

Date: February 28, 2023

Bill number: HB0354

Committee: House Health and Government Operations Committee

Bill title: **Maryland Achieving a Better Life Experience (ABLE) Program- Account Establishment**

DHS Position: **LETTER OF INFORMATION**

The Maryland Department of Human Services (DHS) thanks the Committee for the opportunity to provide written information for House Bill 354 (HB 354).

House Bill 354 would establish certain procedures for Achieving a Better Life Experience (ABLE) accounts and the distribution of funds beginning October 1, 2023. The bill specifically establishes who, other than the designated beneficiary of the account, can establish an account on the designated beneficiary's behalf, as well as request distributions from the account for the designated beneficiary. This bill also requires the Maryland 529 Board to have procedures set for how account establishment and distribution can occur with an authorized representative.

The Maryland ABLE program helps individuals with a disability access resources to pay for disability-related expenses without jeopardizing eligibility for SSI or Medicaid. Funds from an ABLE account can be utilized to cover living expenses, education, employment training and support, assistive technology and other services related to the beneficiary's disability. House Bill 354 expands the pool of authorized representatives who can establish and request distribution from these accounts on behalf of eligible individuals, which will increase utilization of the Maryland ABLE Program.

DHS requests the Committee to take two key considerations into account for ensuring that individuals have the opportunity to make life decisions regarding their financial well being, and that sufficient protections exist to prevent the misuse of these funds and the exploitation of these individuals. First, House Bill 354 does not provide clarity regarding who may or may not be an additional eligible person to establish an ABLE account. Secondly, Local Departments of Social Services and Area Agencies on Aging Directors serve per § 13-705 of the Estates and Trust Article as the Public Guardian of the Person. House Bill 354 would be strengthened by including the clarification that they are not permitted to establish an ABLE Account.

Adult Protective Services is mandated to investigate allegations of financial exploitation of vulnerable adults in Maryland. Financial exploitation investigations continue to rise as more public awareness and educational outreach is provided on the topic. House Bill 354 may be overly expansive in that it would permit any person, without requiring a fiduciary relationship as a power of attorney or any other relationship or legal duty to the beneficiary, to open a 529A account and manage its funds for an individual with a disability. It appears to permit any individual authorized to open the account to request distributions from the account, possibly subjecting the beneficiary to tax liability, loss of benefits, and potential misuse of assets.

The Department appreciates the opportunity to provide the aforementioned information to the Committee for consideration during your deliberations. DHS welcomes continued collaboration with the Committee on HB 354.

