

## **FINAL STATEMENT OF REASONS**

### **CALIFORNIA ACHIEVING A BETTER LIFE EXPERIENCE (ABLE) PROGRAM TRUST**

#### **Update of Initial Statement of Reasons – Government Code Section 11346.9(a)(1)**

The California ABLE Act Board did not make any changes to the Initial Statement of Reasons.

#### **Nonduplication Statement - 1 CCR 12**

The proposed regulations partially duplicate or overlap a state or federal statute or regulation which is cited as “authority” and “reference” for the proposed regulations and the duplication or overlap is necessary to satisfy the “clarity” standard of Government Code section 11349.1(a)(3).

#### **Local Mandate Determination – Gov. Code Section 11346.9(a)(2)**

The California ABLE Act Board determined that the adoption, amendment or repeal of the regulation does not impose a mandate on local agencies or school districts.

#### **Alternatives Determination – Gov. Code Section 11346.9(a)(4)**

The California ABLE Act Board determined that no alternative it considered or that was otherwise identified and brought to its attention would be more effective than carrying out the purposes for which the regulation is proposed, would be as effective and less burdensome to affected private persons than the adopted regulation, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law. No other alternatives have been proposed or otherwise brought to the Board’s attention.

#### **Summary and Response to Comments Received During the Initial Notice Period of June 2, 2017 through July 17, 2017 – Government Code Section 11346.9(a)(3)**

The Board received four public comments during the 45-day public comment period, but these did not result in any changes made to the proposed regulations as originally noticed to the public.

The public comment and the Board’s response are as follows:

##### Section 9001(c)

##### Specific Purpose:

This section is adopted to clarify the definition for “Authorized Legal Representative” in the proposed regulation. Not all eligible individuals have the cognitive or intellectual capacity to establish or manage their accounts; in these situations, an authorized legal representative may act on their behalf, which makes it necessary for the proposed regulations to distinguish individuals that are authorized legal representatives.

##### Factual Basis:

The adoption of this definition is necessary to clarify the meaning of an Authorized Legal Representative. Section 529A of the Internal Revenue Code permits an agent under a power of attorney, parent or legal guardian to establish and manage an account for an eligible individual on behalf of that eligible individual. An authorized legal representative acting on behalf of an eligible individual must have signature authority over that eligible individual.

Comment:

Regarding the language in this section, Autism Society San Francisco Bay Area (SFASA) and Ms. Valerie Rynne recommend it should be modified to include conservators or limited conservators of the person and/or estate so to make enrollment into the CalABLE Program easier for eligible individuals lacking the capacity to manage their own CalABLE accounts.

Response:

The Board appreciates this comment but is not amending the regulation at this time. Currently, language in this section is in complete alignment with section 529(A)(b)(4) of the Internal Revenue Code. The Board does not intend to alter this language through this regulatory action.

Section 9001(i)

Specific Purpose:

This section is adopted to clarify the definition for “Nonqualified Distribution.”

Factual Basis:

The adoption is necessary because it clarifies that a nonqualified distribution is any distribution from the account that does not meet the criteria for a Qualified Disability Expense as outlined in Internal Revenue Code section 529A(e)(5). This adoption also clarifies that rollover of account balances from one account into another account is not considered a nonqualified distribution. There are certain parameters that account owners must be aware of, so that distributions do not penalize their eligibility for means-tested public benefit programs. Account owners must also be aware that nonqualified distributions from the account may count as a resource for means-tested public benefits programs and jeopardize their eligibility for continuing to receive public benefits.

Comment:

Regarding the language in this section, Association of Regional Center Agencies recommends it should be modified to include a more inclusive list of “Non-Qualified Distributions” to lessen the confusion for designated beneficiaries when determining whether distributions are non-qualified or qualified.

Response:

The Board appreciates this comment but is not amending the regulation at this time. Currently, language in this section is kept purposefully broad and is very clear in its meaning. The Board does not intend to alter this language through this regulatory action.

Section 9002(a)

Specific Purpose:

This section is adopted to clarify the definition for “Account Owner and Designated Beneficiary.”

Factual Basis:

The adoption is necessary because it clarifies that the account owner is also the designated beneficiary. Accounts are established by meeting the criteria of the eligible individual pursuant to Section 529A(e) of the Internal Revenue Code. The account is always owned by the account owner and designated beneficiary who is an eligible individual, regardless of whether the account was established by an authorized legal representative.

Comment:

Regarding the language in this section, National Multiple Sclerosis Society recommends it should be modified to increase the onset of disability for the eligible individual and account owner to 46 so that eligibility is expanded to a broader population.

Response:

The Board appreciates this comment but is not amending the regulation at this time. The suggestion requires legislative changes at the federal level.

Section 9002(b)(1)-(11)

Specific Purpose:

This section is adopted to clarify the definition for “Participation Agreement.”

Factual Basis:

The adoption is necessary because it clarifies the minimum requirements included in the Program participation agreement. The participation agreement establishes the contract, or terms and conditions, between the account owner and the program administrator.

Comment:

Regarding the language in this section 9002(b)(5), Association of Regional Center Agencies recommends prohibiting the State from filing a claim to recover Medicaid/Medi-Cal dollars from CalABLE accounts.

Response:

The Board appreciates this comment but is not amending the regulation at this time. This suggestion requires legislative change and is attempting to amend regulation text that cannot be changed through this regulatory action.