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**WELFARE AND INSTITUTIONS CODE - WIC**

**DIVISION 4.5. SERVICES FOR THE DEVELOPMENTALLY DISABLED [4500 - 4885]** ( *Division 4.5 added by Stats. 1977, Ch. 1252.*  )

**CHAPTER 15. Qualified ABLE Program [4875 - 4885]** ( *Chapter 15 added by Stats. 2015, Ch. 796, Sec. 2.*  )

**4875.** For purposes of this chapter:

(a) "ABLE account" or "account" means the account established for and owned by a designated beneficiary pursuant to this chapter for the purpose of meeting the qualified disability expenses of the designated beneficiary of the account.

(b) "Administrative fund" means the fund used to administer this chapter.

(c) "Board" means the California ABLE Act Board established under this chapter.

(d) "California ABLE Program Trust" or "ABLE program trust" means the trust created pursuant to this chapter.

(e) "CalABLE account" means an ABLE account that is established within the program established by this chapter and administered by the board.

(f) "Designated beneficiary" means the eligible individual for whom the ABLE account was established and who is the owner of the account.

(g) "Eligible individual" means an individual who is eligible under the program for a taxable year if blindness or disability occurred before the date on which the individual attained 26 years of age, and during that taxable year either of the following criteria are satisfied:

(1) The individual is entitled to benefits based on blindness or disability under Title II or XVI of the federal Social Security Act, and that blindness or disability occurred before the date on which the individual attained 26 years of age.

(2) A disability certification, as defined in the federal ABLE Act, with respect to the individual is filed pursuant to the requirements set forth in the federal ABLE Act.

(h) "Federal ABLE Act" means the federal Stephen Beck, Jr., Achieving a Better Life Experience Act of 2014 (as codified in Section 529A of Title 26 of the United States Code and amended through Public Law 115-141).

(i) "Investment management" means the functions performed by a manager contracted to perform functions delegated by the board.

(j) "Investment manager" means a manager contracted to perform functions delegated by the board.

(k) "Program fund" means the program fund established by this chapter, which shall be held as a separate fund within the California ABLE Program Trust.

(l) "Qualified ABLE Program" or "program" means the program established by this chapter to implement the federal ABLE Act pursuant to Section 529A of the Internal Revenue Code.

(m) "Qualified disability expenses" means any expenses related to the eligible individual's blindness or disability that are made for the benefit of an eligible individual who is the designated beneficiary, including the following expenses: 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, and other expenses, which are approved by the Secretary of the Treasury under regulations and consistent with the purposes of the federal ABLE Act.

(n) This section shall remain in effect only until January 1, 2026, and as of that date is repealed.

(Amended by Stats. 2023, Ch. 324, Sec. 3. (AB 339) Effective January 1, 2024. Repealed as of January 1, 2026, by its own provisions. See later operative version added by Sec. 4 of Stats. 2023, Ch. 324.)

**4875.** For purposes of this chapter:

- (a) "ABLE account" or "account" means the account established for and owned by a designated beneficiary pursuant to this chapter for the purpose of meeting the qualified disability expenses of the designated beneficiary of the account.
- (b) "Administrative fund" means the fund used to administer this chapter.
- (c) "Board" means the California ABLE Act Board established under this chapter.
- (d) "California ABLE Program Trust" or "ABLE program trust" means the trust created pursuant to this chapter.
- (e) "CalABLE account" means an ABLE account that is established within the program established by this chapter and administered by the board.
- (f) "Designated beneficiary" means the eligible individual for whom the ABLE account was established and who is the owner of the account.
- (g) "Eligible individual" means an individual who is eligible under the program for a taxable year if blindness or disability occurred before the date on which the individual attained 46 years of age, and during that taxable year either of the following criteria are satisfied:
  - (1) The individual is entitled to benefits based on blindness or disability under Title II or XVI of the federal Social Security Act, and that blindness or disability occurred before the date on which the individual attained 46 years of age.
  - (2) A disability certification, as defined in the federal ABLE Act, with respect to the individual is filed pursuant to the requirements set forth in the federal ABLE Act.
- (h) "Federal ABLE Act" means the federal Stephen Beck, Jr., Achieving a Better Life Experience Act of 2014 (as codified in Section 529A of Title 26 of the United States Code and amended through Public Law 117-328).
- (i) "Investment management" means the functions performed by a manager contracted to perform functions delegated by the board.
- (j) "Investment manager" means a manager contracted to perform functions delegated by the board.
- (k) "Program fund" means the program fund established by this chapter, which shall be held as a separate fund within the California ABLE Program Trust.
- (l) "Qualified ABLE Program" or "program" means the program established by this chapter to implement the federal ABLE Act pursuant to Section 529A of the Internal Revenue Code.
- (m) "Qualified disability expenses" means any expenses related to the eligible individual's blindness or disability that are made for the benefit of an eligible individual who is the designated beneficiary, including the following expenses: 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, and other expenses, which are approved by the Secretary of the Treasury under regulations and consistent with the purposes of the federal ABLE Act.
- (n) This section shall become operative on January 1, 2026.

*(Repealed in (Sec. 3) and added by Stats. 2023, Ch. 324, Sec. 4. (AB 339) Effective January 1, 2024. Operative January 1, 2026, by its own provisions.)*

**4876.** There is hereby created the California ABLE Act Board that consists of the Treasurer, the Director of Finance, the Controller, the Director of Developmental Services, the Chairperson of the State Council on Developmental Disabilities, the Director of Rehabilitation, and the Chair of the State Independent Living Council, or their designees. The Treasurer shall serve as chair of the board.

*(Added by Stats. 2015, Ch. 796, Sec. 2. (SB 324) Effective January 1, 2016.)*

- 4877.** (a) There is hereby created an instrumentality of the State of California to be known as the California ABLE Program Trust.
- (b) The purposes, powers, and duties of the California ABLE Program Trust are vested in, and shall be exercised by, the board.
  - (c) The board, in the capacity of trustee, shall have the power and authority to do all of the following:

- (1) Sue and be sued.

- (2) (A) Make and enter into contracts necessary for the administration of the ABLE program trust, and engage personnel, including consultants, actuaries, managers, counsel, and auditors, as necessary for the purpose of rendering professional, managerial, and technical assistance and advice.

(B) Subdivision (a) of Section 10365.5 of the Public Contract Code shall not apply to a contract with a program consultant for the qualified ABLE program. Any contract with a program consultant for the qualified ABLE program that would have been prohibited by that subdivision shall be publicly disclosed in a manner specified by the board prior to entering into the contract.

(3) Adopt a corporate seal and change and amend it from time to time.

(4) Cause moneys in the program fund to be held and invested and reinvested.

(5) Accept any grants, gifts, appropriations, and other moneys from any unit of federal, state, or local government or any other person, firm, partnership, or corporation for deposit to the administrative fund or the program fund.

(6) Enter into agreements with designated beneficiaries or eligible individuals to establish and maintain an ABLE account.

(7) Make provisions for the payment of costs of administration and operation of the ABLE program trust.

(8) Carry out the duties and obligations of the ABLE program trust pursuant to this chapter and the federal ABLE Act pursuant to Section 529A of the Internal Revenue Code and federal regulations issued pursuant to that code, and have any other powers as may be reasonably necessary for the effectuation of the purposes, objectives, and provisions of this chapter.

(9) Carry out studies and projections in order to advise designated beneficiaries or eligible individuals regarding present and estimated future qualified disability expenses and the levels of financial participation in the ABLE program trust required in order to assist designated beneficiaries or eligible individuals.

(10) Participate in any other way in any federal, state, or local governmental program for the benefit of the ABLE program trust.

(11) Promulgate, impose, and collect administrative fees and charges in connection with transactions of the ABLE program trust, and provide for reasonable service charges, including penalties for cancellations.

(12) Set minimum and maximum investment levels.

(13) Administer the funds of the ABLE program trust.

(14) Procure insurance against any loss in connection with the property, assets, or activities of the ABLE program trust.

(15) Procure insurance indemnifying any member of the board from personal loss or liability resulting from a member's action or inaction as a member of the board.

(d) The Treasurer shall, on behalf of the board, appoint an executive director, who shall not be a member of the board and who shall serve at the pleasure of the board. The Treasurer shall determine the duties of the executive director and other staff as necessary and set his or her compensation. The board may authorize the executive director to enter into contracts on behalf of the board or conduct any business necessary for the efficient operation of the board.

*(Amended by Stats. 2016, Ch. 317, Sec. 2. (AB 1553) Effective September 13, 2016.)*

**4878.** (a) The board shall segregate moneys received by the ABLE program trust into two funds, which shall be identified as the program fund and the administrative fund.

(1) Notwithstanding Section 13340 of the Government Code, the program fund is hereby continuously appropriated, without regard to fiscal years, to the ABLE Act Board for the purposes specified in this act.

(2) The moneys in the administrative fund shall be available for the ABLE Act Board, upon appropriation, for administration of the act. Administrative costs shall not exceed 3 percent of the incoming funds for each fiscal year for the first five fiscal years following the opening of the first ABLE Act account. After the five-year period, administrative costs shall not exceed 1 percent of the incoming funds for each fiscal year.

(3) Funding for startup and administrative costs for the board shall be provided in the form of a loan from the General Fund sufficient to cover the board's projected administrative costs for its first two years of implementing the program. Once the loan has been expended and revenues from the program are sufficient to cover the board's ongoing costs, the board shall repay, within five years, the amount loaned, plus interest calculated at the rate earned by the Pooled Money Investment Account.

(b) Not later than 30 days after the close of each month, the investment manager shall place on file for public inspection during business hours a report with respect to investment performance. The investment manager shall report the following information, to the extent applicable, to the board within 30 days following the end of each month:

(1) The type of investment, name of the issuer, date of maturity, and the par and dollar amount invested in each security, investment, and money within the program fund.

- (2) The weighted average maturity of the investments within the program fund.
- (3) Any amounts in the program fund that are under the management of an investment manager.
- (4) The market value as of the date of the report and the source of this valuation for any security within the program fund.
- (5) A description of the compliance with the statement of investment policy.

(c) Moneys in the program fund may be invested or reinvested by the Treasurer or may be invested in whole or in part under contract with an investment manager, as determined by the board.

(d) The board shall annually prepare and adopt a written statement of investment policy. The board shall consider the statement of investment policy and any changes in the investment policy at a public hearing. The board shall approve the investment management entity or entities consistent with subdivision (c).

(e) Transfers may be made from the program fund to the administrative fund for the purpose of paying operating costs associated with administering the ABLE program trust and as required by this chapter. All costs of administration of the ABLE program trust shall be paid out of the administrative fund.

(f) All moneys paid by designated beneficiaries or eligible individuals in connection with ABLE accounts shall be deposited as received into the program fund, and shall be promptly invested and accounted for separately. Deposits and interest thereon accumulated on behalf of designated beneficiaries in the program fund of the ABLE program trust may be used for qualified disability expenses.

(g) The board shall maintain separate accounting for each designated beneficiary.

(h) Any designated beneficiary may, directly or indirectly, direct the investment of any contributions to his or her ABLE account, or any earnings thereon, no more than two times in any calendar year.

(i) The assets of the trust, including the program fund, shall at all times be preserved, invested, and expended solely and only for the purposes of the trust and shall be held in trust for the designated beneficiaries and no property rights therein shall exist in favor of the state. The assets shall not be transferred or used by the state for any purposes other than the purposes of the trust and consistent with the provisions of the federal ABLE Act.

*(Added by Stats. 2015, Ch. 774, Sec. 5. (AB 449) Effective January 1, 2016.)*

**4879.** (a) Under the program, a person may make contributions for a taxable year, for the benefit of an individual who is an eligible individual for that taxable year, to an ABLE account that is established for the purpose of meeting the qualified disability expenses of the designated beneficiary of the account if both of the following criteria are met:

- (1) The designated beneficiary is limited to one ABLE account for purposes of this chapter.
- (2) The ABLE account is established only for a designated beneficiary who is a resident of the United States.

(b) A contribution shall not be accepted if either of the following occurs:

- (1) The contribution is not in cash.

(2) Except in the case of contributions under Section 529A(c)(1)(C) of the Internal Revenue Code, relating to change in designated beneficiaries or programs, the contribution to an ABLE account would result in aggregate contributions from all contributors to the ABLE account for the taxable year exceeding the amount of both of the following:

(A) The amount allowed under Section 2503(b) of the Internal Revenue Code, relating to exclusion from gifts, for the calendar year in which the taxable year begins.

(B) In the case of any contribution by a designated beneficiary described in Section 529A(b)(7) of the Internal Revenue Code before January 1, 2026, the lesser of either of the following:

- (i) Compensation, as defined by Section 219(f)(1) of the Internal Revenue Code, includible in the designated beneficiary's gross income for the taxable year.
- (ii) An amount equal to the poverty line for a one-person household as promulgated under Section 9902(2) of Title 42 of the United States Code, for the calendar year preceding the calendar year in which the taxable year begins.

(c) The designated beneficiary shall retain ownership of all contributions made to the designated beneficiary's ABLE account to the date of utilization for qualified disability expenses, and all interest derived from the investment of the contributions to the designated

beneficiary's ABLE account shall be deemed to be held in the ABLE program trust for the benefit of the designated beneficiary. Neither the contributions, nor any interest derived therefrom, may be pledged as collateral for any loan.

(d) The board shall develop adequate safeguards to prevent aggregate contributions on behalf of a designated beneficiary in excess of the maximum contribution limits necessary to provide for the qualified disability expenses of the designated beneficiary. For purposes of this subdivision, aggregate contributions include contributions under any prior qualified ABLE program of any state or agency or instrumentality thereof.

*(Amended by Stats. 2022, Ch. 896, Sec. 2. (AB 2216) Effective January 1, 2023.)*

**4880.** (a) Notwithstanding any other law, moneys in, contributions to, and any distribution for qualified disability expenses from, an ABLE account, not to exceed one hundred thousand dollars (\$100,000), shall not count toward determining eligibility for a state or local means-tested program.

(b) Notwithstanding subdivision (a), Section 103 of Division B of Public Law 113-295 and Sections 17140.4 and 23711.4 of the Revenue and Taxation Code shall apply.

(c) (1) Notwithstanding any other law, moneys in an ABLE account, not to exceed one hundred thousand dollars (\$100,000), shall be exempt from enforcement of a money judgment without making a claim.

(2) A money judgment in favor of the State Department of Health Care Services shall not be subject to the exemption provided in paragraph (1) during any period of time in which federal law or guidance issued by the federal Centers for Medicare and Medicaid Services requires the department to recover funds from ABLE accounts for reimbursement of qualifying Medi-Cal expenditures.

(d) This section shall become operative on September 1, 2018.

*(Repealed (in Sec. 1.5) and added by Stats. 2017, Ch. 529, Sec. 2.5. (AB 688) Effective January 1, 2018. Section operative September 1, 2018, by its own provisions.)*

**4881.** (a) The board shall provide an annual listing of distributions to individuals with respect to an interest in an ABLE account to the Franchise Tax Board at a time and in a manner and form as specified by the Franchise Tax Board. The taxpayers' identification numbers obtained in connection with an ABLE account shall be used exclusively for state and federal tax administration purposes.

(b) The board shall make a report to the appropriate individual of any distribution to any individual with respect to an interest in an ABLE account, at a time and in a form and manner as required by the Franchise Tax Board.

(c) The board shall report annually to each designated beneficiary all of the following:

(1) The value of the designated beneficiary's account.

(2) The interest earned thereon.

(3) The rate of return of the investments in the designated beneficiary's account for that reporting period.

(4) Information on investments and qualified disability expenses that designated beneficiaries can use to set savings goals and contribution amounts.

(d) The board shall provide a means for designated beneficiaries to express concerns or comments regarding the ABLE program trust and any information required to be reported by this section.

*(Added by Stats. 2015, Ch. 796, Sec. 2. (SB 324) Effective January 1, 2016.)*

**4882.** (a) The board shall adopt regulations as it deems necessary to implement this chapter consistent with the federal Internal Revenue Code and regulations issued pursuant to that code to ensure that this program meets all criteria for federal tax-exempt benefits.

(b) The board may adopt regulations to implement this chapter as emergency regulations in accordance with the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code). The adoption of the regulations shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health and safety, or general welfare.

*(Added by Stats. 2015, Ch. 774, Sec. 7. (AB 449) Effective January 1, 2016.)*

**4883.** This act shall be construed liberally in order to effectuate its legislative intent. The purposes of this act and all of its provisions with respect to powers granted shall be broadly interpreted to effectuate the intent and purposes of the federal ABLE Act and not as a limitation of those powers.

*(Added by Stats. 2015, Ch. 796, Sec. 2. (SB 324) Effective January 1, 2016.)*

**4884.** The board shall market this program to residents of the United States to the extent funds are available to do so.

*(Amended by Stats. 2017, Ch. 470, Sec. 3. (AB 384) Effective January 1, 2018.)*

**4885.** (a) Notwithstanding any other state law, and only to the extent permitted under federal law, the program may permit a change in the designated beneficiary of an ABLE account, made during the life of the designated beneficiary, to take effect upon the death of the designated beneficiary. The amount to be transferred pursuant to the successor beneficiary designation is subject to all of the relevant payment and tax provisions of the federal ABLE Act.

(b) Following the death of a designated beneficiary, and only after the State Department of Health Care Services has received approval by the federal Centers for Medicare and Medicaid Services, both of the following shall apply:

(1) For CalABLE accounts established on or after January 1, 2023, the following shall apply:

(A) The state shall not seek recovery pursuant to Section 14009.5 of any amount remaining in a designated beneficiary's CalABLE account for any amount of medical assistance paid for the designated beneficiary after the establishment of the account under the state's Medicaid plan established under Title XIX of the federal Social Security Act.

(B) The state shall not file a claim for any amount remaining in a designated beneficiary's CalABLE account for the payment under subdivision (f) of Section 529A of the Internal Revenue Code.

(2) For CalABLE accounts and ABLE accounts established prior to January 1, 2023:

(A) The state shall not seek recovery pursuant to Section 14009.5 of any amount remaining in a designated beneficiary's CalABLE or ABLE account for any amount of medical assistance paid for the designated beneficiary after the establishment of the account under the state's Medicaid plan established under Title XIX of the federal Social Security Act.

(B) The state shall not file a claim for any amount remaining in a designated beneficiary's CalABLE or ABLE account for the payment under subdivision (f) of Section 529A of the Internal Revenue Code.

*(Amended by Stats. 2022, Ch. 896, Sec. 3. (AB 2216) Effective January 1, 2023.)*