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Sequence Number: 10-09-15
Rule ID(s): 6057
File Date: 10-8-15
Effective Date: 1-06-16

Proposed Rule(s) Filing Form

Proposed rules are submitted pursuant to Tenn. Code Ann. §§ 4-5-202, 4-5-207, and 4-5-229 in lieu of a rulemaking hearing. It is the intent of the Agency to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within ninety (90) days of the filing of the proposed rule with the Secretary of State. To be effective, the petition must be filed with the Agency and be signed by twenty-five (25) persons who will be affected by the amendments, or submitted by a municipality which will be affected by the amendments, or an association of twenty-five (25) or more members, or any standing committee of the General Assembly. The agency shall forward such petition to the Secretary of State.

Pursuant to Tenn. Code Ann. § 4-5-229, any new fee or fee increase promulgated by state agency rule shall take effect on July 1, following the expiration of the ninety (90) day period as provided in § 4-5-207. This section shall not apply to rules that implement new fees or fee increases that are promulgated as emergency rules pursuant to § 4-5-208(a) and to subsequent rules that make permanent such emergency rules, as amended during the rulemaking process. In addition, this section shall not apply to state agencies that did not, during the preceding two (2) fiscal years, collect fees in an amount sufficient to pay the cost of operating the board, commission or entity in accordance with § 4-29-121(b).

Agency/Board/Commission:	Department of Treasury
Division:	Achieving a Better Life Experience
Contact Person:	John Murphy, Administrator
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Revision Type (check all that apply):

- Amendment
 New
 Repeal

Rule(s) Revised (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please enter only ONE Rule Number/Rule Title per row)

Chapter Number	Chapter Title
1700-08	Achieving a Better Life Experience Program
Rule Number	Rule Title
1700-08-01-.01	Purpose
1700-08-01-.02	Definitions
1700-08-01-.03	Prohibitions
1700-08-01-.04	Eligibility and Application Requirements
1700-08-01-.05	Contributions
1700-08-01-.06	Distributions
1700-08-01-.07	Account Maintenance
1700-08-01-.08	Account Statements
1700-08-01-.09	Account and Contract Termination
1700-08-01-.10	Program Termination

New Rules

Chapter 1700-08-01

Achieving a Better Life Experience Program

1700-08-01-.01 Purpose.

The purpose of these rules is to establish and implement the Achieving a Better Life Experience (ABLE) Act and to establish a qualified ABLE program as an agency and instrumentality of the state to assist an Eligible Individual in saving money to meet the Eligible Individual's Qualified Disability Expenses. The intent of the program is to encourage and assist individuals and families to save private funds for the purpose of supporting individuals with disabilities to maintain health, independence and quality of life.

Authority: Chapter 470 of the 2015 Public Acts; T.C.A. §71-4-802.

1700-08-01-.02 Definitions.

For the purposes of these rules the following definitions shall apply:

- (1) "ABLE" means Achieving a Better Life Experience.
- (2) "Act" means Chapter 470 of the 2015 Public Acts.
- (3) "ABLE Account" means an account established by, owned by, and for the benefit of an Eligible Individual, who is also the Designated Beneficiary on the Account, and maintained under a Qualified ABLE Program for payment of the Eligible Individual's Qualified Disability Expenses, as provided in the Act.
- (4) "Code" means § 529A of the Internal Revenue Code of 1986, codified in 26 U.S.C. § 529A, as amended, and all rules, regulations, notices, and interpretations released by the United States department of treasury, including the internal revenue service.
- (5) "Contract" means a contract for an Eligible Individual's participation in the State's Qualified ABLE Program.
- (6) "Contracting State" means a State without a Qualified ABLE Program that has entered into a contract with a State with a Qualified ABLE Program to provide residents of the Contracting State access to a Qualified ABLE Program.
- (7) "Contribution" or "Contributions" means any payment directly allocated to an ABLE Account for the benefit of a Designated Beneficiary.
- (8) "Contributor" means the Person or Persons contributing money to an ABLE Account.
- (9) "Designated Beneficiary" means the Eligible Individual who has established and owns an ABLE Account, and for whose benefit the ABLE Account has been established.
- (10) "Disability Certification" means a certification that the Eligible Individual has a medically determinable physical or mental impairment, which results in marked and severe functional limitations, and which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than twelve (12) months, or is blind within the meaning of § 1614(a)(2) of the Social Security Act; and such blindness or disability occurred before the date on which the individual attained age twenty-six (26); and includes a copy of the Eligible Individual's diagnosis relating to the individual's relevant impairment or impairments, signed by a physician meeting the criteria of § 1861(r)(1) of the Social Security Act.

- (11) "Distribution" means any payment from an ABLE Account, except for a Program-to-Program Transfer.
- (12) "Eligible Individual" means an individual who is entitled to benefits based on blindness or disability under title II or XVI of the Social Security Act, and such blindness or disability occurred before the date on which the individual attained age twenty-six (26), or a Disability Certification with respect to such individual filed with the Secretary of the United States department of the treasury for such taxable year. The Eligible Individual is the ABLE Account owner and the Designated Beneficiary on the ABLE Account.
- (13) "Excess Contribution" means the amount contributed to an ABLE Account during the taxable year of the Designated Beneficiary that exceeds the limit in effect under 26 U.S.C. §2503(b) for the calendar year in which the taxable year of the Designated Beneficiary begins.
- (14) "Excess Aggregate Contribution" means the amount contributed to an ABLE Account during the taxable year of the Designated Beneficiary that causes the total amounts contributed since the establishment of the ABLE Account (or of an ABLE Account for the same Designated Beneficiary that was rolled into the current ABLE Account) to exceed the limit in effect under 26 U.S.C. §529(b)(6).
- (15) "Legal Representative" means an individual who or entity that may neither have nor acquire any beneficial interest in an ABLE Account during the lifetime of the Designated Beneficiary, but can act on behalf of and for the benefit of a Designated Beneficiary for the purpose of establishing, maintaining, transacting, and terminating an ABLE Account. Not inconsistent with the Code, a legal representative shall include, but not be limited to, an individual or entity with a power of attorney, or parent or legal guardian.
- (16) "Member of the Family" means a Designated Beneficiary's sibling, whether by blood or by adoption, which includes a brother, sister, stepbrother, stepsister, half-brother, and half-sister.
- (17) "Person" means an individual, association, corporation, trust, charitable organization, or other such entity.
- (18) "Program-to-Program Transfer" means the direct transfer of the entire balance of an ABLE Account into an ABLE Account of the same designated beneficiary in which the transferor ABLE Account is closed upon completion of the transfer, or of part or all of the balance to an ABLE Account of another Eligible Individual who is a Member of the Family of the former Designated Beneficiary, without any intervening Distribution or deemed Distribution to the Designated Beneficiary.
- (19) "Rollover" means a Contribution to an ABLE Account of a Designated Beneficiary (or of an Eligible Individual who is a Member of the Family of the Designated Beneficiary) of all or a portion of an amount withdrawn from the Designated Beneficiary's ABLE Account, provided the Contribution is made within sixty (60) days of the date of the Distribution and, in the case of a Rollover to the Designated Beneficiary's ABLE Account, no rollover has been made to an ABLE Account of the Designated Beneficiary within the prior twelve (12) months.
- (20) "Qualified ABLE Program" or "Program" means the ABLE program that is a qualified program pursuant to and in compliance with the Code, and that is created pursuant to the Act.
- (21) "Qualified Disability Expenses" means any expenses related to the Eligible Individual's blindness or disability which are made for the benefit of an Eligible Individual who is the Designated Beneficiary. Qualified disability expenses include expenses for the following: 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 approved pursuant to the Code.
- (22) "Redemption Value" means the current cash value of an ABLE Account attributable to the sum of the principal invested, and the earnings or losses incurred thereon.

- (23) "Refund" means the Redemption Value of the ABLE Account at the time the refund is made, minus any applicable fee charged by the State.
- (24) "State" means the State of Tennessee.
- (25) "Trustees" means state treasurer; the commissioner of finance and administration; the chair of the finance, ways and means committee of the senate; and the chair of the finance, ways and means committee of the house of representatives.

Authority: Chapter 470 of the 2015 Public Acts; T.C.A. §71-4-803, §71-4-804(b), and §71-4-805.

1700-08-01-.03 Prohibitions.

- (1) No interest in the Program or a portion of the Program shall be used as security for a loan.
- (2) No interest in an ABLE Account may be sold or exchanged.

Authority: Chapter 470 of the 2015 Public Acts; T.C.A. §71-4-805 and 71-4-806.

1700-08-01-.04 Eligibility and Application Requirements.

- (1) Eligibility. In order for an Eligible Individual to participate in the Program as the owner of an ABLE Account, the Eligible Individual shall meet the following eligibility requirements by providing the following to the State:
 - (a) Proof that the Eligible Individual is a resident of the State or of a Contracting State as of the date of application to participate in the Program;
 - (b) Proof that he or she meets the definition of an Eligible Individual by providing:
 - 1. a completed and signed certification, affidavit, attestation, verification or declaration indicating that he or she is an Eligible Individual;
 - 2. a completed and signed authorization allowing the State to verify his or her status as an Eligible Individual; or
 - 3. documentation indicating that he or she is an Eligible Individual.
 - (c) A completed and signed application on a form prescribed by the State; and
 - (d) Any other documentation or information required by the Code.
- (2) Application. The Eligible Individual shall provide the following to accompany his or her completed and signed application to participate in the Program:
 - (a) A completed and signed Contract between the State and the Eligible Individual for participation in the State's Qualified ABLE Program;
 - (b) Proof that the Eligible Individual has a Legal Representative who has the authority to administer the Eligible Individual's ABLE Account for the benefit of the Eligible Individual, in the event that the Eligible Individual has a Legal Representative;
 - (c) A verification form signed under the penalty of perjury that the Eligible Individual has no other existing ABLE Account, other than an ABLE Account that will terminate with a Rollover or Program-to-Program Transfer into the new ABLE Account;
 - (d) Investment selection(s) made by the Eligible Individual or his or her Legal Representative. At least one (1) investment option must be selected. If more than one (1) investment option is chosen either the Eligible Individual or his or her Legal

Representative, then the Eligible Individual or Legal Representative must allocate the Contribution among the chosen investment options; and

- (e) An initial Contribution of at least twenty-five dollars (\$25.00) for each investment option chosen by the Eligible Individual or the Eligible Individual's Legal Representative.
- (3) Confirmation. If all of the requirements contained in the Code, the Act and this chapter are met to open an ABLE Account, the State shall send a confirmation of acceptance to the Eligible Individual and will credit the Eligible Individual's ABLE Account with the amount of the initial Contribution made.
- (4) Rejection. If an Eligible Individual fails to provide all of the information required in this rule within thirty (30) calendar days of the State's receipt of the Eligible Individual's application, the State Treasurer may reject the application and refund to the Eligible Individual or the Eligible Individual's Legal Representative all Contributions made less any applicable fees. Rejection of an application shall not preclude the Eligible Individual from enrolling in the Program in the future.
- (5) Fraud. The State Treasurer may terminate an Eligible Individual's Contract if the Eligible Individual or the Eligible Individual's Legal Representative knowingly makes any false statement or falsifies or permits to be falsified any record or records of the Program. The amount of the refund to which the Designated Beneficiary is entitled shall be equal to the Redemption Value of the ABLE Account at the time the refund is made, minus any applicable fee charged by the State.
- (6) Inactivity. If a period of ten (10) consecutive years passes with no Contributions having been made to the Designated Beneficiary's ABLE Account, or with no correspondence from the Designated Beneficiary or the Designated Beneficiary's Legal Representative, the State Treasurer shall report and deliver the amount of any refund payable under the Contract to the Tennessee Department of Treasury's Unclaimed Property Division pursuant to title 66, chapter 29, part 1. Prior to delivering the refund, the State Treasurer shall make reasonable efforts to locate the Designated Beneficiary or the Designated Beneficiary's Legal Representative. The refund shall be equal to the Redemption Value of the ABLE Account at the time the refund is delivered, minus any applicable fee charged by the State. Upon payment of the refund to the State Treasurer, the State's obligations under the Contract shall cease.
- (7) Fees. The State Treasurer may charge fees to the Designated Beneficiary or collect fees from each ABLE Account for the administration of the Program or for transactions under the State's Qualified ABLE Program.
- (8) Separate Accounting. The State shall maintain a separate individual ABLE Account for each Contract, showing the name of the Designated Beneficiary and the Redemption Value of the ABLE Account, including any Distributions made from the ABLE Account.

Authority: Chapter 470 of the 2015 Public Acts; T.C.A. §71-4-804(b), §71-4-805, §71-4-806, and §71-4-807.

1700-08-01-.05 Contributions.

- (1) Who May Make Contributions. One (1) or more Persons may make Contributions for a taxable year into an ABLE Account for the benefit for a Designated Beneficiary who is also an Eligible Individual during that taxable year. The Designated Beneficiary shall be an Eligible Individual at the time the ABLE Account is established, at the time of any Contribution to the ABLE Account, and at the time of a Distribution from the ABLE Account for Qualified Disability Expenses. All Contributions made to a Designated Beneficiary's ABLE Account are pooled and are subject to the terms and conditions of the Designated Beneficiary's Contract.
- (2) How Contributions May be Made. All Contributions to an ABLE Account shall be made only in cash and not in property, except for Program-to-Program Transfers. For the purposes of these rules, "cash" means United States dollars in the form of negotiable checks. Cash contributions may be made in the form of a check, money order, credit card, electronic transfer or similar methods acceptable to the State, but shall not include travelers' checks, cashier checks, starter

checks and credit card convenience checks. Contributions may also be made through a Rollover or through a Program-to-Program Transfer.

- (3) Limit on Amount of Contributions.
 - (a) Contributions made to a Designated Beneficiary's ABLE Account shall not exceed the federal gift limitation contained in annual federal gift tax exclusion pursuant to 26 U.S.C. §2503(b); Contributions made in excess of this limit are referenced as "Excess Contributions". The State shall return the Excess Contributions to the Contributor, including all net income attributable to that Excess Contribution. The State shall return the Excess Contribution to the Contributor on a last-in-first-out basis until the entire Excess Contribution, along with all net income attributable to the Excess Contribution has been returned. The State shall ensure that the returned Excess Contributions are received by the Contributor on or before the due date, including extensions, for the Designated Beneficiary's federal income tax return for the taxable year in which the Excess Contribution was made. If an Excess Contribution and the net income attributable to the Excess Contribution are returned to a Contributor other than the Designated Beneficiary, the State shall notify the Designated Beneficiary of the Excess Contribution return at the same time the Excess Contribution is returned to the Contributor. For the purpose of the Contribution limitation contained in this subparagraph (a), Contributions do not include Rollovers or Program-to-Program Transfers.
 - (b) Contributions made to a Designated Beneficiary's ABLE Account contributed since the establishment of the ABLE Account shall not exceed the limitation in effect under 26 U.S.C. §529(b)(6). The Contributions toward the limitation shall include Contributions to any prior ABLE Account maintained by any State or its agency or instrumentality for the same Designated Beneficiary or any prior Designated Beneficiary. The State shall not accept any Excess Aggregate Contributions, and shall return all Excess Aggregate Contributions to the Contributor on a last-in-first-out basis until the entire Excess Aggregate Contribution, along with the net income attributable to the Excess Aggregate Contribution has been returned. The State shall ensure that the returned Excess Aggregate Contributions are received by the Contributor on or before the due date, including, extensions, for the Designated Beneficiary's federal income tax return for the taxable year in which the Excess Aggregate Contribution was made. If an Excess Aggregate Contribution and the net income attributable to the Excess Aggregate Contribution are returned to a Contributor other than the Designated Beneficiary, the State shall notify the Designated Beneficiary of the Excess Aggregate Contribution return at the same time the Excess Aggregate Contribution is returned to the Contributor.

Authority: Chapter 470 of the 2015 Public Acts; T.C.A. §71-4-804(b), §71-4-805, §71-4-806, and §71-4-807.

1700-08-01-.06 Distributions.

- (1) Written Request. Any Distribution requests shall be made in writing by the Designated Beneficiary or the Designated Beneficiary's Legal Representative (requestor). Funds shall not be distributed from an ABLE Account until the tenth (10th) day following the State's receipt of the respective funds. The distributed funds will be sent to the requestor unless the Designated Beneficiary or the Designated Beneficiary's Legal Representative request that payment be sent directly to a third party for payment.
- (2) Amount and Timing of Distributions. The Distribution amount will be equal to the amount requested, not to exceed the Redemption Value of the Beneficiary's ABLE Account at the time the Distribution is processed. The Distribution amount will be paid within a maximum of sixty (60) calendar days after the State's receipt of a written Distribution request.
- (3) Types of Distributions.
 - (a) Distributions for Qualified Disability Expenses. The Designated Beneficiary or the Designated Beneficiary's Legal Representative may direct a Distribution and payment to

the Designated Beneficiary, the Designated Beneficiary's Legal Representative or a third party as payment for a Qualified Disability Expense. The Designated Beneficiary or the Designated Beneficiary's Legal Representative shall provide the documentation requested by the State to substantiate that the Distribution will be used for the payment of Qualified Disability Expenses.

- (b) Distributions for Non-Qualified Disability Expenses. The Designated Beneficiary or the Designated Beneficiary's Legal Representative may direct a Distribution and payment to a the Designated Beneficiary or the Designated Beneficiary's Legal Representative provided that the funds have been on deposit in the ABLE Account for at least ten (10) calendar days and provided that there is at least one hundred dollars (\$100.00) in the ABLE Account once the Distribution is made. The earnings portion of the Distribution made for non-Qualified Disability Expenses may be subject to federal taxation as prescribed under the Code.
- (c) Death of a Designated Beneficiary. In the event of a Designated Beneficiary's death, the State shall make any outstanding payments for Qualified Disability Expenses. Subject to the outstanding payments and to the extent permitted by the Code:
 - (i) the funds remaining in an ABLE Account not in excess of the amount equal to the total medical assistance paid for the Designated Beneficiary after the establishment of the ABLE Account, net of any premiums paid from the ABLE Account or paid by or on behalf of the Designated Beneficiary to a Medicaid Buy-In program under any State Medicaid plan established under title XIX of the Social Security Act, shall be distributed to such State upon filing a claim for payment by such State; and
 - (ii) the Designated Beneficiary's Legal Representative, estate administrator, estate executor or next of kin may request a Distribution of any remaining moneys in the Designated Beneficiary's ABLE Account remaining after outstanding payments for Qualified Disability Expenses and payments pursuant to subdivision (i) in this paragraph, or may request an Account and Contract termination. In the event that a Person does not request a Distribution of the remaining funds or request an Account or Contract termination, then the remaining funds shall be payable to the Tennessee Department of Treasury's Unclaimed Property Division pursuant to title 66, chapter 29, part 1.
- (d) Rollovers. Any Designated Beneficiary or Designated Beneficiary's Legal Representative may request a Rollover. Any Rollover made pursuant to this rule shall be administered in accordance with the applicable Rollover provisions contained in the Code. Any Rollover made pursuant to this rule shall not exceed the Redemption Value of the Designated Beneficiary's ABLE Account minus any applicable fees charged by the State. The Redemption Value of the ABLE Account shall be determined as of the date that the Rollover is made. The portion of the Rollover amount that constituted an investment into an ABLE Account from which the Distribution was made, shall be added to the investment portion in the recipient ABLE Account, and the earnings from the ABLE Account from which the Distribution was made shall be added the into the earnings of the recipient ABLE Account.
- (e) Program-to-Program Transfers. Any Designated Beneficiary or Designated Beneficiary's Legal Representative may request a Program-to-Program Transfer. The portion of the Program-to-Program Transfer amount that constituted an investment into an ABLE Account from which the Distribution was made, shall be added to the investment portion in the recipient ABLE Account, and the earnings from the ABLE Account from which the Distribution was made shall be added the into the earnings of the recipient ABLE Account.

Authority: Chapter 470 of the 2015 Public Acts; T.C.A. §71-4-804(b), §71-4-805, §71-4-806, and §71-4-807.

1700-08-01-.07 Account Maintenance.

- (1) Update ABLE Account Information. Any Designated Beneficiary or Designated Beneficiary's Legal Representative may make changes and updates to the ABLE Account information as needed. These changes include updates to the following, including, but not limited to, addresses; legal name changes; phone numbers; email addresses and changes in the Designated Beneficiary's Legal Representative. The requested changes shall be provided in writing to the State.
- (2) ABLE Account Limitations.
 - (a) Except in the case of Rollovers or Program-to-Program Transfers, a Designated Beneficiary is limited to one (1) ABLE Account at a time, regardless of where the account is located. Except in the case of Rollovers and Program-to-Program Transfers, if an ABLE Account is established for a Designated Beneficiary who already has an ABLE Account in existence, the State shall not treat the additional account as an ABLE Account; however, as long as the State returns all Contributions (including all net income attributable to the Contribution) to the Person or Persons who/that made the Contribution, then the additional account will be treated as never having been established.
 - (b) The funds (contributions, earnings and funds distributed for housing expenses as defined by the Social Security Administration) in a Designated Beneficiary's ABLE Account at any one time shall not exceed one hundred thousand dollars (\$100,000.00) should the Designated Beneficiary participate in the Supplement Security Income program under title XVI of the Social Security Act.
- (3) Change in Designated Beneficiary. A Designated Beneficiary may be changed on an ABLE Account and the transferred moneys will not be treated as a Distribution subject to federal taxation as long as the new Designated Beneficiary is an Eligible Individual within the taxable year that the change occurs and the new Designated Beneficiary is a Member of the Family of the former Designated Beneficiary. A change in the Designated Beneficiary of an ABLE Account shall only occur during the life of the Designated Beneficiary, and at the time of the change, the successor Designated Beneficiary must be an Eligible Individual.
- (4) Eligible Individual Recertification. At the request of the State, each Designated Beneficiary shall recertify to the State that he or she meets the definition of an Eligible Individual. Each Designated Beneficiary or Designated Beneficiary's Legal Representative shall promptly report any changes in the Designated Beneficiary's status as an Eligible Individual. Should a Designated Beneficiary no longer meet the definition of an Eligible Individual at any time during which the Designated Beneficiary has an ABLE Account, the Designated Beneficiary shall maintain his or her status as an Eligible Individual until the end of the taxable year in which the change in the Designated Beneficiary's condition occurred. On the first day of the subsequent taxable year in which the Designated Beneficiary does not meet the definition of an Eligible Individual, the State shall not accept additional contributions into the ABLE Account and the existing money in the ABLE Account shall not be used for qualified disability expenses. Should a Designated Beneficiary subsequently meet the definition of an Eligible Individual, the State shall accept contributions into the Designated Beneficiary's ABLE Account and the existing funds in the ABLE Account can be used to pay for qualified disability expenses.
- (5) Investment Direction. Any Designated Beneficiary or Designated Beneficiary's Legal Representative may, directly or indirectly, direct the investment of any Contributions to the Program, or any earning thereon, no more than two (2) times in any calendar year.

Authority: Chapter 470 of the 2015 Public Acts; T.C.A. §71-4-804(b), §71-4-805, §71-4-806, and §71-4-807.

1700-08-01-.08 Account Statements.

- (1) The State shall provide Designated Beneficiaries participating in the State's Qualified ABLE

Program or the Designated Beneficiary's Legal Representative with periodic ABLE Account statements that include, but are not limited to the following: Contribution amounts; Distribution amounts; investments in the ABLE Account; total ABLE Account balance; and Redemption Value of the ABLE Account. The State shall also provide this information at the request of the Designated Beneficiary or the Designated Beneficiary's Legal Representative.

Authority: Chapter 470 of the 2015 Public Acts; T.C.A. §71-4-804(b), §71-4-805, §71-4-806, and §71-4-807.

1700-08-01-.09 Account and Contract Termination.

- (1) A Designated Beneficiary may terminate his or her ABLE Account and Contract or a Designated Beneficiary's Legal Representative may terminate a Designated Beneficiary's ABLE Account and Contract at any time and for any reason upon a written request submitted to the State. In response to a written request for termination, a Refund will be paid to the Designated Beneficiary, Designated Beneficiary's Legal Representative or any other Person designated to receive a Refund under the Contract. The actual termination of the ABLE Account and Contract will not occur until all funds in the Designated Beneficiary's ABLE Account have been refunded.

Authority: Chapter 470 of the 2015 Public Acts; T.C.A. §71-4-804(b), §71-4-805, §71-4-806, and §71-4-807.

1700-08-01-.10 Program Termination.

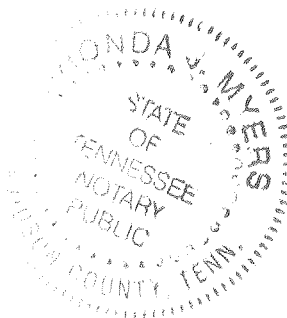
- (1) If the Trustees determine that the State's Qualified ABLE Program is, for any reason, financially infeasible, or is not beneficial to the citizens of the State of Tennessee or the State itself, then the Trustees may suspend or terminate the Program immediately. Termination of the Program will result in a termination of all ABLE Accounts and Contracts, and generate a Refund to the Designated Beneficiary, the Designated Beneficiary's Legal Representative or any other Person designated to receive a Refund under the Contract.
- (2) Notwithstanding any other provision to the contrary, Refunds and other benefits payable under a Contract shall be deemed to be due and payable only to the extent that moneys are available to the credit of the State's Qualified ABLE Program, and that the State, the Tennessee Department of Treasury, the State Treasurer or the State's Qualified ABLE Program shall not be liable for any amount in excess of such sums.
- (3) Should the State's Qualified ABLE Program be terminated by the Trustees and the Program assets prove to be less than would be required to fully pay all obligations of the Program in full, the State Treasurer shall first defray all Program administrative expenses. The State Treasurer shall then reduce payments owed pursuant to a Contract, pro rata, to the degree necessary to bring the total disbursement of the State's Qualified ABLE Program within the amount of the remaining funds.

Authority: Chapter 470 of the 2015 Public Acts; T.C.A. §71-4-805, §71-4-807, and 71-4-811.

* If a roll-call vote was necessary, the vote by the Agency on these rules was as follows:

Board Member	Aye	No	Abstain	Absent	Signature (if required)

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the State Treasurer on 08/27/2015 (date as mm/dd/yyyy), and is in compliance with the provisions of T.C.A. § 4-5-222. The Secretary of State is hereby instructed that, in the absence of a petition for proposed rules being filed under the conditions set out herein and in the locations described, he is to treat the proposed rules as being placed on file in his office as rules at the expiration of ninety (90) days of the filing of the proposed rule with the Secretary of State.



Date: August 27, 2015

Signature: [Handwritten Signature]

Name of Officer: David H. Lillard, Jr.

Title of Officer: State Treasurer

Subscribed and sworn to before me on: August 27, 2015

Notary Public Signature: Pronda J. Myers

My commission expires on: 3-7-17

All proposed rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

Herbert H. Slattery III
 Herbert H. Slattery III
 Attorney General and Reporter
9/30/2015 Date

Department of State Use Only

Filed with the Department of State on: 10-8-15

Effective on: 1-6-16

Tre Hargett
 Tre Hargett
 Secretary of State

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 PUBLICATIONS

Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process as described in T.C.A. § 4-5-202(a)(3) and T.C.A. § 4-5-202(a), all agencies shall conduct a review of whether a proposed rule or rule affects small businesses.

Not applicable.

Impact on Local Governments

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228 “any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments.” (See Public Chapter Number 1070 (<http://state.tn.us/sos/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

It is not anticipated that the proposed rules will impact local governments.

Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

- (A) A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

The proposed rules establish a program to implement the federal and state Achieving a Better Life Experience Act contained in 26 U.S.C. §529A and Chapter 470 of the 2015 Public Acts, respectively.

Rule 1700-08-01-.01 [PURPOSE] establishes the purpose of the rules which is to establish and implement the Achieving a Better Life Experience ("ABLE") Act and establish an ABLE Program to assist eligible individuals in saving money to meet an eligible individual's qualified disability expenses. Pursuant to state law (Chapter 470 of the 2015 Public Acts)

Rule 1700-08-01-.02 [DEFINITIONS] establishes the definitions used throughout the proposed rules that are consistent with the definitions contained in the federal law contained in 26 U.S.C. §529A and state law contained in Chapter 470 of the 2015 Public Acts.

Rule 1700-08-01-.03 [PROHIBITIONS] provides that no interest in the ABLE Program or a portion of the ABLE Program shall be used as security for a loan or sold or exchanged. This rule was established in accordance with the United States Department of Treasury proposed rules (IRS-REG-102837-15).

Rule 1700-08-01-.04 [ELIGIBILITY AND APPLICATION REQUIREMENTS] establishes the eligibility requirements to participate in the ABLE Program which are established in federal law contain in 26 U.S.C. §529A and in the United State Department of Treasury proposed regulations (IRS-REG-102837-15). In order to be eligible to participate in the ABLE Program, an eligible individual must provide the State with proof that he or she is a resident of the State of Tennessee or of a contracting state accompanied by proof that he or she meets the definition of an eligible individual. An eligible individual is defined by federal law as an individual who is entitled to benefits based on blindness or disability under title II or XVI of the Social Security Act, and such blindness or disability occurred before the date on which the individual attained age twenty-six (26), or a disability certification with respect to such individual filed with the Secretary of the United States Department of the Treasury for such taxable year. The eligible Individual is the ABLE account owner and the designated beneficiary on the ABLE Account.

An eligible individual must also submit a completed and signed application and any other information or documentation required by the Internal Revenue Code. The eligible individual's application must be accompanied by a completed and signed contract to participate in the ABLE Program; proof that the eligible individual has a legal representative to act on his or her behalf (to the extent that the eligible individual has a legal representative); and a verification form indicating that the eligible individual has no other existing ABLE account; and investment selections. This rule also provides that the Treasurer may charge a fee for the administration of ABLE accounts.

Rule 1700-08-01-.05 [CONTRIBUTIONS] provides that one (1) or more persons may make contributions into an ABLE account for the benefit of a designated beneficiary. Contributions must be made in cash, meaning in United States dollars in the form of negotiable checks, but may also be made through a rollover or a program-to-program transfer. Annual contributions are limited to the federal gift tax limitation, which is currently fourteen thousand dollars (\$14,000.00). Contributions to an ABLE account since the establishment of the account is limited two hundred thirty-five thousand dollars (\$235,000.00) pursuant to 26 U.S.C. §529(b)(6).

Rule 1700-08-01-.06 [DISTRIBUTIONS] provides that any distribution requests for qualified disability expenses shall be made in writing by the designated beneficiary or the designated beneficiary's legal representative. Funds shall not be distributed from an account until the tenth (10th) day following the State's receipt of the funds. Distributions may be directed to the designated beneficiary, the designated beneficiary's legal representative or a third party. Distributions may be made for non-qualified disability expenses; however, the earnings portion of the distribution may be subject to a federal tax penalty of ten percent (10%). Distributions may also be made upon the death of the designated beneficiary. After paying all outstanding payments for qualified disability expenses, the State shall become a creditor of an ABLE account to obtain the medical assistance paid to a designated beneficiary net any premiums paid from an ABLE account on behalf of a designated beneficiary to a

Medicaid Buy-In Program. Distributions may also be made as rollovers (a withdrawal of all or a portion of an ABLÉ account from one ABLÉ account with a contribution into another) or as a program-to-program transfer (a direct transfer of the entire balance of an ABLÉ account to another ABLÉ account without any intervening distribution).

Rule 1700-08-01-.07 [ACCOUNT MAINTENANCE] provides that a designated beneficiary or designated beneficiary's legal representative may make changes and updates to the ABLÉ account information as needed. The rule also provides that the funds (contributions, earnings and funds distributed for housing expenses as defined by the Social Security Administration) in a Designated Beneficiary's ABLÉ Account at any one time shall not exceed one hundred thousand dollars (\$100,000.00) should the Designated Beneficiary participate in the Supplement Security Income program under title XVI of the Social Security Act. Pursuant to federal law, a designated beneficiary or designated beneficiary's legal representative may, directly or indirectly, direct the investment of any contributions no more than two (2) times in any calendar year. Additionally, a designated beneficiary shall recertify at the request of the State that he or she still meets the definition of an eligible individual.

Rule 1700-08-01-.08 [ACCOUNT STATEMENTS] provides that the State shall provide each designated beneficiary or designated beneficiary's legal representative with periodic ABLÉ account statements, which include, but are not limited to, contribution amounts; distribution amounts; investments in the ABLÉ account; total ABLÉ account balance; and the account's redemption value.

Rule 1700-08-01-.09 [ACCOUNT AND CONTRACT TERMINATION] provides that a designated beneficiary or a designated beneficiary's legal representative may terminate an ABLÉ account at any time.

Rule 1700-08-01-.10 [PROGRAM TERMINATION] provides that the ABLÉ program trustees may terminate or suspend the ABLÉ program if they determine that for any reason the ABLÉ program is financially infeasible, or is not beneficial to the citizens of the State or the State itself.

- (B)** A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

26 U.S.C. §529A and Chapter 470 of the 2015 Public Acts.

- (C)** Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

The persons or entities most directly affected by these proposed rules are those that provide assistance to disabled individuals, including, but not limited to, the Tennessee Disability Coalition, the Arc of Tennessee, the Department of Human Services, the Department of Intellectual and Developmental Disabilities, the Department of Finance and Administration (TennCare), and the Department of Health.

- (D)** Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule;

To the best of the Department's knowledge, there are no Attorney General opinions or any judicial ruling that directly relates to these rules.

- (E)** An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

It is anticipated that there will be an increase in State expenditures to implement this program; however, the funds for these expenditures have been appropriated by the General Assembly.

- (F)** Identification of the appropriate agency representative or representatives, possessing substantial knowledge and understanding of the rule;

John Murphy; Administrator for the Achieving a Better Life Experience Program; Department of Treasury; 502 Deaderick Street, Andrew Jackson Building, 15th Floor; Nashville, Tennessee 37243 and Alison Cleaves, Assistant General Counsel; Department of Treasury; 502 Deaderick Street, Andrew Jackson Building, 13th Floor; Nashville, Tennessee 37243.

- (G) Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees;

John Murphy; Administrator for the Achieving a Better Life Experience Program; Department of Treasury; 502 Deaderick Street, Andrew Jackson Building, 15th Floor; Nashville, Tennessee 37243 and Alison Cleaves, Assistant General Counsel; Department of Treasury; 502 Deaderick Street, Andrew Jackson Building, 13th Floor; Nashville, Tennessee 37243.

- (H) Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

John Murphy; Administrator for the Achieving a Better Life Experience Program; Department of Treasury; 502 Deaderick Street, Andrew Jackson Building, 15th Floor; Nashville, Tennessee 37243 and Alison Cleaves, Assistant General Counsel; Department of Treasury; 502 Deaderick Street, Andrew Jackson Building, 13th Floor; Nashville, Tennessee 37243.

- (I) Any additional information relevant to the rule proposed for continuation that the committee requests.

Any additional information requested by the committee relevant to the proposed rules will be provided promptly upon request.

Katelyn Smith

From: John Murphy
Sent: Tuesday, January 05, 2016 12:08 PM
To: Katelyn Smith
Cc: Alison Cleaves
Subject: RE: Rule Chapter 1700-08

Dear Ms. Smith,

Thank you for catching this typographical error. May you correct this tab over error? Thank you so much for your time and consideration!

Sincerely,
John

From: Katelyn Smith
Sent: Tuesday, January 05, 2016 10:15 AM
To: John Murphy
Subject: Rule Chapter 1700-08

Good morning John,

I have been reviewing the next set of rules to be posted and I found a typographical error. On page 7 of the filing, the outline goes from (c) to (i) and (ii).

- (c) Death of a Designated Beneficiary. In the event of a Designated Beneficiary's death, the State shall make any outstanding payments for Qualified Disability Expenses. Subject to the outstanding payments and to the extent permitted by the Code:
 - (i) the funds remaining in an ABLE Account not in excess of the amount equal to the total medical assistance paid for the Designated Beneficiary after the establishment of the ABLE Account, net of any premiums paid from the ABLE Account or paid by or on behalf of the Designated Beneficiary to a Medicaid Buy-In program under any State Medicaid plan established under title XIX of the Social Security Act, shall be distributed to such State upon filing a claim for payment by such State; and
 - (ii) the Designated Beneficiary's Legal Representative, estate administrator, estate executor or next of kin may request a Distribution of any remaining moneys in the Designated Beneficiary's ABLE Account remaining after outstanding payments for Qualified Disability Expenses and payments pursuant to subdivision (i) in this paragraph, or may request an Account and Contract termination. In the event that a Person does not request a Distribution of the remaining funds or request an Account or Contract termination, then the remaining funds shall be payable to the Tennessee Department of Treasury's Unclaimed Property Division pursuant to title 66, chapter 29, part 1.

The proper outline format is (c) to 1. and 2.

- (c) Death of a Designated Beneficiary. In the event of a Designated Beneficiary's death, the State shall make any outstanding payments for Qualified Disability Expenses. Subject to the outstanding payments and to the extent permitted by the Code:
 - 1. the funds remaining in an ABLE Account not in excess of the amount equal to the total medical assistance paid for the Designated Beneficiary after the establishment of the

ABLE Account, net of any premiums paid from the ABLE Account or paid by or on behalf of the Designated Beneficiary to a Medicaid Buy-In program under any State Medicaid plan established under title XIX of the Social Security Act, shall be distributed to such State upon filing a claim for payment by such State; and

2. the Designated Beneficiary's Legal Representative, estate administrator, estate executor or next of kin may request a Distribution of any remaining moneys in the Designated Beneficiary's ABLE Account remaining after outstanding payments for Qualified Disability Expenses and payments pursuant to subdivision (i) in this paragraph, or may request an Account and Contract termination. In the event that a Person does not request a Distribution of the remaining funds or request an Account or Contract termination, then the remaining funds shall be payable to the Tennessee Department of Treasury's Unclaimed Property Division pursuant to title 66, chapter 29, part 1.

It appears that the two subparts were indented one tab too far. Can you confirm if this is a typographical error or if it should be posted as is? Please let me know how we should proceed.

Thank you for your time,

Katelyn Smith
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Division of Publications
Office of Tennessee Secretary of State Tre Hargett
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8th Floor, Tennessee Tower
Nashville, TN 37243
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