Disability Integration Act

- Introduced by Senator Schumer on December 18th, 2015
- Supported by ADAPT; Follow-up to Community First Choice Option
- Structured like the ADA; intended to address “shortcomings” in Olmstead
- Covers public and private insurance

No public entity or LTSS insurance provider shall deny an individual with an LTSS disability who is eligible for institutional placement, or otherwise discriminate against that individual in the provision of, community-based long-term services and supports that enable the individual to live in the community and lead an independent life.
Disability Integration Act (cont’d)

- Creates new category: LTSS Disability
  - an individual with a disability who needs assistance with ADLs or IADLs, health-related tasks, or related functions in order to live in the community and lead an independent life, is currently in an institutionalized placement, or is at risk of institutionalization if the individual does not receive community-based long-term services and supports.

- Has its own definition of community-based:
  - Largely follows the Medicaid HCBS settings requirements
  - Major difference: Residential settings can have no more than four people with disabilities

- Discrimination includes: eligibility criteria, service or cost caps, failure to provide a needed service, waiting lists, failure to ensure availability of housing, the imposition or application of a policy, rule, regulation, or restriction that interferes with the opportunity for an individual with an LTSS disability to receive HCBS.
Disability Integration Act (cont’d)

- The DIA is not a Medicaid bill, so its definition of community does not supersede that of CMS for purposes of Medicaid law.
- All public entities and LTSS insurance providers must complete a self-evaluation within six months after implementing regulations are released.
- Within one year of completing the self-evaluation, public entities must submit a transition plan which can take up to ten years.
- The Administration on Community Living, not CMS, will review and approve plans.
- ACL will also make an annual determination as to whether the state is complying with its transition plan; a state determined to be in compliance will receive a 5% increase in federal match for the next year for HCBS expenditures resulting from shifts in funding aimed at compliance.
- Includes private right of action—and damages.
The Stephen Beck, Jr. Achieving a Better Life Experience (ABLE) Act

- became law on December 19, 2014
- creates a new option for *some* people with I/DD and their families to save for the future, while protecting eligibility for public benefits.
- The Consolidated Appropriations Act of 2016 eliminates the requirement that ABLE accounts be established only in the ABLE account owner’s state of residence.
ABLE Act

- ABLE accounts:
  - Are established in the new Section 529A Qualified ABLE Programs
  - Are qualified savings accounts that receive preferred federal tax treatment, similar to 529 college savings accounts
  - Enable eligible individuals to save for disability related expenses
  - Are NOT yet available, and there are still some unknowns
  - Have advantages and disadvantages over other savings options
ABLE Act

- Distributions from ABLE accounts for qualified disability related expenses will not count as income to the beneficiary or the contributor (but contributions are not tax deductible)

- Assets in and distributions for qualified disability expenses will be disregarded or given special treatment in determining eligibility for most federal means-tested benefits
ABLE Act

To be eligible, individuals must meet two requirements:

- Age requirement: must be disabled before age 26

- Severity of disability:
  - Have been determined to meet the disability requirements for Supplemental Security Income (SSI) or Social Security disability benefits,
  - OR
  - Have a certification that meets criteria (essentially equal to Social Security level of disability), including a physician’s diagnosis.
ABLE Act

- Each eligible individual may have only one ABLE account.
- “Designated beneficiary” is the account owner.
- Account must be established in the designated beneficiary’s state of residence, or in a contracting state.
- Total annual contributions may not exceed the federal gift tax limit, which is currently $14,000.
ABLE Act

- Multiple individuals may make contributions to the one ABLE account.
- Aggregate contributions may not exceed the state limit for 529 savings accounts.
- Distributions from an ABLE account may be made for qualified disability expenses, related to the individual’s disability or blindness and made for his/her benefit, including:
ABLE Act

- 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
- Any other expenses approved by the Secretary of the Treasury

Expenditures for non-qualified expenditures will be penalized (tax and potential SSI penalties).
ABLE Act

- ABLE assets will be disregarded or receive favorable treatment when determining eligibility for most federal means-tested benefits:
  - Only the first $100,000 in ABLE account assets will be disregarded
  - SSI payments will be suspended if the beneficiary’s account balance exceeds $100,000 but SSI benefits (eligibility) will not be terminated. Funds above $100,000 will be treated as resources.
  - Housing expenses will receive the same treatment as all housing costs paid by outside sources (SSI benefits subject to reduction of 1/3 federal SSI payment, as applicable).
ABLE Act

- Medicaid: ABLE assets are disregarded in determining Medicaid eligibility — Medicaid benefits are NOT suspended if the ABLE account balance exceeds $100,000
- Medicaid Payback: Any assets remaining in the ABLE account when a beneficiary dies, subject to outstanding qualified disability expenses, will be used to reimburse a state for Medicaid payments made on behalf of the beneficiary after the creation of the ABLE account — For purposes of this section, the state is considered a creditor of the ABLE account, not a beneficiary
ABLE Act

- Medicaid: ABLE assets are disregarded in determining Medicaid eligibility — Medicaid benefits are NOT suspended if the ABLE account balance exceeds $100,000
- Medicaid Payback: Any assets remaining in the ABLE account when a beneficiary dies, subject to outstanding qualified disability expenses, will be used to reimburse a state for Medicaid payments made on behalf of the beneficiary after the creation of the ABLE account — For purposes of this section, the state is considered a creditor of the ABLE account, not a beneficiary
- Could ABLE impact amount of Medicaid services?
ABLE Act

- IRS issued proposed regulations on June 19, 2015
- Nov. 20, 2015 Notice indicates three changes to the proposed rules that’ll be included in the final regulations:
  - ABLE programs won’t be required to determine which distributions are for qualified disability expenses.
  - ABLE programs won’t be required to request the taxpayer identification number (TIN) of ABLE contributors.
  - ABLE programs will not need to receive, retain, or evaluate detailed medical records. Designated beneficiaries can open an ABLE account by certifying, under penalties of perjury, that they meet the necessary requirements. This means they have a signed physician’s diagnosis and will provide it to the program or the IRS upon request.
On March 17, 2016, three bills were introduced to improve ABLE:

- The ABLE to Work Act (HR 4795 / S 2702) will enable ABLE beneficiaries who work to save up to the Federal Poverty Level in addition to the $14,000 annual maximum contribution and be eligible for the Saver’s Credit, which low and middle-income individuals can currently claim when they make contributions to a retirement account.

- The ABLE Financial Planning Act (HR 4794 / S 2703) will enable ABLE beneficiaries to roll over regular 529 accounts to 529A (ABLE) accounts up to the annual maximum contribution.

- The ABLE Age Adjustment Act (HR 4813 / S 2704) will raise the age of onset of disability from 26 to 46.
Medicaid Task Force

- Created by House Energy and Commerce Committee
- Only Republicans on the Committee
- No clear agenda
  - Provider taxes
    - E&C Committee passed Common Sense Savings Act of 2016 (HR 4725) this month
  - Counter-cyclical FMAP
  - Block grants/per capita caps
Long Term Care Financing Discussions

- Bipartisan Policy Center
  - Increase the availability and affordability of private long-term care insurance, “retirement LTCI.”
    - Designed to cover two to four years of benefits after a cash deductible or waiting period is met.
    - Employees could use funds in retirement accounts to pay premiums.
    - Incentives for employers to offer retirement LTCI on an opt-out basis.
  - Medicaid changes:
    - Combine existing Medicaid waiver and state plan amendments (SPAs) authorities into a single streamlined SPA
    - Extending existing enhanced federal matching (CFCO) to encourage states to take advantage of the new streamlined authority.
    - LTSS only buy-in for individuals with disabilities, designed to “wrap around” employer-provided insurance and Medicare.
  - Catastrophic public insurance program
Long Term Care Financing Collaborative

- A universal catastrophic insurance program aimed at providing financial support to those with high levels of care needs over a long period of time.
- A series of private sector initiatives and public policies aimed at revitalizing the long-term care insurance market
- Medicaid changes:
  - Eliminate the institutional bias
  - Eliminate the distinction between mandatory and optional services by creating one LTSS Benefit
  - Eligibility for the LTSS benefit based on functional and needs assessments, not LOC
  - Redesign Medicaid’s LTSS component with a sliding scale based on income and assets with income-based cost sharing
  - Incentives for states to share in any savings from greater efficiencies and innovations in the delivery of LTSS
  - Allow working-aged people with disabilities to work and build assets
- Stronger support for family caregivers
Streamlining Medicaid HCBS Authorities

- NASDDDS presentation to Medicaid and CHIP Payment and Access Commission
- Included in BPC recommendations
- Kaiser Family Foundation Brief
  - The idea is to take the best parts of each authority and create one state plan authority
  - Most likely built around (i), with enhanced FMAP from (k), and significant targeting ability within the benefit
  - States would retain ability to use (c) waivers, with a intention of eventual phase-out
  - How would financial eligibility for HCBS be determined?
  - How would states manage program enrollment?
  - How would beneficiaries functionally qualify for services?
  - How would HCBS be incentivized?
  - How would the program be administered, monitored, and evaluated?
In transition plan stage; all states have received CMS response, no approved plans.

Some states have revisions out for public comment

Challenges:
- Policy review vs. site review
- Lack of clarity around standards
- Heightened scrutiny challenges for the states
- Heightened scrutiny challenges for CMS

Additional guidance expected:
- “Reverse integration”
- New construction