

**State of California
Office of Administrative Law**

In re:
California Achieving a Better Life Experience
(ABLE) Act Board

Regulatory Action:

Title 10, California Code of Regulations

Adopt sections: 9000, 9001, 9002, 9003,
9004, 9005, 9006, 9007

Amend sections:

Repeal sections:

**NOTICE OF APPROVAL OF EMERGENCY
REGULATORY ACTION**

**Government Code Sections 11346.1 and
11349.6**

OAL Matter Number: 2017-0210-05


OAL Matter Type: Emergency (E)

The Legislature enacted Senate Bill 324 (Chapter 796, Statutes of 2015) and Assembly Bill 449 (Chapter 774, Statutes of 2015), which authorized the California ABLE Act Board to develop and implement the California ABLE Program Trust which is a financial savings tool for qualified people with disabilities as defined in section 529A of the Internal Revenue code. The regulations in title 10 of the California Code of Regulations being adopted in this emergency action provide the framework to allow eligible individuals to save and maintain their funds in the Trust. The regulations include definitions, account enrollment, limitations on contributions, change of designated beneficiary, qualified and rollover distribution, account information and reports and other provisions related to the administration of the program.

OAL approves this emergency regulatory action pursuant to sections 11346.1 and 11349.6 of the Government Code.

This emergency regulatory action is effective on 2/21/2017 and will expire on 8/22/2017. The Certificate of Compliance for this action is due no later than 8/21/2017.

Date: February 21, 2017



Peggy J. Gibson
Senior Attorney

For: Debra M. Cornez
Director

Original: Christina Elliott
Copy: Carrie Fisher Stone

STD. 400 (REV. 01-2013)

EMERGENCY

OAL FILE NUMBERS Z-	NOTICE FILE NUMBER	REGULATORY ACTION NUMBER	EMERGENCY NUMBER 2017-0210-05E
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For use by Office of Administrative Law (OAL) only

2017 FEB 10 P 3: 23

OFFICE OF ADMINISTRATIVE LAW

NOTICE	REGULATIONS
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ENDORSED - FILED
in the office of the Secretary of State
of the State of California

FEB 21 2017

3:15 PM

AGENCY WITH RULEMAKING AUTHORITY California Achieving a Better Life Experience (ABLE) Act Board	AGENCY FILE NUMBER (if any)
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A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE		TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE	
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other		4. AGENCY CONTACT PERSON		TELEPHONE NUMBER	FAX NUMBER (Optional)
OAL USE ONLY	ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn			NOTICE REGISTER NUMBER	PUBLICATION DATE

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) California ABLE Program Trust	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S) N/A
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2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)

SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	ADOPT 9000, 9001, 9002, 9003, 9004, 9005, 9006, 9007
	AMEND
	REPEAL 10

3. TYPE OF FILING

<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346)	<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.	<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h))	<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
<input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4)	<input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input type="checkbox"/> File & Print	<input type="checkbox"/> Print Only
<input checked="" type="checkbox"/> Emergency (Gov. Code, §11346.1(b))	<input type="checkbox"/> Other (Specify)		

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)

<input type="checkbox"/> Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a))	<input checked="" type="checkbox"/> Effective on filing with Secretary of State	<input type="checkbox"/> §100 Changes Without Regulatory Effect	<input type="checkbox"/> Effective other (Specify)
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6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY

<input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660)	<input type="checkbox"/> Fair Political Practices Commission	<input type="checkbox"/> State Fire Marshal
<input type="checkbox"/> Other (Specify)		

7. CONTACT PERSON Carrie Fisher Stone	TELEPHONE NUMBER (916) 653-0665	FAX NUMBER (Optional) (916) 589-2860	E-MAIL ADDRESS (Optional) carrie.fisherstone@treasurer.ca.gov
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8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE 	DATE 2/9/17
TYPED NAME AND TITLE OF SIGNATORY Christina Elliott, Executive Director	

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

FEB 21 2017

Office of Administrative Law

Note: These regulations are new to the CCR.

California Code of Regulations

Title 10: Investments

Division 1: California Achieving a Better Life Experience (ABLE) Act Board

Chapter 14: California Achieving a Better Life Experience (ABLE) Program Trust

Section 9000. Existing Definitions

All meanings of the terms defined in Welfare and Institutions Code section 4875 and Internal Revenue Code section 529A apply wherever the same terms are used throughout this Chapter.

NOTE: Authority Cited: Section 4882, Welfare and Institutions Code. Reference: Section 4875, Welfare and Institutions Code; Section 529A, Internal Revenue Code.

Section 9001. Additional Definitions.

The following definitions shall also apply wherever the terms are used throughout this Chapter:

- (a) "ABLE Plan" or "Plan" means the qualified ABLE program established and maintained by the State of California, in accordance with Internal Revenue Code section 529A.
- (b) "Account Owner" means the Eligible Individual for whom the Account is established. The Account Owner is the Designated Beneficiary.
- (c) "Authorized Legal Representative" means a person who may act on behalf of the Account Owner with respect to the account if the Account Owner (1) is unable to exercise signature authority over his or her account, or (2) chooses not to exercise signature authority over his or her account. The Authorized Legal Representative may be a parent or legal guardian of the Account Owner or may be a person granted a valid durable power of attorney to manage banking and investment matters on behalf of the Account Owner and to take all necessary actions on behalf of the Account Owner with respect to the account.
- (d) "Cash" includes checks, money orders, funds transferred through rollover distributions, payroll deduction plans, automatic contribution plans, and electronic fund transfers.
- (e) "Contribution" means cash deposited into an account.
- (f) "Distribution" means any disbursement from an account.
- (g) "Earnings" means the total account balance on a particular date minus the contributions to the account as of that date.
- (h) "IRC" means the Internal Revenue Code.

- (i) "Nonqualified Distribution" means a disbursement that is not used for Qualified Disability Expenses or is not a rollover to another qualified ABLE program or account.
- (j) "Program Administrator" means the California ABLE Act Board.
- (k) "Secretary" means the Secretary of the United States Treasury.
- (l) "SSA" means the Social Security Administration.

NOTE: Authority Cited: Section 4882, Welfare and Institutions Code. Reference: Sections 4875 and 4877, Welfare and Institutions Code; Section 529A, Internal Revenue Code.

Section 9002. Account Enrollment

- (a) **Account Owner and Designated Beneficiary.** A person may open an account if that person is an Eligible Individual who is both the Account Owner and the Designated Beneficiary.
- (b) **Participation Agreement.** An Eligible Individual or the Eligible Individual's Authorized Legal Representative must submit a completed and signed Participation Agreement in order to open an Account. The Participation Agreement governs the Account Owner's use of the Account. The Participation Agreement shall include, at a minimum, the following terms and conditions:
 - (1) Representations and warranties regarding eligibility, intentions as to account use, and understanding of the investment options selected.
 - (2) Acknowledgement regarding contribution limits.
 - (3) Treatment of withdrawals, transfers, and excess contributions.
 - (4) Acknowledgement of risks, including no guarantees on returns or account value, no proxy rights on investments, future legislative changes, and future ABLE Plan changes.
 - (5) Potential for Medicaid/Medi-Cal recapture upon death of beneficiary.
 - (6) Dispute resolution.
 - (7) Indemnification and hold harmless of the ABLE Plan for any breaches of representations or factual misstatements.
 - (8) Governing law, venue, and jurisdiction.
 - (9) Certification that the person seeking to open an account does not have another qualified ABLE program account in any state (except in the case of a Rollover). An Account Owner may not have more than one qualified ABLE program account in existence in any state at the same time. A qualified ABLE program account previously opened and closed in any state does not prohibit the subsequent creation of an ABLE Account for the same Account Owner.
 - (10) Certification that the person seeking to open an account is an Eligible Individual as defined in IRC section 529A, and evidence of eligibility, such as a disability certification as defined in IRC section 529A, can and will be submitted upon request.

- (11) Other terms and conditions that may be required by the Program Administrator.

NOTE: Authority Cited: Section 4882, Welfare and Institutions Code. Reference: Sections 4875, 4877, 4878, and 4879, Welfare and Institutions Code; Section 529A, Internal Revenue Code.

Section 9003. Limitations on Contributions

- (a) **Annual Contribution Limit.** IRC section 529A limits the amount that can be contributed annually to an ABL Account to the federal gift tax exclusion. This limit is applied per account from all sources. The annual limit may increase as the federal gift tax exclusion increases.
- (b) **Maximum Account Balances.** IRC section 529A limits the total amount of contributions to an ABL Account. The account balance may not exceed the amount established by the State in accordance with IRC section 529(b)(6) regarding qualified tuition programs. Accounts that have reached the maximum account balance may continue to accrue earnings and, if the account balance falls below the permitted maximum account balance, contributions may recommence.
- (c) **Excess Contributions.** The Program Administrator will not knowingly accept contributions that would cause an account to exceed the annual contribution limit or permitted maximum account balance.
- (d) **Return of Excess Contributions.** Contributions shall be returned to the extent that the amount of the contribution would cause the aggregate amount held for a Designated Beneficiary to exceed the annual contribution limit or permitted maximum account balance.

NOTE: Authority Cited: Section 4882, Welfare and Institutions Code. Reference: Sections 4877 and 4879, Welfare and Institutions Code; Section 529A, Internal Revenue Code.

Section 9004. Change of Designated Beneficiary

- (a) **Change of Designated Beneficiary.** An Account Owner may change the beneficiary designated at any time as long as the individual is an Eligible Individual and a Member of the Family of the current Designated Beneficiary. The individual designated to be the new beneficiary shall become the new Account Owner after completing the account enrollment process under section 9001.
- (b) **Change Through Rollover Distribution.** A change of Designated Beneficiary may also be accomplished at any time by means of a rollover from a different account within the Plan or another qualified ABL program. The individual designated to be the new beneficiary must be an Eligible Individual and a Member of the Family of the current

Designated Beneficiary, and shall become the new Account Owner after completing the account enrollment process under section 9001.

NOTE: Authority Cited: Section 4882, Welfare and Institutions Code. Reference: Section 4877, Welfare and Institutions Code; Section 529A, Internal Revenue Code.

Section 9005. Qualified Distributions

- (a) **Qualified Distributions.** Distributions from an account must be used to pay for Qualified Disability Expenses as defined in Welfare and Institutions Code section 4875(l) and IRC section 529A.
- (b) **Nonqualified Distributions.** Any withdrawal that is not (1) used to pay the Qualified Disability Expenses of the Account Owner or (2) rolled over to another qualified ABLE program for the same beneficiary or for another Eligible Individual who is also a Member of the Family of the beneficiary is a Nonqualified Distribution. The earnings portion of Nonqualified Distributions may be subject to federal and state income tax. Additionally, Nonqualified Distribution may impact benefit eligibility and benefit amounts.

NOTE: Authority Cited: Section 4882, Welfare and Institutions Code. Reference: Sections 4875, 4877, and 4878, Welfare and Institutions Code; Section 529A, Internal Revenue Code.

Section 9006. Rollover Distributions

- (a) **Rollover Distributions Generally.** An Account Owner may direct a rollover once in every rolling twelve-month period for the same Account Owner.
- (b) **Rollover Distribution Deposit Timeframe.** A distribution that is made for purposes of a rollover must be deposited to the different account within the Plan or another qualified ABLE program within 60 days of the distribution. Failure to deposit a rollover distribution within 60 days will result in the distribution being treated as a Nonqualified Distribution.
- (c) **Rollover Documentation.** A rollover directly to or from another qualified ABLE program must be accompanied by a written statement from the applicable qualified ABLE program identifying the portion of the rollover that represents contributions and the portion that represents earnings. Failure to provide this information may result in the deposit being treated as earnings.
- (d) **Closure of Accounts.** The account from which funds are rolled over for the same Account Owner must be closed within 60 days after the distribution.
- (e) **Execution of New Participation Agreement.** Any rollover to a new account not yet established under the ABLE Plan shall not be effective until the Eligible Individual or the

Eligible Individual's Authorized Legal Representative has submitted a completed and signed Participation Agreement for the new account and the account has been established by the Program Administrator.

NOTE: Authority Cited: Section 4882, Welfare and Institutions Code. Reference: Section 4877, Welfare and Institutions Code; Section 529A, Internal Revenue Code.

Section 9007. Account Information

(a) Quarterly Report to Designated Beneficiary. Each Account Owner will receive a quarterly statement from the ABLE Plan with, at a minimum, the following information:

- (1) Contributions to each investment option during that quarter and aggregate contributions, if any, for the year-to-date.
- (2) Distributions from each investment option during that quarter.
- (3) The total value of the Account at the end of the quarter.

(b) Information Security. Any information compiled pursuant to this section and Welfare and Institutions Code section 4875 et seq. shall be maintained by the Board and protected consistent with the requirements of the Information Practices Act of 1977 (Civil Code section 1798 et seq.).

Note: Authority Cited: Section 4882, Welfare and Institutions Code. Reference: Sections 4877 and 4881, Welfare and Institutions Code; Section 529A, Internal Revenue Code.