PASSAGE OF FEDERAL ABLE ACT

- House of Representatives
  - ✓ Passed December 3, 2014
  - ✓ Vote: 404-17
- Senate – Added to Tax Extenders Bill
  - ✓ Passed December 16, 2014
  - ✓ Vote: 76-16
- Signed into law by President Obama – December 19, 2014
- Renamed Stephen Beck, Jr., Achieving a Better Life Expectancy Act – honoring Virginia Father and early advocate – passed away in December 2014

PASSAGE OF ALABAMA ABLE ACT

- Senate passed on April 21, 2015
  - ✓ Vote: 27 -1
- House of Representatives Passed on June 03, 2015
  - ✓ Vote 103-0
- Signed into law by Governor Robert Bentley on June 09, 2015

WHAT IS THE ABLE ACT?

- Creates new IRC 529 A
  - ✓ Authorizes a new type of tax- advantage savings programs: Qualified ABLE Programs
  - ✓ To encourage and assist individuals and families saving to support individuals with disabilities
  - ✓ To provide secure funding for disability-related expenses to supplement private insurance, Medicaid, SSI and other benefits

- Modeled in many respects after 529 college savings accounts

- First major federal legislation for the disabled since the 1990 Americans with Disabilities Act

WHAT ARE THE STATES DOING?

- States with an ABLE Bill in 2015: 41

- Where is the responsibility placed?
  - ✓ Department of Treasury: 15
  - ✓ College Savings Plan: 7
  - ✓ Health/ Human Services Agency: 8
  - ✓ Other: 11

STATUTORY AND OPERATIONAL CONSIDERATIONS

ABLE ACT	529 STATUTE
Account Owner must be beneficiary	Account Owner may be beneficiary
Beneficiary must be an “Eligible Individual”	No comparable restrictions.
In-State/ Contracting State residency required	Plans may be offered to instate residents and nationwide
1 ABLE account per beneficiary requirement	No account owner/beneficiary limit
Annual account contribution limit requirement currently $14,000.00	No annual account contribution limit for Qualified Tuition Programs
SSI eligibility limit - $100,000.00	No Comparable Qualified Tuition Program provisions
Definition of Qualified Disability Expenses	Definition of Qualified Tuition Expenses
Withdrawals	Withdrawals
Rollovers: Narrow “Member of the Family” definition for rollovers and beneficiary changes	Rollover: Broader definition of “Members of the Family” for Qualified Tuition Programs
Medicaid recapture requirement (Transfer to State)	No comparable Qualified Tuition Program Provision
Contributions not allowed for state tax deduction	Contributions allowed for state tax deductions

ABLE FACTS

- Beneficiary must be declared disabled by the age of 26.
- Beneficiary must be declared disabled by Social Security or submit a disability certification that would include a physician's diagnosis.
- Account must be established in the designated beneficiary's state of residence or in a contracting state.
- The total annual contribution limit is $14,000.00 or the current gift tax inclusion.
- The first $100,000.00 is exempt from the SSI $2,000.00 individual limit. If the account exceeds $100,000.00, the benefits are suspended; however the eligibility will not be terminated. The account will remain suspended until the balance falls below $100,000.00.
- Aggregate Contributions may not exceed the state limit for 529 savings accounts. The State of Alabama's limit is $350,000.00
- Medicaid is not suspended due to account balances; however there is a Medicaid payback. Anything remaining in the account when the beneficiary dies may be claimed by the state for Medicaid payments that were made after the account was established. The Medicaid payback is not required until after the payment of all outstanding payments due for the qualified disability expenses have been made.
- Qualified disability expenses include: education, housing, 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.
- Qualified distributions are tax exempt.

Summary of Proposed IRS Regulations of Concerns

The full proposed regulations were 76 pages in length; however, those of concern to CSPN and State Treasury are as follows:

- Eligible Individual Determination – Two Statutory methods for an individual to qualify:

  - Filing of a disability certification with the Secretary of the Treasury that certifies that the individual ha a qualifying disability or is blind and that such disability or blindness occurred before the individual's 26th birthday and containing a physician-signed disability diagnosis. The proposed regulations shift to the state programs the Treasury Department's statutory responsibility to receive, and perhaps assess the facial adequacy of a disability certificate by stating that a "disability certification will be deemed to be filed with the Secretary once the qualified ABLE program has received the disability certification."

  - Eligibility for Social Security Act benefits based on blindness or disability that occurred before the individual's 26th birthday.

Concerns: the portion of the proposed regulations "deeming" disability certifications filed with Treasury when filed with the State. If the State must be involved in this process, ABLE must be allowed to rely on a self-certification by the account owner that the certification and physician's diagnosis has been filed with Treasury.

➢ Qualified Disability Expenses:

The proposed regulations provide a definition of “qualified disability expenses: which states that such term “includes basic living expenses and is not limited to items for which there is a medical necessity or which solely benefit a disabled individual.”

- Distinguishing Among Types of Distributions
  The proposed regulations state that “a qualified ABLE Program must establish safeguards to distinguish between distributions used for the payment of qualified disability expenses and other distributions and to permit the identification of the amounts distributed for housing expenses….”, and to report this information to the Commissioner of Social Security.

Concerns: This language should be deleted as the statute allows an ABLE account owner to request account distributions in advance of paying expenses, and the State will not be able to constitute a qualified disability expense. CSPN suggests striking this regulation as the statute simply requires aggregate distribution reporting, not transaction-by-transaction reporting.

Alternatively, if this regulation requirement is not eliminated, CSPN recommends that the account owner be allowed to self-certify, under penalty of perjury, that the withdrawal will be applied for (i) housing expense; (ii) other qualified disability expense; and (iii) non-qualified expenses.

➢ Requirement to obtain TINS for all contributors

- Proposed regulations require the State to request the TIN for each contributor to an ABLE account at the time the contribution is made. It appears this obligation is being imposed for the purpose of reporting to the IRS the return of any monies considered excess contributions.

Concerns: Require the TIN to be required only when an excess contribution is returned to the contributor.

Note: The regulations are issued as proposed regulations, and therefore technically are not in effect. Comments are due by 9/19/2015 in the Federal Register, and a public hearing on the regulations will be held on 10/14/2015.