



Legislative Bulletin.....December 3, 2014

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H.R. 647 - ABLE Act of 2014

H.R. 647 - ABLE Act of 2014 — (Crenshaw, R-FL)

Order of Business: [H.R. 647](#) is scheduled for consideration on December 3, 2014, under a [closed rule](#).

The rule provides that, in the engrossment of H.R. 5771 (the Tax Increase Prevention Act of 2011), the Clerk add the text of H.R. 647 (the ABLE Act) as passed by the House as new matter at the end of H.R. 5771. This means that the legislation taken up by the Senate will consist of a combined extenders bill and ABLE Act.

Summary: This bill amends the Internal Revenue Code to establish a new type of tax-favored savings program- an ABLE program – which is designed specifically for persons with disabilities. An eligible individual is defined as someone for whom a disability certification has been filed with the Secretary of the Treasury for a taxable year, or who has been determined for the purposes of Social Security Disability Insurance benefits or Supplemental Security Income (SSI) benefits to meet the requirements relating to disability or blindness, and must have occurred before the individual turned 26. It is important to note, an individual does not need to receive SSI or disability insurance to open an ABLE account, nor does having an ABLE account ensure eligibility for those programs.

Similar to a [529 qualified tuition program](#), an ABLE program is established and maintained by a state and allows for contributions to be made to an eligible individual’s ABLE account, which can then be used for qualified disability expenses. These expenses include: 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 approved by the Secretary. Contributions to the account must be made in cash and are limited, during a taxable year, to the annual gift tax exclusion amount (\$14,000 for 2014). In addition, aggregate contributions are subject to the state limit for education related 529 accounts.

According to the [Joint Committee on Taxation](#), “Any distribution under an ABLE program is excluded from the distributee’s gross income to the extent that the total distribution does not

exceed the qualified disability expenses of the beneficiary during the taxable year. If a distribution from an ABLE account exceeds the qualified disability expenses of the beneficiary, the portion of the excess that is treated as earnings is subject to income tax and an additional 10-percent tax.” ABLÉ accounts that are rolled over into another ABLÉ account (for example, if an enrollee moves to a new state) or rolled over to another ABLÉ account for a beneficiary’s eligible family member (who must also be an eligible individual) may be transferred without income tax liability. Upon the death of an ABLÉ account beneficiary, remaining assets are first distributed to any State Medicaid plan that provided medical assistance to the designated beneficiary. The amount of any such Medicaid payback is calculated based on amounts paid by Medicaid after the creation of the ABLÉ account.

Contributions to an ABLÉ account and any distribution for qualified disability expenses will be disregarded for the purposes of determining eligibility to receive, or the amount of, any assistance or benefit authorized by any Federal means-tested program. However, in the case of Supplemental Security Income, a distribution for housing expenses is not disregarded, nor are amounts in an ABLÉ account in excess of \$100,000. In the event an individual has excessive account funds (more than \$100,000) their SSI benefits will not be terminated, only suspended. This suspension does not impact an individual’s Medicaid eligibility.

In the event of a bankruptcy, funds contributed by a parent or grandparent and placed in an ABLÉ account 365 days before the filing are protected.

Finally, a change is made to 529 tuition programs to allow investment direction by an account contributor or designated beneficiary up to two times per year. According to the Ways and Means Committee, current law allows no investment direction, although Treasury guidance allows such direction up to once per year.

Offsets:

Sec. 201: Corrections to workers compensation offset age:

- Under [current law](#), those who receive both Disability Insurance (DI) and worker’s compensation (WC) cannot receive benefits that exceed more than 80 percent of their earnings prior to becoming disabled. To keep the benefit total below 80 percent, the DI benefits are offset by the WC benefit (excess amount is deducted from Social Security) until the worker turns 65, at which time WC ends. However, when the full retirement age was increased by Congress to 67, the increase in the age until the WC was offset was left unchanged. This section the age until which the WC offset applies would be aligned to the increased full retirement age for Social Security. CBO estimates this change to save \$220 million.

Sec. 202: Accelerated application of relative value targets for misvalued services in the Medicare physician fee schedule:

- This section makes changes to the Protecting Access to Medicare Act ([Public Law 113-93](#)) as it relates to the accurate valuation of services under the physician fee schedule. The original policy authorized the Secretary of Health and Human Services to work with health care providers to identify misvalued services, and increase payment accuracy by

improving the valuation of services. The Protecting Access to Medicare Act established an annual target for the reduction in misvalued services in each of the years 2017-2020. If the target (0.5 percent of the estimated amount of fee schedule expenditures) is met, the amount is redistributed to other services within the physician fee schedule. If the target is not met, fee schedule payments for the year are reduced by the difference between the target and the amount of misvalued services identified in a given year.

- Sec. 202 accelerates the date of enactment of this section from 2017 to 2016, and increases the target for relative value adjustments for misvalued services for 2016 to 1 percent (as opposed for .5 percent for other years). CBO estimates this provision to reduce spending by \$356 million.
- The American Medical Association (AMA) has [issued concerns](#) about this section. It is concerned the accelerated timeline and the amount of reallocation that must be found in the first year will lead to an across the board cut to physician services. In addition, the AMA highlights an announcement in the [2015 Medicare Physician Fee Schedule](#) released on October 31, 2014, in which CMS states its intention to ignore Congressional direction in the Protecting Access to Medicare Act, and not finalize potentially misvalued high expenditure codes. The AMA is concerned, “misvalued codes redistribution targets simply cannot be met if the high expenditure services are not on the table for review.”
- AARP has also issued a letter of concern, and can be viewed [here](#).

Sec. 203: Consistent treatment of vacuum erection systems in Medicare Parts B and D:

- Under current law, standard Medicare Part D plans are [prohibited](#) from covering erectile dysfunction medications.
- This provision [prohibits Medicare](#) from covering vacuum erection systems until such time that Medicare covers erectile dysfunction drugs under Medicare Part D. CBO estimates this provision to reduce spending by \$444 million.

Sec. 204: One-year delay of implementation of oral-only policy under Medicare ESRD prospective payment system:

- According to [CMS](#), Section 153(b) of the Medicare Improvements for Patients and Providers Act of 2008 (MIPPA) amended the Social Security Act to require CMS to implement a fully bundled PPS for renal dialysis services furnished to Medicare beneficiaries for the treatment of ESRD effective January 1, 2011. The bundled payment under the ESRD PPS includes all renal dialysis services furnished for outpatient maintenance dialysis, including ESRD-related drugs and biologicals (with the exception of oral-only ESRD drugs until 2024 as required by section 217(a)(1) of the Protecting Access to Medicare Act of 2014 (PAMA)) and other ESRD-related items and services that were formerly separately payable under the previous payment methodologies.
- Previous delays to this policy can be found in the American Taxpayer Relief Act (delayed it until January 1, 2016), and The Protecting Access to Medicare Act of 2014 (delayed it through December 31, 2023).
- Sec. 204 further delays this policy through December 31, 2024. CBO estimates the provision would reduce spending by \$380 million.

Sec. 205: Modification relating to inland waterways trust fund financing rate:

- Sec. 205 increases the excise tax on imposed on fuel used in powering commercial cargo vessels on inland or intra-coastal waterways from 20 cents to 29 cents beginning on March 31, 2015.
- Revenues collected are placed in [Inland Waterways Trust Fund](#) which was established to finance construction and major rehabilitation on the nation's inland waterways. According to JCT, the provision would increase revenues by \$260 million over 2015-2024.

Sec. 206. Certified professional employer organizations:

- This section amends the Internal Revenue Code to allow the IRS to certify a qualifying professional employer organization (PEO) to be solely responsible for their customer's employment taxes. Currently, when a business contracts with a PEO to handle its payroll functions, the business remains liable in the event the PEO doesn't submit the taxes properly.
- This section directs the Secretary to promulgate recordkeeping rules to ensure compliance with this section.
- In order to become certified, a PEO must meet requirements established by the Secretary, agree to satisfy the bond and financial review provision, and compute taxes using an approved actuarial method.
- A PEO would be charged a fee of no more than \$1,000 per year in connection to the certification from the Secretary.
- According to Ways and Means, the provision generally would be effective for wages paid by a certified PEO for services performed by an employee after 2015, and the IRS would be required to establish the PEO certification program by July 1, 2015. According to JCT, the provision would increase revenues by \$8 million over 2015-2024.

Sec. 207: Exclusion of dividends from controlled foreign corporations from the definition of personal holding company income for purposes of the personal holding company rules:

- According to the Ways and Means Committee, this provision would exclude dividends received from a foreign subsidiary from the additional 20-percent tax on personal holding company income, though the dividends would remain subject to corporate income tax. Under current law, the additional tax applies to the retained passive income of corporations that are majority owned by five or fewer individuals and more than 60 percent of whose income consists of certain types of passive income such as dividends, interest, and royalties – including dividends derived from an active trade or business of a foreign subsidiary. The provision would be effective for tax years ending on or after the date of enactment. The provision is also included in S. 2260, reported by the Senate Finance Committee on a bipartisan basis.
- According to JCT, the provision would increase revenues by \$14 million over 2015-2024.

Sec. 208: Inflation adjustment for certain civil penalties under the Internal Revenue Code of 1986:

- This provision would index for inflation the fixed-dollar civil tax penalties (currently at \$135) under [law](#) for the failure to file a tax return or pay a tax. In addition, penalties are assessed for the following:

1. Failure to return certain information returns, registration statements, or other statements;
 2. Failure of a paid preparer to meet certain obligations;
 3. Failure of a partnership to file or an S corporation to file a return;
 4. Failure to file correct information returns and payee statements.
- According to JCT, the provision would increase revenues by \$115 million over 2015-2024.

Sec. 209: Increase in continuous levy:

- This section authorizes the Treasury Department to levy up to 30 percent of a payment to a Medicare provider to collect unpaid taxes. Under [current law](#), the department is able to levy 15 percent of payments.
- According to JCT, the provision would increase revenues by \$241 million over 2015-2024.

Additional Background: The federal Supplemental Security Income (SSI) program is a means tested program which provides monthly cash assistance to eligible individuals who are disabled, blind, or elderly and have little income and few assets. In [June 2014](#), 8.4 million individuals received federally administered SSI payments, including 1.3 million children under the age of 18, 5.0 million adults aged 18-64, and 2.1 million adults aged 65 and older.

According to the [Congressional Research Service](#), to qualify for SSI disability benefits an individual must meet the definition of disability, which is the inability to engage in substantial gainful activity by reason of a medically determinable physical or mental impairment expected to result in death or last at least 12 months.

In order to remain eligible for SSI, beneficiaries must meet the countable resource limit which is \$2,000 for individuals and \$3,000 for couples. These amounts are not indexed for inflation and have remained at their current levels since 1989. Some resources are not counted in determining eligibility for SSI. Excluded resources include the following:

- an individual's home and adjacent land;
- one car, regardless of value, if it is used for transportation by the individual or a member of his or her household;
- property essential for self-support;
- household goods and personal effects;
- burial funds of \$1,500 or less; and
- life insurance policies with a cumulative face value of \$1,500 or less.

In addition to resources, two types of income, earned and unearned, are considered for the purposes of determining SSI eligibility. In 2014, the monthly earned income amount at which an individual with no unearned income and no special earned income exclusions no longer qualifies for a federal SSI payment—not including any state supplement—is \$1,527 (\$2,249 for a couple). The majority of adult SSI-recipient terminations in 2012 were due to excess income.

Committee Action: H.R. 647 was introduced on February 13, 2013, by Representative Crenshaw, and was referred to the Committee on Ways and Means and the Committee on Energy and Commerce. Ways and Means marked up H.R. 647 on July 31, 2014, and ordered the bill, as amended, favorably reported.

In addition, a [legislative hearing](#) on the Social Security Disability Insurance program on June 19, 2013.

Outside Groups Support: [Collaboration to Promote Self Determination – Coalition Letter](#)

Possible Conservative Concerns: The Heritage Foundation’s “[How the ABLE Act Would Expand the Welfare State](#)” expresses concerns that this bill would increase the number of individuals eligible for certain means tested programs. The [CBO](#) estimates the average monthly SSI caseload would increase by around 25,000 (or about one-quarter of one percent) in 2024. This is due to an influx of individuals eligible for SSI who had SSI benefits denied or interrupted because of excess resources and can now use an ABLE account instead of spending down their resources, or those who do not apply for SSI under current law because of excess resources, but who would meet SSI’s age or disability requirement and income requirement.

Section 205, which addresses modification relating to inland waterways trust fund financing rate, has also led to concerns from conservatives. This section increases an excise tax on fuel used in powering commercial cargo vessels on inland or intra-coastal waterways. The revenues collected are placed in the Intercostal Waterways Trust Fund and used for construction and rehabilitation on the nation’s inland waterways. Some may consider this source of revenue as being double counted – both for the Intercostal Waterways Trust Fund as well as to offset costs associated with the ABLE Act.

Administration Position: No Statement of Administration Policy is available at this time.

Cost to Taxpayers: [CBO](#) and JCT estimate that enacting H.R. 647 would increase on-budget deficits by \$187 million and reduce off-budget deficits by \$220 million over the 2015-2024 period.

In total, enacting H.R. 647 would reduce unified budget deficits by \$33 million over the 2015-2024 period. The bill would reduce outlays by \$294 million and reduce revenues by \$261 million over those 10 years.

CBO estimates that enacting H.R. 647 would increase direct spending by \$5 billion in at least one of the four consecutive 10-year periods beginning in 2024.

Does the Bill Expand the Size and Scope of the Federal Government?: Yes, it increases the number of individuals eligible for certain federal means tested programs.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: CBO has determined that the nontax provisions of the bill contain no intergovernmental or private-sector mandates as defined in UMRA. CBO estimates that the

provisions in the bill that would increase federal spending for Medicaid would similarly result in \$415 million of additional Medicaid spending by states over the 2014-2024 period. Those provisions, however, would not be intergovernmental mandates as defined by UMRA because Medicaid provides states with significant flexibility to make programmatic adjustments to accommodate the changes.

JCT has determined that the tax provisions of the bill contain no intergovernmental or private-sector mandates as defined in UMRA.

Does the Bill Contain Any Earmarks/Limited Tax Benefits/Limited Tariff Benefits?: With respect to clause 9 of rule XXI of the Rules of the House of Representatives, the Committee has carefully reviewed the provisions of the bill, and states that the provisions of the bill do not contain any congressional earmarks, limited tax benefits, or limited tariff benefits within the meaning of the rule.

Constitutional Authority: Congress has the power to enact this legislation pursuant to the following: Article I, Section 8, Clause 1 of the U.S. Constitution.

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