State of Wisconsin
Department of Financial Institutions

Report and Recommendations on Establishing an ABLE Program for Wisconsin Residents

September 1, 2022

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I. Background

● ***Nature of ABLE accounts.*** The Stephen Beck, Jr., Achieving a Better Life Experience Act of 2014—better known as the "ABLE Act"—is a federal law authorizing states to establish ABLE programs to help eligible individuals and their families save for disability-related expenses.[1] An ABLE program allows participants to create investment accounts (known as "ABLE accounts") for the benefit of individuals with disabilities that developed prior to age 26.[2]

Contributions toward an individual's account are capped each year at the level of the federal gift-tax exclusion (currently $16,000), plus a formula-based add-on for accounts held by beneficiaries who are employed but do not participate in employer-based retirement savings plans.[3] Account funds may be withdrawn to cover the beneficiary's "qualified disability expenses," which can include education, housing, transportation, employment training and support, assistive technology and support services, and several other categories of living expenses.

● ***Advantages of ABLE accounts.*** For eligible individuals, ABLE accounts have two legal benefits. First, they have **tax advantages**: distributions from ABLE accounts to cover qualified disability expenses are not counted as income for purposes of federal and state tax law,[4] and contributions to an ABLE account are tax-deductible under state law.[5] Second, they have **administrative advantages**: except in limited circumstances, ABLE account contributions and distributions are disregarded for purposes of determining a beneficiary's eligibility and benefits under Social Security and other means-tested federal programs.[6] Together, these advantages allow ABLE beneficiaries and their families to save for disability-related expenses without creating additional tax liabilities or jeopardizing existing federal benefits.

For ABLE beneficiaries and their families, these benefits can bring positive effects beyond the sum of their parts. A local financial advisor interviewed for this report summarized their "life-changing" impact:

> "For an individual with a disability to have an account like this that allows them to protect benefits, work, earn money, and put away in an account that they can use to pay for housing and other essential expenses or invest for the long term, it can be life changing. The ability to create a practical tool for people with a disability to have

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[1] *See generally*, Pub. L. 113-295, 128 Stat. 4056 (2014).

[2] More specifically, a person is eligible to be an ABLE beneficiary if that person (1) is entitled to benefits based on blindness or disability under the Social Security Act or files a proper disability certification with the IRS; and (2) the disability occurred before the person reached age 26. 26 U.S.C. § 529A(e)(1).

[3] 26 U.S.C. § 529A(b)(2).

[4] 26 U.S.C. § 529A(c)(1)(B); Wis. Stat. § 71.05(6)(a)27.

[5] Wis. Stat. § 71.05(6)(b)52.

[6] 26 U.S.C. § 529A, note on "Treatment of ABLE accounts under certain Federal programs." There are limited exceptions: ABLE distributions for housing expenses are counted for purposes of the supplemental security income (SSI) program, and ABLE accounts with balances above $100,000 are considered a resource of the beneficiary for purposes of SSI eligibility. (The first $100,000 in the ABLE account is exempt from SSI resource limits.)

> a place to build their savings and feel less stress surrounding low benefit asset limits, takes away a lot of the anxiety and encourages good saving habits. Its impact can't be understated."[7]

● ***Establishment of ABLE programs around the country.*** To date, 46 states and the District of Columbia have established ABLE programs, either as single-state programs (10 states) or as part of a collaboration of states that coordinate efforts (36 states). Three other states (Idaho and the Dakotas) have not established ABLE programs, but each has designated a public entity or council to provide resources or technical assistance to help ABLE-eligible residents open ABLE accounts administered by other states.[8]

Wisconsin is the only state that has neither established an ABLE program nor tasked a public agency or other public body with helping residents open and utilize ABLE accounts. There have been several proposals to establish a Wisconsin ABLE program in recent years, however, including bipartisan bills introduced in each of the last two legislative sessions[9] and provisions in Governor Evers' proposed 2021-2023 budget.[10]

● ***Legislative mandate for this report.*** In February of this year, Governor Evers signed legislation calling for the Department of Financial Institutions to study and report on the state's options for establishing an ABLE program, either by administering a single-state program or by joining a collaboration of other states.[11] The bill requires the Department to examine the advantages and disadvantages of both approaches—taking into consideration the ABLE programs offered by other states, Wisconsin residents' use of those programs, the potential impact for Wisconsin residents, and the costs and legislative changes necessary to establish an ABLE program in this state—and to make recommendations to the Legislature.[12]

● ***How the Department of Financial Institutions carried out this study.*** To complete this study and make its recommendations, the Department's Office of Financial Capability compiled and reviewed publicly available reports and other sources of data regarding the implementation of ABLE programs in other states, including materials from the ABLE National Resource Center,[13] AKF Consulting's ABLE market reports,[14] agreements and other materials from other states or collaborations of states, prior Wisconsin legislative proposals to establish an

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[7] Interview with Ryan McGuire of Oak Wealth Financial Advisors.
[8] *See* Idaho Stat. § 56-708; N.D. Cent. Code § 6-09-38.1; S.D. Codified L. § 28-21-3.
[9] 2019 Assembly Bill 912/Senate Bill 776; 2021 Assembly Bill 496/Senate Bill 486.
[10] 2021 A.B. 68/S.B. 111, § 2451.
[11] 2021 Wis. Act 119 (published Feb. 5, 2022).
[12] *Id.*
[13] *See generally* https://www.ablenrc.org/.
[14] AKF Consulting, AKF Market Report: ABLE America 2021 (Mar. 2022), *available at* https://akfconsulting.com/wp-content/uploads/ABLE-Market-Report-2021.pdf; AKF Consulting, AKF Market Report: ABLE America 2020 (Dec. 2020), *available at* https://akfconsulting.com/wp-content/uploads/ABLE-Market-Report-FINAL-2020.pdf; AKF Consulting, AKF Market Report: ABLE America 2018 (Mar. 2018), *available at* https://akfconsulting.com/wp-content/uploads/2018-Winter-ABLE-Market-Report-REVISED-FINAL-as-of-2018-5-17-10pm.pdf.

ABLE program,[15] a 2020 cost-benefit analysis of a potential Wisconsin ABLE program prepared by the Tommy G. Thompson Center on Public Leadership,[16] and other sources referenced in the footnotes of this report.

In addition, the Office of Financial Capability interviewed the following people to help inform the findings and recommendations that appear in this report:

> Representatives from groups that provide education, advocacy, or other support for individuals with disabilities and their families, including the ABLE National Resource Center, the National Disability Institute, Disability Rights Wisconsin, The ARC Wisconsin, and People First Wisconsin.
>
> Individuals interested in opening ABLE accounts in Wisconsin.
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> Representatives from government boards, agencies, and regulatory organizations with relevant subject matter expertise, including the Wisconsin Board for People with Developmental Disabilities, the Wisconsin Department of Health Services, the Wisconsin Department of Revenue, the National Association of State Treasurers, and several agencies that administer ABLE programs in other states (including the Alabama State Treasurer's Office, the California State Treasurer's Office, the Illinois State Treasurer's Office, the Maryland 529 Board, the Michigan Department of Treasury, the Nebraska State Treasurer's Office, the Ohio Treasurer's Office, the Oregon Treasury Savings Network, and the Pennsylvania Office of the State Treasurer).
>
> Advisors who provide expertise on ABLE programs or financial planning for individuals with disabilities, including advisors affiliated with AKF Consulting Group, Crescendo Wealth Management, Cuna Mutual, Intuition College Savings Solutions, Johnson Teigen, Oak Wealth Advisors, TIAA-CREF, and TMG.

The Department is grateful to the many individuals who shared their time and insights, which helped the Department evaluate the issues presented by the Legislature and reach the findings and recommendations that follow.

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[15] *See* 2015 Wis. Act 55 § 316e, *repealed by* 2015 Wis. Act 312; 2019 A.B. 912/S.B. 776; 2021 A.B. 68/S.B. 111, § 2451; 2021 A.B. 496/S.B. 486.

[16] Casola et al., *Disability Savings Accounts in Wisconsin: A Cost-Benefit Analysis of a Wisconsin State ABLE Program* (Dec. 2020), Tommy G. Thompson Center on Public Leadership, *available at* https://lafollette.wisc.edu/images/publications/cba/2020-CBA-Wisconsin_ABLE_Participation.pdf.

II. The Status Quo in Wisconsin

● ***Wisconsin's ABLE-eligible population.*** In 2015, the National Disability Institute estimated that as many as 8 million Americans meet the federal eligibility requirements to be beneficiaries of ABLE accounts.[17] Applying the same methodology to more recent data at the state level,[18] an estimated 142,150 Wisconsinites would be eligible for participation in ABLE.

● ***Wisconsinites' low utilization of ABLE accounts relative to other states.*** Though the state has not established a Wisconsin ABLE program, Wisconsin residents can open ABLE accounts in programs administered by other states. To date, relatively few Wisconsinites have done so. The Department of Revenue reports that fewer than 300 filers (equivalent to roughly 0.2 percent of the ABLE-eligible population in Wisconsin) claimed an income tax deduction for ABLE account contributions in either 2020 or 2021.

This data suggests a five- to tenfold lower participation rate among the ABLE-eligible population in Wisconsin than in neighboring states that offer ABLE programs and dedicate public resources toward ABLE outreach and education:

Table II.A: ABLE Participation in Neighboring States
Data as of Q4 2021[19]

	ABLE-eligible population (est.)	# of ABLE Accounts (Q4 2021)	Participation Rate
Iowa	68,390	1,367	2.0%
Illinois	277,152	2,905	1.0%
Michigan	317,689	3,485	1.1%
Minnesota	111,521	2,601	2.3%

● ***Reasons for Wisconsinites' comparatively low utilization of ABLE accounts.*** While ABLE programs nationally are still in their nascent stages, with an emphasis on increasing growth and public awareness, Wisconsin's ABLE participation is especially low relative to neighboring states. To identify specific reasons for Wisconsinites' relatively low participation in ABLE programs, the Office of Financial Capability interviewed representatives from local

[17] NATIONAL DISABILITY INSTITUTE, *Estimated Number of ABLE Act Participants* (Jan. 7, 2015).
[18] The Wisconsin estimate was derived by applying the NDI report's methodology to more recent, state-specific data provided by the Social Security Administration and the National Survey of Children's Health.
[19] Data regarding the number of accounts in each state was obtained from ISS Market Intelligence's *529 College Savings Quarterly Update* for Q4 2021 (hereinafter "ISS MARKET INTELLIGENCE REPORT"), which includes information on ABLE programs.

organizations that provide services or other support for individuals with disabilities, including financial advisors and governmental and non-profit organizations.

Interviewees repeatedly cited the informational hurdles that ABLE-eligible Wisconsinites and their families must surmount prior to opening an account. For example:

> "Many people are unaware that ABLE accounts exist. For those who have heard of ABLE accounts, they may find choosing plans from many states confusing and not understand how to establish one. Adults with disabilities and parents of children with disabilities have a lot of things to coordinate and this is another thing that involves a lot of research and work. Is it okay to establish one in another state? No one wants to do something wrong."[20]

> "There's a lot of confusion. You can't google 'Wisconsin ABLE.' It does not come up when developing a long-term care plan or [individualized educational plan]. Nobody knows what to tell people other than what's on the national website."[21]

While informational barriers exist even in states that have established ABLE programs, interviewees noted that the lack of a dedicated state ABLE program in Wisconsin multiplies those challenges for its residents:

> "The low numbers [in Wisconsin] likely have a lot to do with the wide-open decision-making process for choosing a program. It involves a lot of consumer work to go and figure out what other state's program might be the best option, and that effort is surely a major barrier. A second likelihood is that without a Wisconsin-specific option, the possibility is less often referenced. Too many people probably don't know that ABLE is even available to them, and Wisconsin not having its own program is a barrier to getting the word out to the people who could benefit."[22]

> "Many people aren't aware that they can open an account in another state. And because Wisconsin doesn't have an ABLE program, there is an overall lack of awareness of the benefits of them and how to start one."[23]

● ***Additional fees imposed on Wisconsinites who open accounts through out-of-state ABLE programs.*** Some ABLE programs in other states charge higher fees for out-of-state participants. For example, the annual fee for out-of-state participants in Minnesota's ABLE program is $5 higher than the fee for in-state residents; out-of-state residents utilizing Ohio's

[20] Interview with Nancy Gapinski of People First Wisconsin.
[21] Interview with Beth Swedeen of the Wisconsin Board for People with Developmental Disabilities.
[22] Interview with Joanne Juhnke of Disability Rights Wisconsin.
[23] Interview with Dan Krohn of TMG.

ABLE program pay higher asset-based fees than in-state residents (0.45 percent to 0.59 percent for out-of-state residents, depending on the investment options selected, versus 0.19 percent to 0.33 percent for in-state residents).

While these additional fees for out-of-state residents are not so substantial that they outweigh the broader benefits of opening an ABLE account, they do represent an additional penalty borne by Wisconsin ABLE participants that is not required of ABLE-eligible residents in the 46 other states that have established ABLE programs.

III. Overview of Options for Establishing an ABLE Program for Wisconsin Residents

● ***How state ABLE programs are structured and staffed.*** While fees and investment options vary among state ABLE programs, the structure of those programs is generally the same. A state agency contracts with a third-party financial institution to manage the ABLE program, which includes opening accounts, providing investment options, processing contributions and withdrawals, meeting recordkeeping and reporting requirements, and providing online access and other services. The third-party financial institution in this relationship is commonly referred to as the "program manager."

The state agency administers the contract with the program manager, oversees the program manager's performance, addresses any complaints, promotes the program to potential participants, coordinates with other state agencies and boards, and serves as an ABLE information hub for members of the public. The number of public employees devoted primarily to ABLE program administration and outreach varies by state, ranging from three full-time staff members to one half-time staff member. When identifying critical factors for an ABLE program's success, out-of-state agencies repeatedly emphasized the importance of having at least one full-time public staff position dedicated to ongoing program oversight and outreach.

ABLE programs also typically engage a third-party investment consultant to provide independent monitoring and analysis of the investments offered to participants.

● ***The challenge of achieving sufficient scale for ABLE programs.*** In a general sense, the structure outlined above mirrors the structure of state college savings programs established under section 529 of the Internal Revenue Code. The two programs differ substantially in their scale, however. As of 2021, there were roughly $1 billion in assets under management in all ABLE programs across the country combined.[24] By comparison, there are roughly $6.7 billion in participant assets under management in Wisconsin's college savings program alone.

● ***The prevalence of partnerships among states with ABLE programs.*** To achieve greater scale—and thereby reduce administrative fees charged to participants or the need for public subsidization—most state ABLE programs have chosen to join collaborations of other states that utilize a shared third-party program manager and plan structure.

There are presently three main collaborations of state ABLE programs: the National ABLE Alliance (consisting of 18 states and the District of Columbia, led by the state of Illinois), the STABLE Account Partnership (13 states, led by Ohio), and the ABLE Collaboration (five states, led by Oregon). Ten states have their own independent ABLE plans, but only four of them (California, Massachusetts, Nebraska, and Virginia) offer plans that are open to residents of other states.

The chart on the following page provides a breakdown of these collaborations and independent plans.

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[24] ISS MARKET INTELLIGENCE REPORT, *supra* note 19.

Table III.A: ABLE Program Structures by State[25]

<table>
<tr><th rowspan="2"></th><th colspan="3">Collaborative Structures</th><th rowspan="2">Independent Plans</th></tr>
<tr><th>National ABLE Alliance</th><th>STABLE Account Partnership</th><th>ABLE Collaboration</th></tr>
<tr><td>46 States and DC</td><td>Alaska
Arkansas
Colorado
Connecticut
Delaware
D.C.
Illinois
Indiana
Iowa
Kansas
Michigan
Minnesota
Mississippi
Montana
Nevada
New Jersey
North Carolina
Pennsylvania
Rhode Island</td><td>Arizona
Georgia
Kentucky
Missouri
New Hampshire
New Mexico
Ohio
Oklahoma
South Carolina
Utah
Vermont
West Virginia
Wyoming</td><td>Alabama
Hawaii
Maryland
Oregon
Washington</td><td>California
Florida
Louisiana
Maine
Massachusetts
Nebraska
New York
Tennessee
Texas
Virginia</td></tr>
</table>

[25] This table is borrowed from AKF Consulting's *Market Report: ABLE America 2021* (Mar. 2022), *available at* https://akfconsulting.com/wp-content/uploads/ABLE-Market-Report-2021.pdf.

IV. ABLE Program Option 1: the Independent Plan Approach

● ***Overview.*** To establish an independent ABLE plan, a state agency contracts directly with a third-party financial institution to manage the program. To obtain insights into the advantages and disadvantages of this approach, the Office of Financial Capability interviewed representatives from two states that administer independent ABLE plans (California and Nebraska), as well as representatives from some states that considered—but ultimately decided against—implementing that approach for their ABLE programs.

The following table lists the states with independent ABLE plans in order of their total assets under management. Note has Virginia offers two ABLE plans, one offered directly to the public (ABLENow) and another offered only through financial advisors (ABLEAmerica). The table below combines the data for those two plans.

Table IV.A: Independent ABLE Plans by State and Assets Under Management

Data as of Q4 2021[26]

	# of Accounts	Assets	Average Account Size
Virginia (combined)	13,660	$104,491,334	$7,649
Massachusetts	6,532	$84,141,464	$12,881
California	7,098	$70,498,030	$9,932
Florida	7,368	$56,901,110	$7,723
Tennessee	2,942	$38,011,024	$12,920
Nebraska	2,993	$26,056,215	$8,706
New York	1,980	$20,660,837	$10,435
Texas	1,792	$13,033,682	$7,273
Louisiana	798	$3,940,044	$4,937
Maine	85	$346,292	$4,074
	45,248	$418,080,031	$8,653

Advantages of the Independent Plan Approach

● ***Greater flexibility and control over program design.*** By proceeding independently, a state has the autonomy to craft an ABLE plan that is tailored to the needs of its residents. While the practical considerations and market forces associated with independent plans significantly curtail the universe of potential program options (more on that in the "Disadvantages" section below), the state would have ultimate control over the program's size, shape, and direction.

This autonomy leads to some material variations among independent ABLE plans. The California, Massachusetts, Nebraska, and Virginia plans seek to achieve greater scale by marketing nationally and inviting participation by out-of-state residents, while other independent

[26] ISS MARKET INTELLIGENCE REPORT, *supra* note 19.

plans are subsidized and limited to in-state residents. Virginia offers two types of plans, one offered directly to the public and another offered through financial advisors. Maine's program is tailored for residents who primarily use ABLE accounts for day-to-day expenses rather than savings: it only allows participants to deposit ABLE contributions in a local checking account, without offering longer-term investment options.

● ***Direct control over program management.*** Program managers for independent state plans enter contracts directly with a single state, rather than a collaboration of states. In theory, this gives the contracting state more control over the contractual relationship, with the ability to negotiate contract terms and demand changes to the manager's performance without first seeking the coordination or consent of other states. In practice, however, this benefit is likely offset by the additional leverage program managers have over independent plans, as explained in more detail below.

Disadvantages of the Independent Plan Approach

● ***Challenges in attracting a viable program manager.*** As outlined earlier in this report, ABLE program managers are financial institutions responsible for opening accounts, providing investment options, processing contributions and withdrawals, meeting recordkeeping and reporting requirements, and providing online access and other services. They typically recoup the costs of providing these services through program manager fees charged to program participants, often calculated as a percentage of assets under management.

While this contractual model functions well for programs with substantial assets under management and investors with long time horizons, such as college savings programs, it creates challenges for ABLE programs. A limited number of people are eligible to open ABLE accounts, which caps the potential size of any individual state's program, and ABLE accounts can be used for both long-term savings and everyday expenses, which increases a program manager's recordkeeping costs while reducing the average size of accounts. Without the ability to scale up the program sufficiently to cover the program manager's expenses, a state trying to establish an independent ABLE plan from scratch may struggle to attract a viable program manager.

Interviews with representatives from agencies in other states confirm that ABLE programs with limited scale have had to make sacrifices to attract program managers in recent years. Some found it necessary to offer subsidies of up to $1 million and other incentives to attract qualified institutions. Maine took an alternative approach, reducing program management expenses by limiting the scope of its ABLE plan to checking accounts through a local bank (and leaving those who seek to use their ABLE accounts for long-term savings to utilize out-of-state programs instead).

● ***The need for up-front public investment.*** A state attempting to start an independent ABLE plan from the ground up faces significant costs of entry. Whereas a state with an existing ABLE program may be able to cover some or all of a program manager's costs through asset-based fees paid by participants, a new ABLE program starts with no assets and generates no asset-based fees. The program manager's costs would need to be covered by a different source of funding, likely in the form of a direct subsidy from the state, unless and until the program grows large enough to recoup those costs through asset-based fees.

Subsidization would also be needed to help achieve that growth. An independent ABLE plan would need to create marketing materials and online functionality from scratch, rather than repurposing printed and online materials already in use (as would be the case if the state joined an existing collaboration).

● ***Independent plans are often more costly for participants.*** For many of the same reasons, independent ABLE plans tend to charge participants higher fees than collaborative plans. The following table provides the range of asset-based fees on investment portfolios[27] for the four independent ABLE plans that are open to out-of-state participants, as compared to the fees for the two groups of collaborative plans (the ABLE Collaboration and the National ABLE Alliance) that are currently accepting new state members:

Table IV.B: Participant Fees for Established Independent Plans, Compared to Collaborative Structures

	Total annual asset-based fee	Annualized maintenance fees	Combined annual fees on a $10,000 account
ABLE Collaboration	0.33% to 0.38%	$35	$68 to $73
Virginia (ind.) (direct plan)	0.36% to 0.39%	$39	$75 to $78
National ABLE Alliance	0.32% to 0.37%	$45	$77 to $82
Massachusetts (ind.)	0.70% to 0.88%	$0	$70 to $88
California (ind.)	0.51% to 0.52%	$37	$88 to $89
Nebraska (ind.)	0.44% to 0.45%	$45	$89 to $90

Note that the four independent plans shown in this table are marketed nationally, and each is an established plan with more than $25 million in assets. Participant fees would likely need to be even higher to offset the costs of a new independent plan that has not yet achieved the same scale as the plans in Virginia, Massachusetts, California, and Nebraska.

[27] The table does not reflect asset-based fees for federally insured investments, such as savings, checking, or money-market account options. Asset-based fees for these investments are typically lower than the fees for portfolios that assume investment risk.

V. ABLE Program Option 2: the Collaborative Approach

● ***Overview.*** Thirty-six of the 46 states with ABLE programs do not offer independent plans. Instead, they belong to one of three state ABLE collaborations, each of which is served by a single program manager. By combining multiple state plans' participants under a single program manager with a common set of materials, recordkeeping systems, and online functions, collaborations enable states to overcome the challenges of "scaling up" their ABLE programs.

As illustrated in the table below, the assets held by each of the three state ABLE collaborations exceed those of even the largest independent ABLE plans:

Table V.A: Assets of State Collaborations, as Compared to the Largest Independent Plans

	# of States	# of Accounts	Assets	Average Account Size
National ABLE Alliance	18	28,194	$268,335,330	$8,672
STABLE Partnership	13	26,671	$242,434,548	$9,090
ABLE Collaboration	5	12,018	$115,618,220	$7,440
Virginia (combined)	1	13,660	$104,491,334	$7,649
Massachusetts	1	6,532	$84,141,464	$12,881
California	1	7,098	$70,498,030	$9,932
Florida	1	7,368	$56,901,110	$7,723
Tennessee	1	2,942	$38,011,024	$12,920
Nebraska	1	2,993	$26,056,215	$8,706
New York	1	1,980	$20,660,837	$10,435
Texas	1	1,792	$13,033,682	$7,273

To obtain insights into the advantages and disadvantages of the collaborative approach, the Office of Financial Capability interviewed representatives from the lead states of the each of the three collaborations (Illinois, Ohio, and Oregon), as well as two states that joined the National ABLE Alliance (Michigan and Pennsylvania) and two states that joined the ABLE Collaboration (Alabama and Maryland). The STABLE Partnership is not currently accepting new member states, and therefore this report does not evaluate it as an option for Wisconsin.

Advantages of the Collaborative Approach

● ***Collaborations already have qualified program managers in place, and they provide services at no cost to the state.*** There are no entrance fees or other costs to the state to join the National ABLE Alliance or the ABLE Collaboration. Each program is large enough that the asset-based and account maintenance fees charged to participants are sufficient to fully compensate the shared program manager for its services, and thus no fees are paid from participating states to the program manager or to the collaboration. Each program has an experienced and well-regarded manager already in place,[28] and those managers can incorporate new member states and begin opening accounts for new state ABLE programs in a matter of months—all at no charge to the state.

● ***Lower fees for ABLE plan participants.*** Though participants in each collaboration must pay asset-based and maintenance fees to cover the program manager's services, the greater scale of these programs tends to result in lower fees for participants than even the largest independent plans. See Table IV.B above.

Each collaboration also gives states the option to impose a state-specific fee on its participants to help defray the state's administrative costs (namely marketing costs and payroll expenses for relevant state agency staff) in promoting and overseeing the program. While this report does not recommend imposing a state-specific fee on participants while an ABLE program remains in its early stages of growth,[29] this option may warrant further consideration once the state program has matured.

● ***Access to ABLE program expertise.*** This state has no experience administering an ABLE program or addressing the various kinds of participant questions and issues that may arise, but the other members of ABLE collaborations do. The collaborative structure enables each member state to benefit from the others' experience and expertise, ultimately reducing risk and improving program management.

In addition, both the National ABLE Alliance and the ABLE Collaboration retain third-party consultants with relevant expertise in the management of investment plans to review the performance of investments and recommend adjustments to the program manager's investment lineups where warranted. The consultants are compensated from participant fees, and member states are entitled to receive their periodic reports at no charge to the state.

● ***No long-term commitments required.*** Neither the National ABLE Alliance nor the ABLE Collaboration requires long-term commitments of its members. The standard agreements for each are terminable by the participating state program on short notice (120 days for the National ABLE Alliance, 30 days for the ABLE Collaboration). Moreover, the assets and accounts attributable to each participating state program are held in state-specific trusts controlled by that state.

Taken together, these provisions allow a participating state program to exit a collaboration at any time and choose a different path—whether joining a different collaboration or forming an independent plan—without surrendering control over the state ABLE accounts opened while it was a member of the collaboration. In this way, collaborative structures provide

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[28] The National ABLE Alliance currently utilizes Ascensus as its program manager, while the ABLE Collaboration utilizes Sumday (an affiliate of BNY Mellon).

[29] There are two reasons for this recommendation. First, because state-specific fees are generally charged as a percentage of participants' assets under management—and because a new program begins without account holders or assets—a new program would generate limited state-specific fees in its early years. Second, additional fees would reduce the competitiveness of a new program relative to other state programs from the outset, potentially stunting its growth.

a vehicle for new state ABLE plans to mature, without reducing a state's ability to explore alternative structures once its plan achieves greater scale.

Disadvantages of the Collaborative Approach

● ***Somewhat less autonomy than independent plans.*** By proceeding independently, the state has full discretion to select a program manager and design an ABLE plan—at least if it is willing to pay the additional up-front costs associated with developing an ABLE program outside of a collaborative structure.

In a collaboration, the state's autonomy is somewhat more limited. Though a participating state is free to leave the collaboration at any time, it cannot unilaterally select the program manager for the collaboration or amend the scope of its services. The investment lineups available to participants are generally standardized, as well, though the makeup of these lineups (consisting primarily of Vanguard index funds and other low-fee mutual funds) is broadly acceptable to most investors. The ABLE Collaboration also offers states the option to create their own investment portfolios.

VI. Recommendations

Recommendation 1: The legislature should create the position of ABLE Officer within the Department of Financial Institutions' Office of Financial Capability.

As noted in Part I of this report, Wisconsin is presently the only state in the country with neither a dedicated ABLE program nor a public agency or other body tasked with helping residents open and utilize ABLE accounts. Financial advisors and non-profit groups that assist individuals with disabilities identify the lack of public resources as the primary cause for Wisconsinites' under-utilization of these "life-changing" benefits, and comparative data from Wisconsin's neighbors—all of which have dedicated ABLE programs—supports the conclusion that public education and outreach is a critical driver of participation. (See Part II of this report.)

To fill this gap, the Department of Financial Institutions recommends that the legislature create and fund the permanent position of ABLE Officer within the Department's Office of Financial Capability.[30] This position would provide financial education resources for ABLE-eligible individuals and their families, promote and facilitate their participation in ABLE, coordinate with public agencies and non-profit organizations serving individuals with disabilities in Wisconsin, and work with counterparts in other states and the federal government to help ensure that Wisconsinites can take full advantage of the valuable financial tools and benefits available to others. In addition, if the Legislature authorizes the Department to establish an ABLE program (as recommended below), the ABLE Officer would be responsible for the management, development, and oversight of the program.

As noted in Part III of this report, other states utilize between one-half and three full-time employees to carry out these functions. While more staff would certainly enable more extensive outreach, at this time—and assuming the state joins a collaboration as recommended below—the Department believes that these functions can be carried out by one qualified, full-time ABLE Officer.

The Department estimates the initial cost of funding this position at **$174,960 annually**, consisting of the following: $80,000 in salary and $29,960 in fringe benefits for the ABLE Officer; $20,000 for travel, training, and conferences; and $45,000 for marketing and printed materials, an expense that may decrease over time as Wisconsinites' familiarity and experience with ABLE accounts grows.

Recommendation 2: The legislature should authorize the Department of Financial Institutions to establish a qualified ABLE program.

In 2015, shortly after Congress enacted the ABLE Act, the Wisconsin Legislature passed (and Governor Walker signed) legislation authorizing the state to establish a qualified ABLE

[30] Placing this position within the Office of Financial Capability is appropriate because the Office also manages the state's college savings program under section 529 of the Internal Revenue Code. There are some structural similarities between the programs, and other states typically assign the same office jurisdiction over section 529 college savings and section 529A ABLE programs.

program in Wisconsin.[31] The Legislature repealed the legislation later that session, however, on the ground that Wisconsin residents had the option to join ABLE plans established by other states—and thus there was no need for the state to bear the substantial risk and expense of creating its own proprietary plan.[32] Indeed, a fiscal estimate at the time put the cost of developing and administering an independent ABLE plan at $300,000 to $350,000 per year,[33] which was likely an underestimate for the reasons stated in Part IV above.

But the ABLE marketplace has changed substantially since that time. States no longer need to incur the risks and costs of developing independent, proprietary ABLE plans from scratch. They can join one of the now-existing collaborations of states, each with an established program manager, consultants, and investment portfolios already in place, at no cost to the participating state. By granting state ABLE plans the benefit of immediate scale and shared expertise, collaborative structures remove the main barriers to establishing, growing, and managing state ABLE plans. Moreover, as noted in Part II above, a state plan ensures that Wisconsin residents can participate in an ABLE program overseen by a state agency that is politically accountable to them, while avoiding out-of-state charges imposed by some other states' plans.

In light of these factors and the significant changes in the ABLE marketplace over the past seven years, the Department recommends that the Legislature re-authorize the state to establish a qualified state ABLE program. The Legislature in recent sessions proposed bipartisan bills that would accomplish that objective, including 2019 Assembly Bill 912/Senate Bill 776 and 2021 Assembly Bill 496/Senate Bill 486, and Governor Evers included the same language in his administration's most recent budget bill.[34] Each of these proposals authorizes the Department of Financial Institutions to "implement and administer an ABLE program, either directly or by entering into a formal agreement with another state, or with an entity representing an alliance of states, to establish an ABLE program or otherwise administer ABLE program services for the residents of this state." This authorizing language would enable the Department to establish an ABLE program through an existing collaboration, while retaining the leverage and flexibility to join a different collaboration or pursue another structure if conditions change such that a new approach becomes more advantageous for the state and program participants.

Recommendation 3: The Department of Financial Institutions should establish an ABLE program through an existing ABLE collaboration.

For all the reasons outlined in Parts IV and V of this report, the Department recommends establishing an ABLE plan through an existing ABLE collaboration, rather than attempting to develop an independent plan. The overwhelming majority of states with ABLE programs belong to one of the three collaborative groups, which provide members with expertise and the benefits of scale without the growing pains of developing it themselves. They also provide participants with the added assurance of working with experienced program managers with proven track

[31] 2015 Wis. Act 55, § 316e.
[32] 2015 Wis. Act 312; Legislative Council Hearing Materials for 2015 A.B. 731 (Jan. 27, 2016).
[33] 2015 A.B. 731, Fiscal Estimate of the Department of Administration (Jan. 25, 2016).
[34] 2021 A.B. 68/S.B. 111, § 2451.

records in administering ABLE accounts. None of the regulators or consultants that the Office interviewed on this subject recommended a different approach for Wisconsin.

Wisconsin can obtain these benefits by joining either the National ABLE Alliance or the ABLE Collaboration, the two collaborations that are accepting new member states. Both are suitable vehicles for a state to efficiently establish and grow a new ABLE program, and participation in either will enable the state to offer the benefits of ABLE accounts to eligible residents within months.

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For all the reasons outlined in this report, the Department recommends that the Legislature (1) create the position of ABLE Officer within the Department of Financial Institutions' Office of Financial Capability, with annual program funding of $174,960; and (2) authorize the Department of Financial Institutions to establish a state ABLE program by re-introducing and enacting 2019 Assembly Bill 912/Senate Bill 776 or 2021 Assembly Bill 496/Senate Bill 486. If the Legislature takes these recommended actions, the Department would establish a state ABLE program by joining the ABLE Collaboration or the National ABLE Alliance, with the decision depending on which collaboration offers more favorable terms to new states and participants at the time.

We welcome any questions regarding the findings and recommendations in this report, and we look forward to working with the Legislature on these important issues.