The Stephen Beck Jr.
Achieving a Better Life Experience (ABLE) Act:
One Year Later
After eight years of tireless work by our Congressional Champions, the National Down Syndrome Society, advocates from across the country and other disability organizations, the Stephen Beck Jr. Achieving a Better Life Experience (ABLE) Act (Public Law 113-295) was signed into law by President Obama on December 19, 2014. The ABLE Act amends the Internal Revenue Service Code of 1986 to create tax-free savings accounts for individuals with disabilities. The ABLE law aims to ease financial strains faced by individuals with disabilities, which are exacerbated by the $2,000 cap on assets that is required to preserve critical government supports. ABLE supplements, but does not supplant, benefits provided through private insurances, the Medicaid program, the supplemental security income program, the beneficiary’s employment and other sources. An ABLE account, which does not count toward this asset cap, could fund a variety of essential expenses for individuals, including medical and dental care, education, community based supports, employment training, assistive technology, housing and transportation.

The ABLE Act provides individuals with disabilities the same types of flexible savings tools that all other Americans have through college savings accounts, health savings accounts and individual retirement accounts. Families who have been able to set up regular 529 college savings accounts for their non-disabled children can now for the first time can save for their children with disabilities. People with disabilities are living longer, healthier and productive lives, working and contributing to society, yet they are forced to take low or no-paying jobs and live in poverty when they have the potential to achieve so much more. ABLE accounts will enhance their quality of life and promote their independence.

History of the ABLE Act

The ABLE Act was a legislative concept that took four US Congresses and almost a decade to enact into federal law. The idea behind the ABLE Act started around a kitchen table in Northern Virginia, after several parents from the Board of the Down Syndrome Association of Northern Virginia (DSANV) were discussing the inequities and injustice that existed in the current system as it related to the ability for individuals with disabilities and their families to save for the future. These five parents - Steve, Phil, Jenn, Rick and Christina - along with NDSS staff - were instrumental in the introduction of the first ABLE bill in 2006 by Congressman Ander Crenshaw (R-FL), which at the time was called the Financial Savings Account for Individuals with Disabilities (FSAID) Act. In 2010, the bill was renamed the Achieving a Better Life Experience (ABLE) Act in an effort to better define the goals of the legislation and, ultimately, was rewritten to place the ABLE program under the auspices of the 529 college and university savings program in the IRS Tax Code.

Making Bipartisan, Bicameral History

The passage of ABLE Act in the 113th Congress was led by Senators Robert Casey, Jr. (D-PA) and Richard Burr (R-NC), and Representatives Ander Crenshaw (R-FL), Cathy McMorris Rodgers (R-WA), Chris Van Hollen (D-MD) and Pete Sessions (R-TX), along with their Congressional staffs. The momentum behind the ABLE Act
intensified in the 113th Congress after the bill continued to receive record-breaking cosponsors and media attention. On July 23, 2014, the Senate Finance Subcommittee on Taxation and IRS Oversight held a Congressional hearing entitled, *Saving for an Uncertain Future: How the ABLE Act can Help People with Disabilities and their Families*, where NDSS Board Member and self-advocate Sara Wolff testified. On July 31, 2014, the House Ways and Means Committee unanimously passed the ABLE Act out of Committee. On December 3, 2014, the US House of Representatives passed the ABLE Act with 404 votes in favor and 17 against, and a few days later, the US Senate passed the ABLE Act as part of the Tax Extenders Package of 2014.

The ABLE Act is named after the late NDSS Vice Chairman and quarterback of the legislation, Stephen Beck, Jr., one of the original “kitchen table parents” and a father of two daughters, Mariae Rose and Natalie. Steve Beck made it his life’s passion to ensure his daughter, Natalie, who happens to have Down syndrome, had the same opportunities to save as everyone else. Beck cheered loudly in the House gallery with NDSS staff and other advocates when, on behalf of Rep. Julia Brownley (D-CA), Brianna Pitzele, a little girl with Down syndrome from California, pushed the button to cast the 404th vote in the House, officially passing ABLE. Tragically, Beck passed away shortly after this vote and less than two weeks before President Obama signed the ABLE Act into law on December 19, 2014.

At the end of the 113th Congress, the ABLE bill garnered the support of 85 percent of the entire Congress. ABLE was cosponsored by 380 of 435 US Representatives and 78 of 100 US Senators, making it one of the most bipartisan laws ever passed in the history of any Congress in the United States.

*Real People, Real Stories Make a Difference & Make History*

NDSS and Autism Speaks led the advocacy effort behind the bill’s passage, along with almost 100 national disability organizations and other key stakeholders. There are many, many advocates from across the country that aided in the passage of this landmark legislation. All of these advocates played a vital role in helping pass the ABLE Act into law by telling their own personal stories on how the ABLE Act would change their lives for the better.

One of the most famous faces and stories was that of NDSS Board Member and self-advocate Sara Wolff from Moscow, Pennsylvania. In February 2014, Wolff authored a Change.org petition calling on Congress to pass the ABLE Act. The petition garnered more than 260,000 signatures and served as the impetus for Wolff sharing her own personal story about how the ABLE Act would change her life. Wolff’s petition also
led to the ABLE Act’s endorsement by the *New York Times* and is featured in the recent [Change.org video](#) about the power of the online petition.

**Status at the Federal Level**

Following the passage of the federal ABLE Act in December 2014, the US Treasury has actively collaborated with NDSS and other disability organizations and stakeholders regarding next steps. In March 2015, the US Treasury and the IRS issued *Notice 2015-18*, which gave the green light for states to establish ABLE programs prior to issuance of federal guidelines on Section 529A. At that point, more than half of the states had already introduced bills in their legislatures. However, some states were hesitant to enact the bills prior to the issuance of federal guidelines on Section 529A. The notice released by Treasury and the IRS encouraged states to proceed with the establishment of ABLE programs and provided assurances that any state programs that did not meet the requirements established by the guidelines would be given “transition relief” to make changes to the ABLE programs, including providing “sufficient time” to make necessary changes. This notice also confirmed that the owner of an ABLE account is the designated beneficiary of the account.

**Proposed Federal Guidelines**

On June 19, 2015, the US Treasury issued [proposed regulations and rules](#) for the federal ABLE Act. NDSS welcomed the proposed regulations as a positive step toward effective implementation, but had significant concerns that the proposed regulations would create administrative hurdles for both individuals who need ABLE accounts and the states that must administer the programs. NDSS collaborated with leading disability organizations as well as other stakeholders to provide [comprehensive comments](#), which were submitted on September 16, 2015. The comments focused on making all state ABLE programs simple to use and accessible for individuals with disabilities and their families. The comments also aimed to lessen the administrative burden and cost for state treasurers and 529 administrators who will oversee the state plan implementation and rollout. NDSS President Sara Hart Weir and Board Member Sara Wolff provided [testimony](#) on these points at the IRS public hearing on the proposed ABLE regulations on October 14, 2015.

**IRS Guidance on ABLE Program Implementation**

On November 20, 2015, the IRS issued [interim guidance](#) to simplify ABLE program implementation, which was favorably received by NDSS and other disability advocates. The specific clarifications included:

- **Categorization of distributions not required:** ABLE programs need not include safeguards to determine which distributions are for qualified disability expenses, nor are they required to specifically identify those used for housing expenses. Designated beneficiaries will still need to categorize distributions when determining their federal income tax obligations.

- **Contributors’ taxpayer identification numbers (TINs) not required:** ABLE programs will not be required to request the TINs of contributors to the ABLE account at the time when the contributions are made as long as the program has a system in place to reject contributions that exceed the annual limits. However, if an excess contribution is deposited into a designated beneficiary’s ABLE account, the program will need to request the contributor’s TIN.
• Disability diagnosis certification permitted: Designated beneficiaries can open an ABLE account by certifying, under penalties of perjury, that they meet the qualification standards, including their receipt of a signed physician’s diagnosis if necessary, and that they will retain that diagnosis and provide it to the program or the IRS upon request. This means that eligible individuals with disabilities will not need to provide the written diagnosis when opening the ABLE account, and ABLE programs will not need to receive, retain or evaluate detailed medical records.

NDSS believes these changes will make ABLE programs less burdensome for states and more accessible to people with disabilities and their families.

Looking Ahead at the Federal Level

Stakeholders are still waiting for guidance on the ABLE Act from other federal agencies such as the Social Security Administration (SSA), the Centers for Medicare and Medical Services (CMS), the US Department of Housing and Urban Development (HUD) and the US Department of Education (ED). We expect SSA to issue Programs Operations Manual System (POMS) relating to ABLE by the end of December 2015. NDSS has met with SSA and is optimistic that SSA, as well as the other relevant federal agencies, will interpret ABLE as broadly as possible and will uphold the spirit and intent of the law in allowing ABLE account owners to retain eligibility for certain benefits as they save for their future.

NDSS and other disability advocates are working to make improvements to the federal ABLE Act. Just recently, an amendment was added to Section 303 of the 2015 Tax Extenders bill to remove the ABLE state residency requirement. Some other potential areas of improvement include: (1) adding the ability to rollover a 529 account into a 529A ABLE account, (2) increasing the age limit for onset of disability (which is currently age 26), and (3) providing for an exemption of earned income from the annual cap on contributions to an ABLE account.

State of the States

Harnessing the momentum of the federal bipartisan effort, 34 states have enacted their own versions of the ABLE Act and are in the process of setting up ABLE programs. These states are: Alabama, Arkansas, California, Colorado, Connecticut, Delaware, District of Columbia (enacted with expiration date of 1/13/16 - permanent legislation is pending), Florida, Hawaii, Illinois, Iowa, Kansas, Louisiana (pre-federal and post-federal), Maryland, Massachusetts (pre-federal), Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, North Carolina, North Dakota, Ohio, Oregon, Rhode Island, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia and Wisconsin. In addition, New York has passed an ABLE bill, which is awaiting the Governor’s signature.

These states have ABLE bills filed that are still active: Georgia (prefiled), Kentucky (prefiled), Maine, Massachusetts (revision of pre-federal legislation), New Jersey and Pennsylvania. We expect most of these bills to become law. Other states are organizing ABLE coalitions and planning to introduce or carry-over legislation. These states include Alaska, Arizona, Indiana, Maryland (program implementation bill) and Oklahoma.
Trends in Basic Structure of State ABLE Programs

There are many commonalities in the legislative design of state ABLE programs. The vast majority of the states have designated the state treasurer or state 529 plan administrator as the ABLE program administrator. A handful of states have empowered other government departments, such as Health and Human Services, to run the ABLE program as the administrator. Many states have set up Advisory Committees or Boards as part of their ABLE programs including Alabama, Arkansas, California, Delaware, Florida, Louisiana, Missouri, Montana, New York, North Carolina, Ohio, Oregon, Texas and Virginia. Maryland, Vermont and Washington will also have ABLE Advisory Boards but the specific composition and duties have yet to be determined by the ABLE task forces in these states.

While all states have aligned with the federal ABLE Act by excluding funds in ABLE accounts from taxable income, some states have gone even further and offered tax deductions for contributions to ABLE accounts. Seven states allow a deduction (Iowa, Michigan, Missouri, Montana, Nebraska, Oregon and Wisconsin) and one state allows a tax credit (Utah).

Implementation of State ABLE Programs

The passage of ABLE bills at the state level has moved at a lightning pace. Although there are no ABLE programs that have “gone live”, many states are enmeshed in ABLE program development. States such as Florida, Nebraska, Ohio and Virginia are leading the way. Some states, including Florida, Nebraska and Texas, have already created websites for their ABLE programs. While a few states may have ABLE accounts available in early to mid-2016, most states will not be able to offer ABLE accounts until 2017.

Conclusion

The ABLE Act stands for much more than being able to open up a tax-free 529A savings account for people with disabilities – the ABLE Act provides a guarantee (for the first time ever) that people with disabilities, and their families, can save their own mjoney without jeopardizing necessary federal benefits like Medicaid and Social Security Income (SSI). For people with disabilities and their families, this is the first major legislative victory to achieving greater economic self-sufficiency.
It is a momentous accomplishment to end the year with more than 2/3 of the states having passed their own versions of ABLE bills. Nevertheless, there is still much more work to be done to empower individuals with disabilities and their families to enjoy the same rights and opportunities as everyone else so that all individuals with disabilities may “achieve a better life experience”.

For More Information: Please visit the NDSS website: http://www.ndss.org/ABLE and www.ndss.org/stateABLE. For questions about ABLE, please contact Heather Sachs, Vice President of Advocacy & Public Policy, NDSS, hsachs@ndss.org.