Summary of H.R. 647, the *Achieving a Better Life Experience (ABLE) Act of 2014*
(As Amended and Expected to Be Considered by the House)
December 1, 2014

TITLE I—QUALIFIED ABLE PROGRAMS

Sec. 101. Purposes. The legislation is designed to provide new opportunities beyond what is available under current for individuals and families to save for the purpose of supporting individuals with disabilities in maintaining their health, independence, and quality of life.[1]

Sec. 102. Qualified ABLE programs. This section allows each State to establish and operate an ABLE program. Under the ABLE program, an ABLE account may be set up for any eligible State resident, who would generally be the only person who could take distributions from the account. Contributions into an account may be made by any person and would not be tax deductible. Income earned by the accounts would not be taxed. Distributions, including portions attributable to investment earnings generated by the account, to an eligible individual for qualified expenses would not be taxable. Distributions used for non-qualified expenses would be subject to income tax on the portion of such distributions attributable to earnings from the account, plus a ten percent penalty on such portion. Upon the death of an eligible individual, any amounts remaining in the account (after Medicaid reimbursement, see below) would go to the deceased's estate or to a designated beneficiary and would be subject to income tax on investment earnings, but not to the penalty.

Individuals would be limited to one ABLE account, and total annual contributions by all individuals to any one ABLE account could be made up to the gift tax exclusion amount ($14,000 in 2014, which is adjusted annually for inflation). Aggregate contributions would be subject to the State limit for education-related Section 529 accounts. ABLE accounts could generally be rolled over only into another ABLE account for the same individual or into an ABLE account for a sibling who is also an eligible individual.

[1] Under current law, individuals with only very limited financial resources are eligible for traditional means-tested benefit programs, such as food stamps, housing assistance, Medicaid, and Supplemental Security Income (SSI). For example, the SSI program limits eligibility to individuals with no more than $2,000 in cash savings, retirement, and other items of significant value. In Medicaid an individual may retain his or her savings, but States are generally required to recover benefit costs from an individual or his or her estate after death. Parents, grandparents, and the courts have the authority to establish a "special needs" trust for a disabled individual, which is exempt from the SSI and Medicaid resource tests, but the Medicaid rules require that any remaining amounts be used for Medicaid reimbursement. Investment earnings of these trusts are subject to income tax under current law.

Eligible individuals must be severely disabled before turning age 26, based on marked and severe functional limitation or receipt of benefits under the SSI or Disability Insurance (DI) programs. However, an individual does not need to receive SSI or DI to open or maintain an ABLE account, nor does the ownership of an account confer eligibility for those programs. Qualified expenses are expenses related to the individual's disability, such as health, education, housing, transportation, training, assistive technology, personal support, and related services and expenses. The legislation would generally be effective for tax years beginning after December 31, 2014.

Sec. 103. Treatment of ABLE accounts under certain Federal programs. Individuals with ABLE accounts could maintain eligibility for means-tested benefit programs such as SSI and Medicaid. Specifically, the bill would exempt the first $100,000 in ABLE account balances from being counted toward the SSI program's $2,000 individual resource limit; however, account distributions for housing expenses would be counted as income for SSI purposes. Assuming the individual has no other assets, if the balance of an individual's ABLE account exceeds $102,000, the individual would be suspended from eligibility for SSI benefits but would remain eligible for Medicaid. States would be required to recoup certain expenses through Medicaid upon the death of the individual. According to the Joint Committee on Taxation (JCT) and the Congressional Budget Office (CBO), sections 102 and 103 of the legislation would reduce revenues by $898 million over 2015-2024 and would increase outlays by $1.153 billion over 2015-2024.

Sec. 104. Treatment of able accounts in bankruptcy. This section protects contributions to an ABLE account by a parent or grandparent of a designated beneficiary in the case of bankruptcy. In order to be protected, ABLE account contributions must be made more than 365 days prior to the bankruptcy filing.

Sec. 105. Investment direction rule for 529 plans. This section allows Section 529 qualified tuition programs to permit investment direction by an account contributor or designated beneficiary up two times per year. (Under current law no investment direction is allowed, although Treasury guidance allows such direction up to once per year.) The provision would be effective for tax years beginning after December 31, 2014. According to JCT, the provision would have a negligible revenue effect.

TITLE II—OFFSETS

Sec. 201. Technical correction to worker's compensation offset age. Under current law, Disability Insurance (DI) benefits are generally offset when the beneficiary also receives worker's compensation (WC) benefits, to ensure total benefits do not exceed 80 percent of average current earnings from before the worker became disabled. The offset ends the month the worker reaches age 65 or the month the worker's compensation payment stops, whichever occurs first. Prior to 1983 amendments, the WC offset applied to any DI beneficiary who was also receiving WC. However, when Congress increased the full retirement age (FRA) to ultimately reach age 67, it did not increase the age until which the WC offset applied.

Under the provision, the age until which the WC offset applies would be aligned to the increased FRA for Social Security. This change was proposed by the Social Security Administration in 2007 and 2008. The legislation would be effective for those under the FRA beginning one year after enactment. According to CBO, the provision would decrease spending by $220 million over 2015-2024.

Sec. 202. Accelerated application of relative value targets for misvalued services in the Medicare physician fee schedule. In March 2014, Congress passed the Protecting Access to Medicare Act (PAMA; P.L. 113-93), which provided physicians with relief from the Sustainable Growth Rate. The law also contained a provision that requires the Secretary to reduce payments to physicians across the board if the Secretary fails to identify and correct payment values for individual services (e.g. diagnostic tests, surgeries) that are overpaid.

This provision would now begin the policy requiring the Secretary to identify overpayments one year earlier and reduce the number of years it is in effect from four to three. The target would be 1 percent in 2016, 0.5 percent in 2017, and 0.5 percent in 2018. This policy would allow physician groups to have efforts to reduce overpaid services that are well underway, primarily through the Relative Value Scale Update Committee (RUC), counted against the target. Utilizing those efforts puts physicians in a position to avoid potential across-the-broad cuts in 2016. CBO estimates that moving the effective dates and revising the first year target for this policy will reduce spending by $365 million.

Sec. 203. Consistent treatment of vacuum erection systems in Medicare Parts B and D. This provision would prohibit Medicare coverage of vacuum erection systems (VES) until such time that Medicare covers erectile dysfunction drugs under Medicare Part D. When the Part D program was created in 2003, it established a statutory prohibition on erectile dysfunction drugs. CBO estimates that this provision will reduce spending by $444 million.

Sec. 204. One-year delay of implementation of oral-only policy under Medicare ESRD prospective payment system. The provision would prohibit the inclusion of the payment for the oral-only drugs that beneficiaries take related to their ESRD in the Medicare per-dialysis treatment bundled payment amount through December 31, 2024. Medicare makes a per-treatment payment to facilities that provide dialysis to beneficiaries with end-stage renal disease (ESRD). The per-treatment amount, implemented in 2011 represents a bundled payment for the dialysis service, intravenous drugs, laboratory tests, and other associated services. The oral drugs that beneficiaries commonly take related to their dialysis are currently covered under the Medicare Part D prescription drug benefit. Shortly after the dialysis payment bundle was implemented, the Centers for Medicare and Medicaid Services (CMS) signaled that it would include payment for these oral-only drugs in the per-treatment bundle in 2014. The American Taxpayer Relief Act of 2012 prohibited CMS from including payment in the bundle until January 1, 2016, meaning that payment would continue through Part D. The Protecting Access to Medicare Act of 2014 extended this prohibition through December 31, 2023. CBO estimates that this provision will reduce spending by $380 million.

Sec. 205. Modification relating to Inland Waterways Trust Fund financing rate. The provision would increase to 29 cents per gallon the excise tax rate of 20 cents per gallon imposed on fuel used in powering commercial cargo vessels on inland or intra-coastal waterways. These excise tax revenues are deposited into the Inland Waterways Trust Fund. A similar provision is included in President Obama's proposed budget. The provision would be effective for fuel used after April 1, 2015. According to JCT, the provision would increase revenues by $260 million over 2015-2024.

Sec. 206. Certified professional employer organizations. Under current law, when a business contracts with a professional employer organization (PEO) to administer its payroll functions, the business customer remains responsible for all withholding taxes with respect to its employees. Thus, even though the PEO pays the employees, the customer remains liable if the PEO fails to withhold or remit the taxes or otherwise comply with related reporting requirements. The provision would authorize the IRS to certify qualifying PEOs, which would allow the PEO to become solely responsible for the customer's employment taxes. To be certified by the IRS, a PEO would have to satisfy various requirements -- such as reporting obligations, posting a bond in case the PEO fails to satisfy its employment tax withholding and payment obligations, and submitting audited financial statements -- intended to ensure that the PEO properly remits wages and employment taxes. The PEO would also be subject to an annual fee of $1,000. The provision generally would be effective for wages paid by a certified PEO for services performed by an employee after 2015, and the IRS would be required to establish the PEO certification program by July 1, 2015. According to JCT, the provision would increase revenues by $8 million over 2015-2024.

Sec. 207. Exclusion of dividends from controlled foreign corporations from the definition of personal holding company income for purposes of the personal holding company rules. The provision would exclude dividends received from a foreign subsidiary from the additional 20-percent tax on personal holding company income, though the dividends would remain subject to corporate income tax. Under current law, the additional tax applies to the retained passive income of corporations that are majority-owned by five or fewer individuals and more than 60 percent of whose income consists of certain types of passive income such as dividends, interest, and royalties -- including dividends derived from an active trade or business of a foreign subsidiary. The provision would be effective for tax years ending on or after the date of enactment. The provision is also included in S. 2260, reported by the Senate Finance Committee on a bipartisan basis. According to JCT, the provision would increase revenues by $14 million over 2015-2024.

Sec. 208. Inflation adjustment for certain civil penalties under the Internal Revenue Code of 1986. The provision would index for inflation each calendar year the fixed-dollar civil tax penalties under current law for: (1) failure to file a tax return or to pay tax; (2) failure to file certain information returns, registration statements, and certain other statements; (3) failure of a paid preparer to meet certain obligations; (4) failure of a partnership to file or an S corporation to file a return; and (5) failure to file correct information returns and payee statements. The provision is also included in S. 2260, reported by the Senate Finance Committee on a bipartisan basis. The provision would be effective for returns required to be filed after December 31, 2014. According to JCT, the provision would increase revenues by $115 million over 2015-2024.

Sec. 209. Increase in continuous levy. The Treasury Department would be authorized to levy up to 30 percent of a payment to a Medicare provider to collect unpaid taxes, up from 15 percent under current law. The provision would be effective for levies issued six months after the date of enactment. A similar policy is also included in S. 2260, reported by the Senate Finance Committee on a bipartisan basis. According to JCT, the provision would increase revenues by $241 million over 2015-2024.