

FINDING OF EMERGENCY
Readoption of Emergency Regulations

CALIFORNIA ABLE PROGRAM TRUST

SPECIFIC FACTS DEMONSTRATING THE EXISTENCE OF AN EMERGENCY AND THE NEED FOR IMMEDIATE ACTION

Specific Basis for the Finding of Emergency

Emergency regulations are appropriate based on Welfare and Institutions Code section 4882, subdivision (b) which provides that California Achieving a Better Life Experience (ABLE) Act Board may adopt regulations as emergency regulations in accordance with the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code). Welfare and Institutions Code section 4882, subdivision (b), further states, "The adoption of the regulations shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health and safety, or general welfare."

The California ABLE Act Board ("the Board") finds that an emergency continues to exist and the emergency regulations, California Code of Regulations, title 10, sections 9000 - 9007 effective February 21, 2017, must be readopted for the immediate preservation of the public peace, health and safety or general welfare, within the meaning of Government Code section 11346.1.

NECESSITY FOR EXTENSION

At its February 7, 2017 meeting, the Board approved Resolution No. 2017-03 relating to the approval of emergency regulations for the California ABLE Program and Proposed Emergency Regulations (California Code of Regulations, title 10, sections 9000 – 9007), and directed staff to submit the emergency regulations to the Office of Administrative Law (OAL) for approval. These regulations were necessary on an emergency basis pursuant to Welfare and Institutions Code section 4882, subdivision (b), providing that the Board may adopt regulations as emergency regulations in accordance with the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code). Welfare and Institutions Code section 4882, subdivision (b), further states, "The adoption of the regulations shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health and safety, or general welfare." The OAL approved the emergency regulations effective February 21, 2017, and these emergency regulations are set to expire on August 22, 2017.

At its April 27, 2017 meeting, the Board commenced the permanent rulemaking package by approving Resolution No. 2017-04 relating to the approval of permanent regulations for the California ABLE Program and proposed regulations. The Board sent the regulations out for a 45-day comment period, commencing June 2, 2017, and ending on July 17, 2017. The Board received four written public comments on the proposed permanent regulations which did not result in any substantive changes to the regulations. On July 18, 2017, the Board held a public comment hearing and received no comments on the proposed regulations.

To ensure that the permanent regulations ultimately adopted by the Board provide the necessary direction and clarification required, the extension of the existing emergency

regulations is necessary for an additional 90-day period until permanent regulations can be finalized. In the absence of these emergency regulations, the public process for developing the California ABLE Program will be seriously disrupted or cease completely.

NON-DUPLICATION

Government Code section 11349 prohibits unnecessary duplication of state or federal statutes in regulation. In this case, duplication of certain state statutes in the proposed emergency regulations is necessary in order to provide additional specific detail not included in state statute.

AUTHORITY AND REFERENCE CITATIONS

The California ABLE Act Board readopts these emergency regulations under the authority granted in Section 4882 of the Welfare and Institutions Code. Subject regulations implement and make specific Sections 4875, 4877, 4878, 4879, 4880, 4881, and 4882 of the Welfare and Institutions Code, and section 529A of the Internal Revenue Code.

INFORMATIVE DIGEST

The Legislature enacted and the Governor signed Senate Bill (SB) 324 (Chapter 796, Statutes of 2015) and Assembly Bill (AB) 449 (Chapter 774, Statutes of 2015), which authorized the California ABLE Act Board to develop and implement the California ABLE Program Trust (“Trust” or “program”), which is a financial savings tool for qualified people with disabilities as defined in Section 529A of the Internal Revenue Code.

The California ABLE Act Board is authorized under Welfare and Institutions Code section 4882 to adopt regulations as it deems necessary to implement the program consistent with the Internal Revenue Code and regulations issued pursuant to that code to ensure that the program meets all criteria for federal tax-exempt benefits.

These regulations provide the framework to allow eligible individuals to save and maintain their funds in the Trust. The following are included in the regulations: relevant definitions; account enrollment; limitations on contributions; change of designated beneficiary; qualified and rollover distributions; account information and reports; and other provisions related to the administration of the program.

The California ABLE Act Board anticipates the regulations will benefit individuals with disabilities through the development and implementation of the Trust. The regulations are compatible and consistent with the intent of the Legislature in adopting Welfare and Institutions Code section 4875 et seq.

DILIGENT ADOPTION OF PERMANENT REGULATIONS

Pursuant to California Code of Regulations, Title 1, section 52(b)(1), the Board has made substantial progress and proceeded with diligence to comply with Government Code section 11346.1(e) by undertaking the following activities since the emergency regulations were adopted in February 2017:

- During numerous outreach efforts between August 2016 to the present, staff has informed stakeholders of the Board’s timeline of regular rulemaking and encouraged public comment.

- In September 2016, staff held its first Public Agency Advisory Council (PAAC) meeting, inviting more than 14 public agency administrators to inform them about the California ABLE Program Trust, and encouraging them to conduct in-house reviews of their impacted regulations.
- In November 2016, staff held its first Stakeholders Conference, inviting 46 disability advocacy groups and service provider organizations to inform them about the California ABLE Program Trust, and encouraging them to educate and share information with their constituencies about the CalABLE Program.
- In December 2016, staff held a second PAAC meeting to continue collaborations with public agency administrators and receive an update on their in-house reviews of impacted regulations.
- In February 2017, staff obtained Board approval to begin the emergency rulemaking process.
- In February 2017, staff filed emergency regulations with OAL, which were approved and effective until August 2017.
- In April 2017, staff obtained Board approval to begin the regular rulemaking process.
- In May 2017, staff held a third PAAC meeting, inviting more than 14 public agency administrators to continue discussions regarding impacted regulations and inform them of the Board's timeline of the regular rulemaking timeline.
- In May 2017, staff submitted Notice of Proposed Action to OAL which was published in the Notice Register on June 2, 2017. The written comment period was from June 2, 2017 to July 17, 2017, during which staff received a total of four comments.
- In July 2017, staff began evaluating and considering the written comments that were received during the 45-day comment period.
- On July 18, 2017, staff held a public comment hearing and received no comment.

As required for readoption of emergency regulations, California Code of Regulations, Title 1, section 52(b)(2)), there have been no material changes in emergency circumstances since the emergency adoption of these regulations in February 2017 (OAL File #: 2017-0210-05E).

SPECIFIC BENEFITS ANTICIPATED BY THE PROPOSED REGULATIONS

The benefit of enacting the proposed regulations will be to provide definitive framework for the Board to administer and implement the California ABLE Program Trust.

COST ESTIMATE

- Costs or savings to state agencies or costs/savings in federal funding to the state: None
- Nondiscretionary costs/savings to local agencies: None
- Programs mandated on local agencies or school districts: None
- Costs imposed on any local agency or school district that is required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code: None
- Effect on housing costs: None
- Significant, statewide adverse economic impact directly affecting businesses to compete with businesses in other states: The Board has determined that the proposed regulations will not have such an impact.

- Cost impacts on a representative private person or business: The Board is not aware of any costs impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.
- Impact on jobs/new businesses: The Board has determined that this regulatory proposal will not have significant impact on the creation of jobs or businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State.

LOCAL MANDATE STATEMENT

The proposed regulations do not impose any mandate on local agencies or school districts.