



Governor's Advisory Council for Exceptional Citizens (GACEC)
516 West Loockerman St., Dover, DE 19904
302-739-4553 (voice) 302-739-6126 (fax) <http://www.gacec.delaware.gov>

MEMORANDUM

DATE: January 28, 2022

TO: The Honorable Members of the Delaware General Assembly

FROM: Ann C. Fisher, Chairperson
GACEC

RE: **Senate Bill No. 210 ABLÉ Act Statute Amendment**

The Governor's Advisory Council for Exceptional Citizens (GACEC) has reviewed Senate Bill No. 210, which will amend the state ABLÉ plan and bring it into compliance with the final federal regulations published in November 2020. 85 FR 74010. Because of the federal regulations, this bill to amend the Delaware ABLÉ plan is required to be in compliance with the regulations. Council **endorses** this legislation, as the State plan must comply with federal law.

By way of background, ABLÉ accounts were created by the Stephen J. Beck, Jr., Achieving a Better Life Experience Act of 2014, which was signed into law by President Obama on December 19, 2014. Pub. L. No. 113-295, 128 Stat. 4056 et seq. The purpose of the act was to increase the financial independence and improve the quality of life for persons with disabilities while easing the financial hardships faced by these individuals and their families. ABLÉ accounts are tax-advantaged saving accounts for eligible persons with disabilities (called beneficiaries). Although the designated beneficiary is the owner of the account, contributions can be made by anyone (including family, or friends) using after-tax monies. While contributions are not tax deductible for federal income tax, monies in the plan can accumulate earnings on a tax-free basis and distributions are not subject to federal taxation when used for qualified disability related expenses (QDE). QDEs are broad and expansive, and 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, which are approved by the Secretary under regulations and consistent with the purposes of this section." 26 U.S.C. §529A (e)(5).

In Delaware, the ABLÉ plan is known as the Delaware Achieving a Better Life Experience Saving Accounts. 16 *Del. C.* §§ 9601A-9608A. The changes that the bill will make are significant. The account owner would change from the eligible individual or parent or legal guardian of an eligible incapacitated individual or an eligible individual under 18 to the designated beneficiary. 16 *Del. C.* § 9602A(2). The designated beneficiary includes the individual for whom the account was opened or the individual “who has succeeded the former designated beneficiary in that capacity.” 16 *Del. C.* § 9602A(4). The hierarchy of a successor, who will have signature authority over the account under the federal regulations, consists of the individual selected by the eligible individual or if the individual is not able to or declines to exercise authority, the eligible individual’s agent under a power of attorney, conservator or legal guardian, the spouse, a parent, a sibling, a grandparent, or a representative payee (whether an individual or organization) appointed by the Social Security Administration. 26 *C.F.R.* §1.529A-2(c)1-2; Summary of Comments and Explanation of Provisions 2.A. Establishment and Signatory of an Able Account.

Another change concerns who can open or establish the account. The account can be opened by an eligible individual. 16 *Del. C.* § 9605A(a)(1). This change limits the existing provision, which provides that an account can be opened “by any person” who wants to pay the QDEs of an eligible individual and makes an initial contribution to the individual’s account. 16 *Del. C.* § 9605A(a).

Lastly, the bill would limit the QDEs to expenses incurred while the designated beneficiary is an eligible individual. Although obvious, any expenses incurred while the person was not blind or disabled would not be a QDE. 16 *Del. C.* § 9602A(8).

Thank you in advance for your time and consideration of our endorsement and observations. Please feel free to contact me or Pam Weir at the GACEC office should you have any questions.