

Department of Legislative Services  
Maryland General Assembly  
2018 Session

FISCAL AND POLICY NOTE  
Third Reader - Revised

House Bill 782

(Delegate Waldstreicher, *et al.*)

Health and Government Operations

Budget and Taxation

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Maryland Achieving a Better Life Experience (ABLE) Program – Modifications

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This bill prohibits the State, unless required by federal law, from seeking payment from a Maryland Achieving a Better Life Experience (ABLE) account or its proceeds for any amount of medical assistance paid for the designated beneficiary. A related provision of State law that authorizes any state to file for reimbursement of medical assistance paid under the state’s Medicaid plan after the establishment of an ABLE account is repealed, although the authorization still exists in the federal law. Unless prohibited by federal law, on the death of a designated beneficiary, money and assets in an ABLE account may be transferred to (1) the beneficiary’s estate or (2) an ABLE account for another eligible individual specified by either the designated beneficiary or the beneficiary’s estate. The bill also conforms to recent federal law changes related to account contributions and rollovers from 529 plans. **The bill takes effect June 1, 2018.**

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Fiscal Summary

**State Effect:** Likely no effect in FY 2018. General fund revenues decrease beginning in FY 2019 due to reduced Medicaid recoveries, offset by revenue increases due to taxable ABLE account transfers beginning in that same year, as discussed below. The bill does not otherwise materially affect State finances or operations.

**Local Effect:** Local revenues increase due to taxable ABLE account transfers beginning in FY 2019. Expenditures are not affected.

**Small Business Effect:** None.

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## Analysis

**Current Law/Background:** The Stephen Beck, Jr., Achieving a Better Life Experience Act of 2014 established a new § 529A of the Internal Revenue Code that permits a state (or a state agency or instrumentality) to establish and maintain a new type of tax-advantaged savings program, a qualified ABLE program, under which contributions may be made to an account that is established for the purpose of meeting the qualified disability expenses of the designated beneficiary of the account.

State programs must adhere to minimum federal guidelines to be considered qualified ABLE programs under federal law. Eligibility is limited to individuals with significant disabilities for whom the onset of the disability occurred prior to age 26. Total annual contributions are generally limited to the amount allowed for tax-free gifts (currently \$15,000), and assets over \$100,000 in an account count toward eligibility for Social Security supplemental income.

Chapter 39 of 2016 required the Maryland 529 Board, in consultation with the Maryland Department of Disabilities, to establish, administer, manage, and promote the Maryland ABLE Program. The Act implemented recommendations of a State task force established in 2015. The program began accepting applicants in late November 2017, and as of January 19, 2018, had 216 accounts with a combined \$1.2 million in assets (\$5,379 on average). The maximum account balance is \$350,000.

### *Recovery of Benefits upon the Death of a Designated Beneficiary*

Federal law specifies that, subject to any outstanding payments due for qualified disability expenses, upon the death of an ABLE account designated beneficiary, payments made by a state's Medicaid program for medical assistance paid for the designated beneficiary, net of premiums paid, must be distributed from the account to the state upon filing of a claim for payment by the state.

Federal guidance issued in September 2017 has clarified this provision. States *must* seek recovery of funds in an ABLE account that have become part of an estate otherwise subject to Medicaid recovery. However, if the estate of an ABLE account beneficiary is not otherwise subject to Medicaid recovery, states have discretion on whether to file a claim against the ABLE account of a deceased individual.

The State's Medicaid program must seek recovery of medical assistance benefits correctly paid for by the Maryland Department of Health from the estate of any individual who was age 55 or older when the individual received the benefits, subject to certain limitations. Generally, recoveries from an estate are prohibited while the deceased participant has a surviving spouse, children, or a disabled son or daughter, or in cases where substantial hardship will result.

### *Taxable Distributions*

Distributions from an ABLE account are taxable unless specifically excluded by federal law. Federal law allows a beneficiary to transfer funds in an ABLE account to another ABLE account for a new eligible individual *who is a family member* of the designated beneficiary. Transfers that are made in such a manner are not treated as distributions subject to tax or additional penalties. A “member of the family,” with respect to any designated beneficiary, is a brother, sister, stepbrother, or stepsister. Funds transferred to the estate of the beneficiary upon the death of the beneficiary are also not subject to tax or penalties.

The Department of Legislative Services is aware of at least four states that have enacted legislation similar to the bill: California, Delaware, Oregon, and Pennsylvania. Maryland 529 advises that the bill may encourage additional individuals to open an ABLE account.

### *Federal Tax Cuts and Jobs Act of 2017*

The federal Tax Cuts and Jobs Act of 2017 allows a qualified beneficiary to contribute additional funds to his or her ABLE account each year through calendar 2025. The additional contribution is limited to either the beneficiary’s compensation or the federal poverty level for a one-person household, whichever is less. In 2018, the relevant federal poverty level is \$12,140.

The Act also allows account balances from 529 plans to be rolled over into ABLE accounts through calendar 2025, subject to the established general limit of the amount allowed for tax-free gifts (currently \$15,000).

### **State Revenues:**

#### *Recovery of Benefits upon the Death of a Designated Beneficiary*

Federal guidance allows states discretion on whether to file a claim against an ABLE account of a deceased individual that is not otherwise subject to Medicaid recovery (*i.e.*, typically if the individual died before age 55). The bill, consistent with the federal guidance, prohibits such recoveries. Therefore, Medicaid recoveries decrease by an indeterminate amount, likely beginning no sooner than fiscal 2019. Half of these recoveries accrue to the general fund, the remainder revert to the federal government. The amount cannot be reliably estimated but is assumed to be minimal for at least the next several years while the program is new.

### *Taxable Distributions*

Under federal law, transfers to the estate of a deceased designated beneficiary or the ABLE account of a close family member of the deceased designated beneficiary are not taxable. However, the bill allows transfers to the ABLE account of another eligible individual; if the eligible individual is not a close family member, the transfer is taxable. Therefore, general fund revenues increase beginning in fiscal 2019 to the extent that taxable transfers occur due to the bill. The amount cannot be reliably estimated but is assumed to be minimal for at least the next several years while the program is new.

### *529 Rollovers and Additional Contributions*

Conforming to new federal authorizations for qualified ABLE programs related to 529 rollovers and additional contributions may marginally reduce tax revenues (since 529 rollovers are not taxable) or increase the number of individuals who remain eligible for State and local means-tested programs, but it is not expected to materially affect State finances.

**Local Revenues:** For the reasons discussed above, the bill allows taxable transfers between ABLE accounts. Local revenues increase beginning in fiscal 2019 to the extent that taxable transfers are made. The amount cannot be reliably estimated but is assumed to be minimal for at least the next several years while the program is new.

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## **Additional Information**

**Prior Introductions:** None.

**Cross File:** SB 550 (Senator Zucker, *et al.*) - Budget and Taxation.

**Information Source(s):** Maryland Department of Health; Maryland State Treasurer's Office; Judiciary (Administrative Office of the Courts); Maryland 529; Register of Wills; Department of Legislative Services

**Fiscal Note History:** First Reader - February 19, 2018  
mm/rhh Third Reader - March 23, 2018  
Revised - Amendment(s) - March 23, 2018

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