

Second Regular Session 119th General Assembly (2016)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2015 Regular Session of the General Assembly.

SENATE ENROLLED ACT No. 11

AN ACT to amend the Indiana Code concerning human services.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 12-7-2-0.5 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION TO READ AS FOLLOWS** [EFFECTIVE JULY 1, 2016]: **Sec. 0.5. "ABLE account", for purposes of IC 12-11-14, has the meaning set forth in IC 12-11-14-1.**

SECTION 2. IC 12-7-2-18.5 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION TO READ AS FOLLOWS** [EFFECTIVE JULY 1, 2016]: **Sec. 18.5. "Authority", for purposes of IC 12-11-14, has the meaning set forth in IC 12-11-14-2.**

SECTION 3. IC 12-7-2-22, AS AMENDED BY P.L.145-2014, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 22. "Board" means the following:

(1) For purposes of IC 12-10-10, IC 12-10-10.5, and IC 12-10-11, the community and home options to institutional care for the elderly and disabled board established by IC 12-10-11-1.

(2) For purposes of IC 12-11-14, the meaning set forth in IC 12-11-14-3.

~~(2)~~ **(3)** For purposes of IC 12-12-7-5, the meaning set forth in IC 12-12-7-5(a).

~~(3)~~ **(4)** For purposes of IC 12-15-35, the meaning set forth in IC 12-15-35-2.

SECTION 4. IC 12-7-2-58.5 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION TO READ AS FOLLOWS** [EFFECTIVE JULY

SEA 11 — Concur



1, 2016]: **Sec. 58.5. "Designated beneficiary", for purposes of IC 12-11-14, has the meaning set forth in IC 12-11-14-5.**

SECTION 5. IC 12-7-2-76, AS AMENDED BY P.L.145-2014, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 76. (a) "Eligible individual", for purposes of:

- (1) IC 12-10-10, has the meaning set forth in IC 12-10-10-4; ~~and~~
 - (2) IC 12-10-10.5, has the meaning set forth in IC 12-10-10.5-3;
- and**

(3) IC 12-11-14, has the meaning set forth in IC 12-11-14-6.

(b) "Eligible individual" has the meaning set forth in IC 12-14-18-1.5 for purposes of the following:

- (1) IC 12-10-6.
- (2) IC 12-14-2.
- (3) IC 12-14-18.
- (4) IC 12-14-19.
- (5) IC 12-15-2.
- (6) IC 12-15-3.
- (7) IC 12-16-3.5.
- (8) IC 12-20-5.5.

SECTION 6. IC 12-7-2-154.4 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: **Sec. 154.4. "Qualified ABLE program", for purposes of IC 12-11-14, has the meaning set forth in IC 12-11-14-7.**

SECTION 7. IC 12-7-2-154.6 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: **Sec. 154.6. "Qualified disability expense", for purposes of IC 12-11-14, has the meaning set forth in IC 12-11-14-8.**

SECTION 8. IC 12-11-14 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]:

Chapter 14. Achieving a Better Life Experience (ABLE) Program

Sec. 1. As used in this chapter, "ABLE account" refers to an achieving a better life experience (ABLE) account established by an eligible individual that:

- (1) is maintained under a qualified ABLE program; and
- (2) meets the requirements of Section 529A of the Internal Revenue Code.

Sec. 2. As used in this chapter, "authority" refers to the achieving a better life experience (ABLE) authority created by



section 9 of this chapter.

Sec. 3. As used in this chapter, "board" refers to the ABLE board of the authority established by section 10 of this chapter.

Sec. 4. As used in this chapter, "contracting state" means a state that has entered into a contract with Indiana to:

- (1) provide residents of the contracting state access to Indiana's qualified ABLE program; or
- (2) provide residents of Indiana access to the contracting state's qualified ABLE program.

Sec. 5. As used in this chapter, "designated beneficiary" means the eligible individual who has established an ABLE account and is the owner of the account.

Sec. 6. As used in this chapter, "eligible individual" means an individual who during a taxable year:

- (1) is entitled to benefits based on blindness or disability under Title II or Title XVI of the federal Social Security Act and the blindness or disability occurred before the individual became twenty-six (26) years of age; or
- (2) has a disability certification that has been filed as set forth in Section 529A of the Internal Revenue Code.

Sec. 7. As used in this chapter, "qualified ABLE program" refers to the achieving a better life experience (ABLE) program established under this chapter under which a person may make contributions for a taxable year for the benefit of an eligible individual to an ABLE account to meet the qualified disability expenses of the designated beneficiary in compliance with Section 529A of the Internal Revenue Code.

Sec. 8. As used in this chapter, "qualified disability expense" means any expenses related to the eligible individual's blindness or disability that are incurred for the benefit of an eligible individual who is the designated beneficiary, including the following expenses:

- (1) Education.
- (2) Housing.
- (3) Transportation.
- (4) Employment training and support.
- (5) Assistive technology and personal support services.
- (6) Health.
- (7) Prevention and wellness.
- (8) Management and administration.
- (9) Legal fees.
- (10) Oversight and monitoring.
- (11) Funeral and burial.



(12) Other expenses approved by the federal government for a qualified ABLE program.

Sec. 9. (a) The achieving a better life experience (ABLE) authority is created. The authority is a body corporate and politic.

(b) The authority:

- (1) is not an agency of the state; and
- (2) is an instrumentality of the state performing essential governmental functions.

(c) The authority may establish a qualified ABLE program.

(d) Because the management and operation of a qualified ABLE program and all funds and ABLE accounts established under this chapter constitute the performance of an essential public function, the following are exempt from taxation by the state and by any political subdivision of the state:

- (1) The authority's management and operations.
- (2) The authority's property and assets.
- (3) All property and assets held by or for the authority except individual ABLE accounts.
- (4) The investment income and earnings (whether interest, gains, or dividends) on:
 - (A) the authority's property and assets; and
 - (B) all property and assets held by or for the authority; including all funds and accounts established under this article except individual ABLE accounts.

(e) The authority may contract with public or private entities or persons for the provision of all or any portion of the services the board considers necessary for the management and operation of the authority, including the qualified ABLE program and all funds and accounts of the authority.

(f) The authority is a public agency for purposes of IC 5-14-1.5 and IC 5-14-3. However, the data, information, and records (including medical records) relating to designated beneficiaries of and individual contributors to an ABLE account, including any records that reveal personally identifiable information about such individuals, are confidential for purposes of IC 5-14-3-4(a), are excepted from IC 5-14-3, and may not be disclosed by the authority, unless access to the records is specifically required by a state or federal statute or is ordered by a court under the rules of discovery. The board is a governing body for purposes of IC 5-14-1.5.

Sec. 10. (a) The ABLE board of the authority is established. The board consists of the following:



- (1) The following four (4) ex officio members:
- (A) The treasurer of state.
 - (B) The secretary of family and social services.
 - (C) The budget director.
 - (D) The executive director of the Indiana housing and community development authority.
- (2) Five (5) appointed members who:
- (A) are appointed by the governor; and
 - (B) consist of the following:
 - (i) One (1) member who has significant experience in actuarial analysis, accounting, investment management, or other areas of finance that are relevant to the authority.
 - (ii) One (1) member who has significant legal expertise and knowledge of estate planning.
 - (iii) One (1) member who is a representative of a statewide organization that advocates on behalf of individuals with disabilities.
 - (iv) One (1) member who is an individual with a disability.
 - (v) One (1) member who is a family member of an individual with a disability.
- (b) A certificate of appointment or reappointment of each member shall be filed with the authority, and this certificate is conclusive evidence of the due and proper appointment of the member.
- (c) Not more than three (3) of the appointed members of the board may belong to the same political party.
- (d) An appointed member serves a four (4) year term. An appointed member shall hold over after the expiration of the member's term until the member's successor is appointed and qualified.
- (e) The governor may reappoint an appointed member of the board.
- (f) A vacancy shall be filled for the balance of an unexpired term in the same manner as the original appointment.
- (g) The treasurer of state shall serve as chairperson of the board. The board shall annually elect one (1) of its ex officio members as vice chairperson and may elect any other officer the board desires. The board shall meet at the call of the chairperson and as provided in the bylaws of the authority.
- (h) The governor may remove an appointed member for



misfeasance, malfeasance, willful neglect of duty, or other cause.

(i) An appointed member of the board is not entitled to the minimum salary per diem provided by IC 4-10-11-2.1(b). However, each appointed member is entitled to reimbursement for traveling expenses and other expenses actually incurred in connection with the member's duties.

(j) An ex officio member of the board is entitled to reimbursement for traveling expenses and other expenses actually incurred in connection with the member's duties.

(k) An ex officio member of the board may designate a person to serve as an ex officio member of the board in the absence of the ex officio member.

(l) The majority of the members of the board constitute a quorum for the purposes of conducting the board's business and exercising the board's powers and for all other purposes. Vacant positions may not be counted when determining whether a majority of the members is present.

(m) The affirmative vote of a majority of all the members of the board who are present is necessary for the authority to take action. A vacancy in the membership of the board does not impair the right of a quorum to exercise all the rights and perform all the duties of the authority. An action taken by the board under this article may be authorized by:

- (1) resolution at any regular or special meeting; or
- (2) unanimous consent of all the members who have not abstained.

A resolution takes effect immediately upon adoption and need not be published or posted.

Sec. 11. (a) The board may:

- (1) employ a manager, who is not a member of the board; and
- (2) delegate necessary and appropriate functions and authority to the manager.

(b) The board has the powers necessary and appropriate to carry out and effectuate the purposes of this chapter, including the following:

- (1) To develop and implement a qualified ABLE program for Indiana through:
 - (A) rules adopted under IC 4-22-2 or emergency rules adopted in the manner provided under IC 4-22-2-37.1; or
 - (B) rules, guidelines, procedures, or policies established by the board.
- (2) To conform the qualified ABLE program to meet the



requirements of Section 529A of the Internal Revenue Code and all applicable federal laws and regulations.

- (3) To retain professional services, including the following:
 - (A) Advisers and managers, including investment advisers.
 - (B) Custodians and other fiduciaries.
 - (C) Accountants and auditors.
 - (D) Consultants or other experts.
 - (E) Actuarial services providers.
 - (F) Attorneys.
- (4) To establish minimum ABLE account deposit amounts (both initial and periodic).
- (5) To employ persons, if the board chooses, and as may be necessary, and to fix the terms of employment.
- (6) To recommend legislation to the governor and the general assembly.
- (7) To apply for designation as a tax exempt entity under the Internal Revenue Code.
- (8) To sue and be sued.
- (9) To provide or facilitate provision of benefits and incentives for the benefit of qualified beneficiaries.
- (10) To conform the qualified ABLE program to federal tax advantages or incentives, to the extent consistent with the purposes and objectives of this chapter.
- (11) To charge, impose, and collect administrative fees and service charges in connection with any agreement, contract, or transaction under a qualified ABLE program.
- (12) To have perpetual succession.
- (13) To establish policies and procedures to govern distributions from ABLE accounts that are not:
 - (A) made on account of the death or disability of an account beneficiary; or
 - (B) rollovers.
- (14) To establish penalties for withdrawals of money from ABLE accounts that are not used exclusively for a qualified disability expense of an account beneficiary unless a circumstance described in subdivision (13) applies.
- (15) To establish policies and procedures regarding the transfer of individual ABLE accounts and the designation of substitute account beneficiaries.
- (16) To establish policies and procedures for withdrawal of money from ABLE accounts for, or in reimbursement of, a qualified disability expense.



(17) To enter into agreements with ABLE account owners, account beneficiaries, and contributors, with the agreements naming:

(A) the account owner; and

(B) the account beneficiary.

(18) To establish ABLE accounts for account beneficiaries. However, the authority shall establish a separate ABLE account for each account beneficiary.

(19) To enter into agreements with financial institutions relating to ABLE accounts as well as deposits, withdrawals, penalties, allocation of benefits or incentives, and transfers of accounts, account owners, and account beneficiaries.

(20) To develop marketing plans and promotional material.

(21) To enter into agreements with other states to:

(A) allow Indiana residents to participate in a plan operated by a contracting state with a qualified ABLE program; or

(B) allow residents of contracting states to participate in the Indiana qualified ABLE program.

(22) To do all things necessary and appropriate to carry out the purposes of this chapter.

Sec. 12. (a) The authority shall do the following:

(1) Provide the board and each member, officer, employee, consultant, counsel, and agent of the authority or the board a defense in a suit arising out of the performance of duties for or on behalf of the authority or the board, if the board determines that the duties were provided in good faith.

(2) Hold a person described in subdivision (1) or the board harmless from any liability, cost, or damage in connection with an action arising out of the performance of duties for or on behalf of the authority or the board, including the payment of any legal fees, except where the liability, cost, or damage is predicated on, or arises out of, bad faith of the person or the board, or is based on the person's or board's malfeasance in the performance of duties.

(b) The authority shall prepare an annual report for the qualified ABLE program and transmit the annual report to the governor and, in an electronic format under IC 5-14-6, to the general assembly. The authority shall make available upon request a copy of the annual report to qualified beneficiaries, account owners, and the public.

Sec. 13. (a) The authority may accept gifts, bequests, donations,



and devises of personal and real property:

- (1) as trustees for the maintenance, use, or benefit of the authority, the qualified ABLE program, or the endowment fund; or
- (2) to be administered for other public or charitable purposes for the use or benefit of ABLE account owners or ABLE account beneficiaries.

(b) The authority may receive, accept, hold, administer, and use any property transferred to the authority by gift, bequest, donation, or devise in accordance with the terms, conditions, obligations, liabilities, and burdens imposed on the gift, bequest, donation, or devise if, in the judgment of the board, the action is in the best interest of the authority, the qualified ABLE program, the endowment fund, ABLE account owners, ABLE account contributors, or ABLE account beneficiaries, as applicable.

(c) The authority may, if not inconsistent with the terms and conditions of a gift of real property:

- (1) sell, convey, or otherwise dispose of the real property; and
- (2) invest, reinvest, or use the proceeds as, in the judgment of the board, is of the greatest benefit to the authority, the qualified ABLE program, the endowment fund, ABLE account beneficiaries, and ABLE account owners.

Sec. 14. A person designated by resolution of the authority:

- (1) shall keep a record of the proceedings of the authority;
- (2) shall be custodian of:
 - (A) all books, documents, and papers filed with the authority; and
 - (B) the minutes book or journal of the authority; and
- (3) may copy all minutes and other records and documents of the authority and may certify that the copies are true copies. A person who deals with the authority may rely upon the certification.

Sec. 15. Before the adoption and implementation of a qualified ABLE program:

- (1) the chairperson;
- (2) the vice chairperson;
- (3) the manager; and
- (4) any officer elected by the authority or member of the authority authorized by resolution to handle funds or sign checks;

shall execute a surety bond in the penal sum of one hundred thousand dollars (\$100,000). The surety bond shall be conditioned



upon the faithful performance of the duties of the office of the principal and shall be executed by a surety company authorized to transact business in Indiana. The authority shall pay the cost of the bonds.

Sec. 16. Notwithstanding any other law, it is not a conflict of interest or violation of any other law for a person to serve as a member of the authority. However, a member shall disclose a conflict of interest relating to actions of the authority as required and in a manner provided by IC 35-44.1-1-4.

Sec. 17. The following are established:

- (1) The general operating fund.
- (2) The endowment fund.
- (3) The trust fund and, in the trust fund, the following:
 - (A) The administrative account.
 - (B) The program account.

Sec. 18. The authority shall establish and implement investment policies in accordance with IC 5-13 for the following:

- (1) Money in the general operating fund.
- (2) Money in the administrative account.
- (3) Any other money of the authority other than money in:
 - (A) the endowment fund; and
 - (B) the program account.

Sec. 19. The board shall establish and implement investment policies for money in:

- (1) the endowment fund; and
- (2) the program account;

for investment in the manner provided by IC 30-4-3-3.

Sec. 20. The trust fund and other property of the authority must be preserved, invested, and expended only under this article and may not be used for any other purpose. The trust fund shall be held in trust for account owners and account beneficiaries.

Sec. 21. Criteria for management of assets in the trust fund, including investment of assets, must provide for both asset protection and income growth while providing for the actuarial soundness of the trust fund.

Sec. 22. (a) General operating, administrative, and capital expenses of the authority may be paid from amounts appropriated for those purposes by the general assembly. Appropriations must be deposited in either the administrative account or the general operating fund, as the board determines to be appropriate.

(b) Money in the administrative account shall be used first to pay the general operating, administrative, and capital expenses of



the authority. Before money in the program account may be used for these expenses, the authority must exhaust all other funds available to the authority, including money in the endowment fund and the administrative account.

Sec. 23. (a) The funds, accounts, management, and operations of the authority are subject to annual audit by an independent public accounting firm retained by the board.

(b) The authority shall promptly transmit copies of each annual audit to the governor and in an electronic format under IC 5-14-6 to the general assembly. Upon request, the authority shall make available copies of the audit to qualified beneficiaries, account owners, and the public.

Sec. 24. (a) All ABLÉ accounts and all earnings or interest on ABLÉ accounts are exempt from taxation in Indiana to the extent that those accounts, earnings, and interest are exempt from federal taxation under the Internal Revenue Code, subject to any penalties that are established for a qualified ABLÉ program under this chapter.

(b) Money deposited in an ABLÉ account by the account owner or a contributor and investment returns on an account are the property of the account owner.

(c) Funds held in an ABLÉ account that may be established under this chapter may not be used by an account owner or account beneficiary as security for a loan.

(d) Funds held in an ABLÉ account:

- (1)** are exempt from creditors and are not liable to attachment, levy, garnishment, or other process; and
- (2)** may not be seized, taken, appropriated, or applied by any legal or equitable process or operation of law to pay any debt or liability of any contributor or beneficiary.

However, the state of residency of the designated beneficiary of an ABLÉ account is a creditor of the account in the event of the death of the designated beneficiary.

(e) Funds held in an ABLÉ account may not be included in determining income eligibility of the designated beneficiary for state and local assistance programs.

SECTION 9. IC 12-15-13-5 IS REPEALED [EFFECTIVE JULY 1, 2016]. Sec. 5: The office shall reimburse at a reimbursement rate for services provided by an ICF/MR (as defined in IC 16-29-4-2) that is three percent (3%) greater than the Medicaid reimbursement rate for the services calculated using the methodology in effect on December 31, 2013.



SECTION 10. IC 12-15-32-2, AS AMENDED BY P.L.213-2015, SECTION 129, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 2. (a) The office shall reimburse community residential facilities for the developmentally disabled for the cost of the Medicaid services that are provided by the facility to individuals who are eligible for Medicaid.

(b) ~~The office shall reimburse at a reimbursement rate for services provided by a community residential facility for the developmentally disabled that is three percent (3%) greater than the Medicaid reimbursement rate for the services calculated using the methodology in effect on December 31, 2013. 405 IAC 1-12-27 is void.~~



President of the Senate

President Pro Tempore

Speaker of the House of Representatives

Governor of the State of Indiana

Date: _____ Time: _____

SEA 11 — Concur

