

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Appropriations

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BILL: SB 1300

INTRODUCER: Senator Benacquisto

SUBJECT: Florida ABLE Program

DATE: April 10, 2019

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Hendon</u>	<u>Hendon</u>	<u>CF</u>	<b>Favorable</b>
2.	<u>Gerbrandt</u>	<u>Kidd</u>	<u>AHS</u>	<b>Recommend: Favorable</b>
3.	<u>Gerbrandt</u>	<u>Kynoch</u>	<u>AP</u>	<b>Favorable</b>

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**I. Summary:**

SB 1300 repeals section 11 of the 2018-2019 Implementing Bill. Section 10 of the Implementing Bill prohibits the Medicaid program, upon the death of a Medicaid recipient who has assets in an ABLE account, from filing a claim on the account to recover medical assistance. By repealing section 11, the changes in the implementing bill that prohibit a claim by Medicaid will remain in effect. Contributions to ABLE accounts are tax exempt and pay for a variety of expenses related to maintaining the health, independence and quality of life for people with disabilities.

The bill is expected to have an insignificant fiscal impact to the state and has an effective date of June 30, 2019.

**II. Present Situation:**

**ABLE Act**

Signed into law in December 2014, the Stephen Beck, Jr. Achieving a Better Life Experience (ABLE) Act authorized states to establish tax-advantaged savings programs for individuals with disabilities.<sup>1</sup> In 2015, Virginia became the first state to approve and pass ABLE legislation after passage of the federal ABLE Act. The act created Section 529A of the Internal Revenue Code. This is the federal legal framework that establishes the specific rules and requirements of an ABLE account. Such accounts are tax-advantaged savings accounts for eligible individuals with disabilities. Individuals with disabilities and their families depend on a wide variety of public benefits for income, health care, food and housing assistance. Many of these benefits require meeting a means or resource test that limits the eligibility of individuals who report more than \$2,000 in cash savings, retirement funds and other items of significant value.

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<sup>1</sup> ABLEnow website, see <https://www.able-now.com/>, last visited March 28, 2019.

For the first time in public policy, the ABLE Act recognized the extra and significant costs of living with a disability. ABLE accounts allow eligible individuals the opportunity to save and fund a variety of qualified disability expenses without endangering eligibility for certain benefits such as Medicaid and Supplemental Security Income (SSI).

### **Florida's ABLE Program**

Section 1009.986, F.S., established the ABLE program to encourage and assist the saving of private funds in tax-exempt accounts in order to pay for the qualified disability expenses<sup>2</sup> of eligible individuals with disabilities. The Legislature intended that the ABLE program be implemented in a manner that is consistent with the federal law authorizing the program and that maximizes program efficiency and effectiveness.

### **Medicaid**

The Florida Medicaid program is a partnership between the federal and state governments. Each state operates its own Medicaid program under a state plan approved by the federal Centers for Medicare and Medicaid Services (CMS). The state plan outlines Medicaid eligibility standards, policies, and reimbursement methodologies. Florida Medicaid is administered by the Agency for Health Care Administration and financed with federal and state funds. Approximately 3.9 million Floridians are currently enrolled in Medicaid, and the program is expected to cost \$28.2 billion in 2019-2020.<sup>3</sup>

Eligibility for Medicaid is based on a number of factors, including age, household, or individual income, and assets. State eligibility payment guidelines are provided in s. 409.903, F.S., for mandatory payments for eligible persons and s. 409.904, F.S., for optional payments for eligible persons. Minimum coverage thresholds are established in federal law for certain population groups, such as children. Many of the persons with developmental disabilities that are assisted by the ABLE program are also served by the Medicaid program. State and federal law require states to file a lien or claim on the estate of persons served by Medicaid after their death to recover the costs of their medical care.<sup>4</sup> In addition, s. 1009.986, F.S., allows the Medicaid program, upon the death of an ABLE account beneficiary, to make a claim on the account for the total amount of medical assistance provided under the Medicaid program.

### **2018-2019 General Appropriations Act and Implementing Bill**

Specific Appropriation 70 of the Fiscal Year 2018-2019 General Appropriations Act<sup>5</sup> provided \$2.2 million in general revenue to the ABLE program for student financial aid.

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<sup>2</sup> Qualified disability expenses include, but are not limited to, 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. (See s. 529A of the Internal Revenue).

<sup>3</sup> Social Services Estimating Conference, Medicaid Caseloads and Expenditures, November 18, 2018 and December 10, 2018—Executive Summary <http://edr.state.fl.us/Content/conferences/medicaid/execsummary.pdf> (last visited March 13, 2019).

<sup>4</sup> Section 409.9101, F.S.

<sup>5</sup> Chapter 2018-10, Laws of Florida

Each year, the Legislature passes an Implementing Bill to make temporary changes in the Florida Statutes to implement the provisions of the General Appropriations Act. The Fiscal Year 2018-2019 Implementing Bill<sup>6</sup> made needed changes in statute and provided for these changes to revert back to prior text on July 1, 2019.

Section 10 of the Implementing Bill amended s. 1009.986(7), F.S., prohibiting the Medicaid program, upon the death of a Medicaid recipient who has assets in an ABLE account, from filing a claim on the account to recover medical assistance provided by Medicaid. Section 11 restores the text so that this prohibition is in effect only during Fiscal Year 2018-2019.

### **III. Effect of Proposed Changes:**

**Section 1** of the bill repeals section 11 of the 2018-2019 Implementing Bill. Section 10 of the Implementing Bill prohibits the Medicaid program from filing a claim on a Medicaid client who receives assistance from the ABLE program. By repealing section 11, the changes in section 10 of the 2018-2019 Implementing Bill will remain in effect, which prohibits the Medicaid program from filing a claim on an ABLE account to recover medical assistance provided by Medicaid.

**Section 2** provides an effective date of June 30, 2019.

### **IV. Constitutional Issues:**

#### **A. Municipality/County Mandates Restrictions:**

None.

#### **B. Public Records/Open Meetings Issues:**

None.

#### **C. Trust Funds Restrictions:**

None.

#### **D. State Tax or Fee Increases:**

None.

#### **E. Other Constitutional Issues:**

None.

### **V. Fiscal Impact Statement:**

#### **A. Tax/Fee Issues:**

None.

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<sup>6</sup> *Id.*

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

The state's Medicaid program will not be able to make a claim on the ABLE account of any Medicaid recipient who also receives assistance from the ABLE program. The fiscal impact to the state is unknown, but is not expected to be significant.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill repeals section 11 of ch. 2018-10, L.O.F.

**IX. Additional Information:****A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:**

None.