improving his or her health, independence, or quality of life.
- The term “qualified disability expenses” should be broadly construed to permit the inclusion of basic living expenses and should not be limited to:
 - expenses for items for which there is a medical necessity, or
 - which provide no benefits to others in addition to the benefit to the eligible individual.

Qualified disability expenses may include the following:



Distributions for **non-qualified expenditures** will be subject to tax consequences and may affect eligibility for federal means tested benefits.

Expenses for Housing – Special Monitoring

- Withdrawals from an ABLE account for the purpose of paying housing-related expenses (some examples: rent, utilities, condo fees, property taxes) have special rules and are monitored carefully.
- Those withdrawals **must be spent** for that intended purposes **during the month of withdrawal**, or they will be counted as resources for SSI benefits purposes as of the first day of the month following withdrawal (could cause ineligibility for SSI).
- Example: the designated beneficiary of the ABLE account withdraws \$600 for her rent, deposits the payment to her bank account, writes and delivers rent check to landlord, but landlord does not cash check until the following month. The \$600 will be counted as a resource on the first day of that following month.
- Problem-solving: recurring payments for housing expenses could be handled by automatic debit from the ABLE account, if the ABLE program will set up such automatic payment plans.

Record Keeping

- **Designated beneficiaries must always be prepared to substantiate how they spent withdrawals from their ABLE account, to be able to answer any questions from SSA, the state or the IRS and prove that the expenditures were for QDEs.**
- SSA has monthly data-sharing with the state ABLE programs, and states must report account numbers to SSA.
- For SSI recipients, SSA can access the ABLE account information and this is important because of the special timing treatment of withdrawals for housing expenses.
- There will be automatic updates on account balances between states and SSA.
- SSA will have data exchange on prepaid debit cards, showing when monies are loaded onto the card.

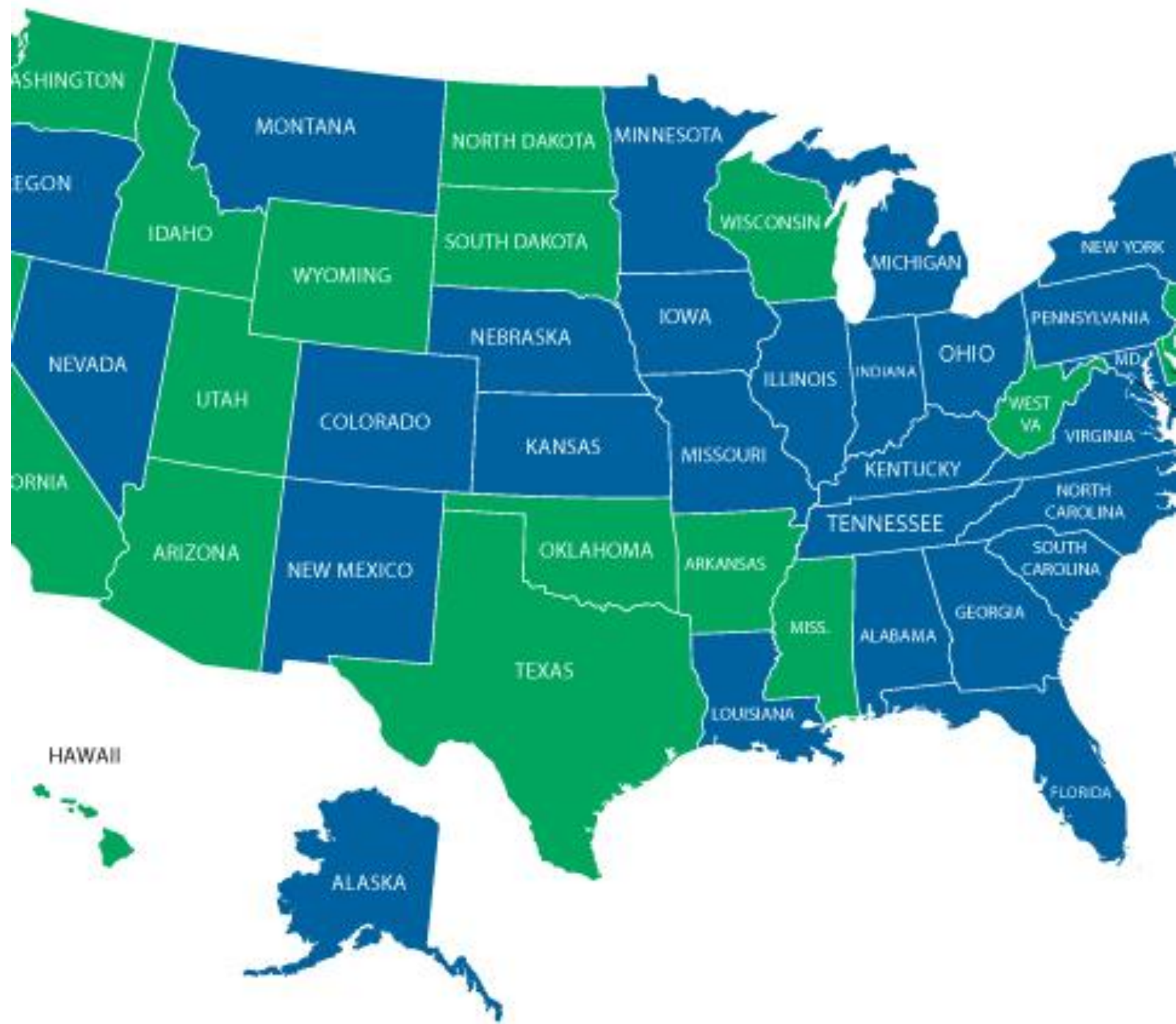
2018 ABLE Enhancements

- Annual Contribution Limit – increased
 - 2017 was \$14,000 and in 2018 is now **\$15,000**
- ABLE Financial Planning Act
 - Roll over funds from a traditional 529 College Savings Plan
 - Must be same beneficiary, total contribution limits still apply
 - Can only roll over \$15,000 in 2018 - if do that, no additional contributions to ABLE account allowed
 - While allowed, not always appropriate
- Saver's Tax Credit
 - ABLE account owners may be eligible to take advantage of Retirement Savings Contributions Tax Credit (Saver's)
- ABLE to Work
 - ABLE account owners who are EMPLOYED may be able to contribute MORE than **\$15,000** (possibly an **additional \$12,060**) depending on gross income.



States programs open for ABLE Accounts

- Wisconsin does not offer an ABLE account program
- Ohio was first program to launch – www.stableaccount.com
- Nebraska – the Enable Program launched on June 30, 2016. www.enablenebraska.com
- Some states' programs are only available to in-state residents. www.myablesavings.com
- 35 state programs available as of January 2019



What do I need to consider when choosing an ABLE Program?

- How to enroll – need to determine how the state program allows enrollment, online, in-person, etc.
- Investment Provider – each state's program will choose its own.
- Fees - each account may have an annual account fee, as well as investment management fee for the underlying investment option. Check on whether there are account minimums.
- Investment Options – the investment choices within the account. Do they have a money market fund, mutual funds, age-based portfolios, etc.?
- Distribution Options – will there be check-writing capabilities, loaded debit card, EFT, ACH, etc.? Will there be additional costs, or limitations on the amount of distributions from the accounts?

Resources for ABLE Accounts



- Wisconsin – Department of Revenue–
<https://www.revenue.wi.gov/Pages/faqs/ise-ABLEAccounts.aspx>
- ABLE National Resource Center –
www.ablenrc.org
 - Has a program comparison tool that is very useful
- Saving for College.com –
www.savingforcollege.com



Distributions from ABLE accounts



Can distribute cash directly to the beneficiary's bank account or be loaded onto a debit card, so long as used for qualified disability expenses OR not retained more than a month. If withdrawn for housing expense, must be spent for that in the month of withdrawal.



Can be used to pay for things that the beneficiary needs/wants that are "qualified disability expenses."



Penalty for making distributions for non-QDE purposes:

Taxable recognition of otherwise tax-free growth

Does not interfere with benefit eligibility UNLESS non-QDE funds are held over a month and make beneficiary's bank account exceed \$2,000.00.

Distributions from SNTs



Cannot distribute cash directly to the beneficiary if on SSI.



May pay for things that the beneficiary needs/wants.



May reimburse others for expenditures made on behalf of the beneficiary.



When beneficiary receives SSI, limitations on distributions for food or shelter (in kind support and maintenance, or “ISM”) may cause reduction of SSI monthly benefit.



First party trusts have strict rule that use of the trust must be for the beneficiary’s sole benefit – some recent clarifications in 2018 make this less scary



Penalty for violating sole benefit rule, cash distribution to beneficiary, or other SSI limitations:

Distributions will be treated as income that reduces SSI benefit.

Violation of sole benefit rule can make entire trust a countable asset.

Planning Considerations

- **Consideration 1:** Not a good idea to mix 1st party funds with 3rd party funds. 1st party SNTs are subject to Medicaid payback on beneficiary's death; 3rd party SNTs are not.
- **Consideration 2:** SNTs can do things that ABLE accounts cannot:
 - Receive more than \$15,000/year + earned income limit.
 - Exceed \$100,000 and still be exempt for purposes of SSI.
 - Provide professional management of account.
 - Some trust programs provide additional non-trust services to the beneficiary.
 - Pay for items that may not be “qualified disability expenses.”
 - Receive in-kind distributions (examples: stock, real estate, “inherited” IRA payable to the trust, etc.) vs. cash only.

Planning Considerations (continued)

- **Consideration 3:** ABLE accounts may be able to do things that SNTs cannot.
 - Beneficiary may possess direct access to funds when appropriate
 - Pay for food and shelter expenses without SSI reduction due to “ISM”
 - Receive rollovers from “traditional” 529 accounts (new in 2018)
- **Consideration 4:** Having both tools might be better than either one on its own.
 - Pay rent, food expenses from ABLE account; pay “non-ISM” expenses from the SNT
 - Give beneficiary control over small amount of funds in ABLE account when feasible, teaching money management skills
 - For 3rd party SNTs, distributing to ABLE minimizes taxation at very high trust income tax rates.
 - Especially if will be funded with an “inherited” IRA, where the annual required minimum distributions (RMDs) are taxed as ordinary income: distributions of SNT income to an ABLE account results in taxation at beneficiary’s much lower tax rate.

Comparison of SNTs and ABLÉ accounts

	Special Needs Trusts	ABLE Accounts
Exempt from MA/SSI Asset limits?	Yes, unlimited	Yes, up to a limit
Annual contribution limit?	No	Yes
Direct beneficiary access?	No	Yes
Tax-free growth?	No	Yes
Subject to guardianship ?	No	Yes
Age restriction?	No	Yes
Pay for ISM without SSI reduction?	No	Yes
Subject to Medicaid payback?	3 rd party no, 1 st party yes	Yes
Professional fees to create?	Yes	Minimal
Professional fees to maintain?	Generally, yes	Technically, no

Summary of ABLE accounts and Special Needs Trusts

- Understanding ABLE and Special Needs Trusts
 - ABLE Accounts are a new savings vehicle for current and future savings of individuals whose disability began before age 26.
 - Special Needs Trusts are still **essential** tools.
- ABLE Accounts and Special Needs Trusts can complement each other.
- Knowing when and how to use one or both is essential.
- Work with legal and financial professionals who have experience with special needs estate and financial planning.
- Special planning is needed for retirement account distributions to Special Needs Trusts.



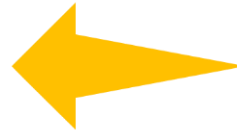
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Questions?

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