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113TH CONGRESS
2D SESSION

H. R. 647

AN ACT

To amend the Internal Revenue Code of 1986 to provide for the tax treatment of ABLE accounts established under State programs for the care of family members with disabilities, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; ETC.

(a) SHORT TITLE.—This Act may be cited as the ''Achieving a Better Life Experience Act of 2014'' or the ''ABLE Act of 2014''.

(b) AMENDMENT OF 1986 CODE.—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.

(c) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

Sec. 1. Short title; etc.

TITLE I—QUALIFIED ABLE PROGRAMS

Sec. 101. Purposes.
Sec. 102. Qualified ABLE programs.
Sec. 103. Treatment of ABLE accounts under certain Federal programs.
Sec. 104. Treatment of able accounts in bankruptcy.
Sec. 105. Investment direction rule for 529 plans.

TITLE II—OFFSETS

Sec. 201. Correction to workers compensation offset age.
Sec. 202. Accelerated application of relative value targets for misvalued services in the Medicare physician fee schedule.
Sec. 203. Consistent treatment of vacuum erection systems in Medicare Parts B and D.
Sec. 204. One-year delay of implementation of oral-only policy under Medicare ESRD prospective payment system.
Sec. 205. Modification relating to Inland Waterways Trust Fund financing rate.
Sec. 206. Certified professional employer organizations.
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.
Sec. 208. Inflation adjustment for certain civil penalties under the Internal Revenue Code of 1986.
Sec. 209. Increase in continuous levy.

TITLE I—QUALIFIED ABLE PROGRAMS

SEC. 101. PURPOSES.

The purposes of this title are as follows:

(1) To encourage and assist individuals and families in saving private funds for the purpose of supporting individuals with disabilities to maintain health, independence, and quality of life.

(2) To provide secure funding for disability-related expenses on behalf of designated beneficiaries with disabilities that will supplement, but not supplant, benefits provided through private insurance, the Medicaid program under title XIX of the Social Security Act, the supplemental security income program under title XVI of such Act, the beneficiary's employment, and other sources.

SEC. 102. QUALIFIED ABLE PROGRAMS.

(a) IN GENERAL.—Subchapter F of chapter 1 is amended by inserting after section 529 the following new section:

"SEC. 529A. QUALIFIED ABLE PROGRAMS.

''(a) GENERAL RULE.—A qualified ABLE program shall be exempt from taxation under this subtitle. Notwithstanding the preceding sentence, such program shall be subject to the taxes imposed by section 511 (relating

to imposition of tax on unrelated business income of charitable organizations).

''(b) QUALIFIED ABLE PROGRAM.—For purposes of this section—

''(1) IN GENERAL.—The term 'qualified ABLE program' means a program established and maintained by a State, or agency or instrumentality thereof—

''(A) under which a person may make contributions for a taxable year, for the benefit of an individual who is an eligible individual for such taxable year, to an ABLE account which is established for the purpose of meeting the qualified disability expenses of the designated beneficiary of the account,

''(B) which limits a designated beneficiary to 1 ABLE account for purposes of this section,

''(C) which allows for the establishment of an ABLE account only for a designated beneficiary who is a resident of such State or a resident of a contracting State, and

''(D) which meets the other requirements of this section.

''(2) CASH CONTRIBUTIONS.—A program shall not be treated as a qualified ABLE program unless it provides that no contribution will be accepted—

''(A) unless it is in cash, or

''(B) except in the case of contributions under subsection (c)(1)(C), if such contribution to an ABLE account would result in aggregate contributions from all contributors to the ABLE account for the taxable year exceeding the amount in effect under section 2503(b) for the calendar year in which the taxable year begins.

For purposes of this paragraph, rules similar to the rules of section 408(d)(4) (determined without regard to subparagraph (B) thereof) shall apply.

''(3) SEPARATE ACCOUNTING.—A program shall not be treated as a qualified ABLE program unless it provides separate accounting for each designated beneficiary.

''(4) LIMITED INVESTMENT DIRECTION.—A program shall not be treated as a qualified ABLE program unless it provides that any designated beneficiary under such program may, directly or indirectly, direct the investment of any contributions to

the program (or any earnings thereon) no more than 2 times in any calendar year.

''(5) NO PLEDGING OF INTEREST AS SECURITY.—A program shall not be treated as a qualified ABLE program if it allows any interest in the program or any portion thereof to be used as security for a loan.

''(6) PROHIBITION ON EXCESS CONTRIBUTIONS.—A program shall not be treated as a qualified ABLE program unless it provides adequate safeguards to prevent aggregate contributions on behalf of a designated beneficiary in excess of the limit established by the State under section 529(b)(6). For purposes of the preceding sentence, aggregate contributions include contributions under any prior qualified ABLE program of any State or agency or instrumentality thereof.

''(c) TAX TREATMENT.—

''(1) DISTRIBUTIONS.—

''(A) IN GENERAL.—Any distribution under a qualified ABLE program shall be includible in the gross income of the distributee in the manner as provided under section 72 to the extent not excluded from gross income under any other provision of this chapter.

''(B) DISTRIBUTIONS FOR QUALIFIED DISABILITY EXPENSES.—For purposes of this paragraph, if distributions from a qualified ABLE program—

''(i) do not exceed the qualified disability expenses of the designated beneficiary, no amount shall be includible in gross income, and

''(ii) in any other case, the amount otherwise includible in gross income shall be reduced by an amount which bears the same ratio to such amount as such expenses bear to such distributions.

''(C) CHANGE IN DESIGNATED BENEFICIARIES OR PROGRAMS.—

''(i) ROLLOVERS FROM ABLE ACCOUNTS.—Subparagraph (A) shall not apply to any amount paid or distributed from an ABLE account to the extent that the amount received is paid, not later than the 60th day after the date of such payment or distribution, into another ABLE account for the benefit of the same designated beneficiary or an eligible individual

who is a family member of the designated beneficiary.

''(ii) CHANGE IN DESIGNATED BENEFICIARIES.—Any change in the designated beneficiary of an interest in a qualified ABLE program during a taxable year shall not be treated as a distribution for purposes of subparagraph (A) if the new beneficiary is an eligible individual for such taxable year and a member of the family of the former beneficiary.

''(iii) LIMITATION ON CERTAIN ROLLOVERS.—Clause (i) shall not apply to any transfer if such transfer occurs within 12 months from the date of a previous transfer to any qualified ABLE program for the benefit of the designated beneficiary.

''(D) OPERATING RULES.—For purposes of applying section 72—

''(i) except to the extent provided by the Secretary, all distributions during a taxable year shall be treated as one distribution, and

''(ii) except to the extent provided by the Secretary, the value of the contract, in-

come on the contract, and investment in the contract shall be computed as of the close of the calendar year in which the taxable year begins.

''(2) GIFT TAX RULES.—For purposes of chapters 12 and 13—

''(A) CONTRIBUTIONS.—Any contribution to a qualified ABLE program on behalf of any designated beneficiary—

''(i) shall be treated as a completed gift to such designated beneficiary which is not a future interest in property, and

''(ii) shall not be treated as a qualified transfer under section 2503(e).

''(B) TREATMENT OF DISTRIBUTIONS.—In no event shall a distribution from an ABLE account to such account's designated beneficiary be treated as a taxable gift.

''(C) TREATMENT OF TRANSFER TO NEW DESIGNATED BENEFICIARY.—The taxes imposed by chapters 12 and 13 shall not apply to a transfer by reason of a change in the designated beneficiary under subsection (c)(1)(C).

''(3) ADDITIONAL TAX FOR DISTRIBUTIONS NOT USED FOR DISABILITY EXPENSES.—

''(A) IN GENERAL.—The tax imposed by this chapter for any taxable year on any taxpayer who receives a distribution from a qualified ABLE program which is includible in gross income shall be increased by 10 percent of the amount which is so includible.

''(B) EXCEPTION.—Subparagraph (A) shall not apply if the payment or distribution is made to a beneficiary (or to the estate of the designated beneficiary) on or after the death of the designated beneficiary.

''(C) CONTRIBUTIONS RETURNED BEFORE CERTAIN DATE.—Subparagraph (A) shall not apply to the distribution of any contribution made during a taxable year on behalf of the designated beneficiary if—

''(i) such distribution is received on or before the day prescribed by law (including extensions of time) for filing such designated beneficiary's return for such taxable year, and

''(ii) such distribution is accompanied by the amount of net income attributable to such excess contribution.

Any net income described in clause (ii) shall be included in gross income for the taxable year in which such excess contribution was made.

''(4) LOSS OF ABLE ACCOUNT TREATMENT.—If an ABLE account is established for a designated beneficiary, no account subsequently established for such beneficiary shall be treated as an ABLE account. The preceding sentence shall not apply in the case of an account established for purposes of a rollover described in paragraph (1)(C)(i) of this section if the transferor account is closed as of the end of the 60th day referred to in paragraph (1)(C)(i).

''(d) REPORTS.—

''(1) IN GENERAL.—Each officer or employee having control of the qualified ABLE program or their designee shall make such reports regarding such program to the Secretary and to designated beneficiaries with respect to contributions, distributions, the return of excess contributions, and such other matters as the Secretary may require.

''(2) CERTAIN AGGREGATED INFORMATION.—For research purposes, the Secretary shall make available to the public reports containing aggregate information, by diagnosis and other relevant characteristics, on contributions and distributions from the

qualified ABLE program. In carrying out the preceding sentence an item may not be made available to the public if such item can be associated with, or otherwise identify, directly or indirectly, a particular individual.

''(3) NOTICE OF ESTABLISHMENT OF ABLE ACCOUNT.—A qualified ABLE program shall submit a notice to the Secretary upon the establishment of an ABLE account. Such notice shall contain the name and State of residence of the designated beneficiary and such other information as the Secretary may require.

''(4) ELECTRONIC DISTRIBUTION STATEMENTS.—For purposes of section 4 of the Achieving a Better Life Experience Act of 2014, States shall submit electronically on a monthly basis to the Commissioner of Social Security, in the manner specified by the Commissioner, statements on relevant distributions and account balances from all ABLE accounts.

''(5) REQUIREMENTS.—The reports and notices required by paragraphs (1), (2), and (3) shall be filed at such time and in such manner and furnished to such individuals at such time and in such manner as may be required by the Secretary.

''(e) OTHER DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

''(1) ELIGIBLE INDIVIDUAL.—An individual is an eligible individual for a taxable year if during such taxable year—

''(A) the individual 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 26, or

''(B) a disability certification with respect to such individual is filed with the Secretary for such taxable year.

''(2) DISABILITY CERTIFICATION.—

''(A) IN GENERAL.—The term 'disability certification' means, with respect to an individual, a certification to the satisfaction of the Secretary by the individual or the parent or guardian of the individual that—

''(i) certifies that—

''(I) the 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 12 months, or is blind (within the meaning of section 1614(a)(2) of the Social Security Act), and

''(II) such blindness or disability occurred before the date on which the individual attained age 26, and

''(ii) includes a copy of the individual's diagnosis relating to the individual's relevant impairment or impairments, signed by a physician meeting the criteria of section 1861(r)(1) of the Social Security Act.

''(B) RESTRICTION ON USE OF CERTIFICATION.—No inference may be drawn from a disability certification for purposes of establishing eligibility for benefits under title II, XVI, or XIX of the Social Security Act.

''(3) DESIGNATED BENEFICIARY.—The term 'designated beneficiary' in connection with an ABLE account established under a qualified ABLE program means the eligible individual who established an ABLE account and is the owner of such account.

''(4) MEMBER OF FAMILY.—The term 'member of the family' means, with respect to any designated beneficiary, an individual who bears a relationship to such beneficiary which is described in subparagraph section 152(d)(2)(B). For purposes of the preceding sentence, a rule similar to the rule of section 152(f)(1)(B) shall apply.

''(5) QUALIFIED DISABILITY EXPENSES.—The term '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, including the following expenses: 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, which are approved by the Secretary under regulations and consistent with the purposes of this section.

''(6) ABLE ACCOUNT.—The term 'ABLE account' means an account established by an eligible individual, owned by such eligible individual, and maintained under a qualified ABLE program.

''(7) CONTRACTING STATE.—The term 'contracting State' means a State without a qualified ABLE program which 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.

''(f) TRANSFER TO STATE.—Subject to any outstanding payments due for qualified disability expenses, upon the death of the designated beneficiary, all amounts remaining in the qualified ABLE account not in excess of the amount equal to the total medical assistance paid for the designated beneficiary after the establishment of the account, net of any premiums paid from the account or paid by or on behalf of the 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 of a claim for payment by such State. For purposes of this paragraph, the State shall be a creditor of an ABLE account and not a beneficiary. Subsection (c)(3) shall not apply to a distribution under the preceding sentence.

''(g) REGULATIONS.—The Secretary shall prescribe such regulations or other guidance as the Secretary determines necessary or appropriate to carry out the purposes of this section, including regulations—

''(1) to enforce the 1 ABLE account per eligible individual limit,

''(2) providing for the information required to be presented to open an ABLE account,

''(3) to generally define qualified disability expenses,

''(4) developed in consultation with the Commissioner of Social Security, relating to disability certifications and determinations of disability, including those conditions deemed to meet the requirements of subsection (e)(1)(B),

''(5) to prevent fraud and abuse with respect to amounts claimed as qualified disability expenses,

''(6) under chapters 11, 12, and 13 of this title, and

''(7) to allow for transfers from one ABLE account to another ABLE account.''.

(b) TAX ON EXCESS CONTRIBUTIONS.—

(1) IN GENERAL.—Subsection (a) of section 4973 (relating to tax on excess contributions to certain tax-favored accounts and annuities) is amended by striking ''or'' at the end of paragraph (4), by inserting ''or'' at the end of paragraph (5), and by inserting after paragraph (5) the following new paragraph:

''(6) an ABLE account (within the meaning of section 529A),''.

(2) EXCESS CONTRIBUTION.—Section 4973 is amended by adding at the end the following new subsection:

''(h) EXCESS CONTRIBUTIONS TO ABLE ACCOUNT.—For purposes of this section—

''(1) IN GENERAL.—In the case of an ABLE account (within the meaning of section 529A), the term 'excess contributions' means the amount by which the amount contributed for the taxable year to such account (other than contributions under section 529A(c)(1)(C)) exceeds the contribution limit under section 529A(b)(2)(B).

''(2) SPECIAL RULE.—For purposes of this subsection, any contribution which is distributed out of the ABLE account in a distribution to which the last sentence of section 529A(b)(2) applies shall be treated as an amount not contributed.''.

(c) PENALTY FOR FAILURE TO FILE REPORTS.—Section 6693(a)(2) is amended by striking ''and'' at the end of subparagraph (D), by redesignating subparagraph (E) as subparagraph (F), and by inserting after subparagraph (D) the following:

''(E) section 529A(d) (relating to qualified ABLE programs), and''.

(d) RECORDS.—Section 552a(a)(8)(B) of title 5, United States Code, is amended—

(1) in clause (viii), by striking ''or'' at the end;

(2) in clause (ix), by adding ''or'' at the end; and

(3) by adding at the end the following new clause:

''(x) matches performed pursuant to section 3(d)(4) of the Achieving a Better Life Experience Act of 2014;''.

(e) OTHER CONFORMING AMENDMENTS.—

(1) Section 26(b)(2) is amended by striking ''and'' at the end of subparagraph (W), by striking the period at the end of subparagraph (X) and inserting '', and'', and by inserting after subparagraph (X) the following:

''(Y) section 529A(c)(3)(A) (relating to additional tax on ABLE account distributions not used for qualified disability expenses).''.

(2) Section 877A is amended—

(A) in subsection (e)(2) by inserting ''a qualified ABLE program (as defined in section 529A),'' after ''529),'', and

(B) in subsection (g)(6) by inserting ''529A(c)(3),'' after ''529(c)(6),''.

(3) Section 4965(c) is amended by striking ''or'' at the end of paragraph (6), by striking the period at the end of paragraph (7) and inserting '', or'', and by inserting after paragraph (7) the following new paragraph:

''(8) a program described in section 529A.''.

(4) The heading for part VIII of subchapter F of chapter 1 is amended by striking ''**HIGHER EDUCATION**'' and inserting ''**CERTAIN**''.

(5) The item in the table of parts for subchapter F of chapter 1 relating to part VIII is amended to read as follows:

''PART VIII. CERTAIN SAVINGS ENTITIES.''.

(6) The table of sections for part VIII of subchapter F of chapter 1 is amended by inserting after the item relating to section 529 the following new item:

''Sec. 529A. Qualified ABLE programs.''.

(7) Paragraph (4) of section 1027(g) of the Consumer Financial Protection Act of 2010 (12 U.S.C. 5517(g)(4)) is amended by inserting '', 529A'' after ''529''.

(f) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to taxable years beginning after December 31, 2014.

(2) REGULATIONS.—The Secretary of the Treasury (or the Secretary's designee) shall promulgate the regulations or other guidance required under section 529A(g) of the Internal Revenue Code of 1986, as added by subsection (a), not later than 6 months after the date of the enactment of this Act.

SEC. 103. TREATMENT OF ABLE ACCOUNTS UNDER CERTAIN FEDERAL PROGRAMS.

(a) ACCOUNT FUNDS DISREGARDED FOR PURPOSES OF CERTAIN OTHER MEANS-TESTED FEDERAL PROGRAMS.—Notwithstanding any other provision of Federal law that requires consideration of 1 or more financial circumstances of an individual, for the purpose of determining eligibility to receive, or the amount of, any assistance or benefit authorized by such provision to be provided to or for the benefit of such individual, any amount (including earnings thereon) in the ABLE account (within the meaning of section 529A of the Internal Revenue Code of 1986) of such individual, any contributions to the ABLE account of the individual, and any distribution for qualified disability expenses (as defined in subsection

(e)(5) of such section) shall be disregarded for such purpose with respect to any period during which such individual maintains, makes contributions to, or receives distributions from such ABLE account, except that, in the case of the supplemental security income program under title XVI of the Social Security Act—

(1) a distribution for housing expenses (within the meaning of such subsection) shall not be so disregarded, and

(2) in the case of such program, any amount (including such earnings) in such ABLE account shall be considered a resource of the designated beneficiary to the extent that such amount exceeds $100,000.

(b) SUSPENSION OF SSI BENEFITS DURING PERIODS OF EXCESSIVE ACCOUNT FUNDS.—

(1) IN GENERAL.—The benefits of an individual under the supplemental security income program under title XVI of the Social Security Act shall not be terminated, but shall be suspended, by reason of excess resources of the individual attributable to an amount in the ABLE account (within the meaning of section 529A of the Internal Revenue Code of 1986) of the individual not disregarded under subsection (a) of this section.

(2) NO IMPACT ON MEDICAID ELIGIBILITY.—An individual who would be receiving payment of such supplemental security income benefits but for the application of paragraph (1) shall be treated for purposes of title XIX of the Social Security Act as if the individual continued to be receiving payment of such benefits.

(c) EFFECTIVE DATE.—This section shall take effect on the date of the enactment of this Act.

SEC. 104. TREATMENT OF ABLE ACCOUNTS IN BANKRUPTCY.

(a) EXCLUSION FROM PROPERTY OF THE ESTATE.—Section 541(b) of the title 11, United States Code, is amended—

(1) in paragraph (8), by striking ''or'' at the end;

(2) in paragraph (9), by striking the period at the end and inserting a semicolon and ''or''; and

(3) by inserting after paragraph (9) the following:

''(10) funds placed in an account of a qualified ABLE program (as defined in section 529A(b) of the Internal Revenue Code of 1986) not later than 365 days before the date of the filing of the petition in a case under this title, but—

"(A) only if the designated beneficiary of such account was a child, stepchild, grandchild, or stepgrandchild of the debtor for the taxable year for which funds were placed in such account;

"(B) only to the extent that such funds—

"(i) are not pledged or promised to any entity in connection with any extension of credit; and

"(ii) are not excess contributions (as described in section 4973(h) of the Internal Revenue Code of 1986); and

"(C) in the case of funds placed in all such accounts having the same designated beneficiary not earlier than 720 days nor later than 365 days before such date, only so much of such funds as does not exceed $6,225.".

(b) DEBTOR'S MONTHLY EXPENSES.—Section 707(b)(2)(A)(ii)(II) of title 11, United States Code, is amended by adding at the end "Such monthly expenses may include, if applicable, contributions to an account of a qualified ABLE program to the extent such contributions are not excess contributions (as described in section 4973(h) of the Internal Revenue Code of 1986) and if the

designated beneficiary of such account is a child, stepchild, grandchild, or stepgrandchild of the debtor.''.

(c) RECORD OF DEBTOR'S INTEREST.—Section 521(c) of title 11, United States Code, is amended by inserting '', an interest in an account in a qualified ABLE program (as defined in section 529A(b) of such Code,'' after ''Internal Revenue Code of 1986)''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to cases commenced under title 11, United States Code, on or after the date of the enactment of this Act.

SEC. 105. INVESTMENT DIRECTION RULE FOR 529 PLANS.

(a) AMENDMENTS RELATING TO INVESTMENT DIRECTION RULE FOR 529 PLANS.—

(1) Paragraph (4) of section 529(b) is amended by striking ''may not directly or indirectly'' and all that follows and inserting ''may, directly or indirectly, direct the investment of any contributions to the program (or any earnings thereon) no more than 2 times in any calendar year.''.

(2) The heading of paragraph (4) of section 529(b)is amended by striking ''NO'' and inserting ''LIMITED''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2014.

TITLE II—OFFSETS

SEC. 201. CORRECTION TO WORKERS COMPENSATION OFFSET AGE.

(a) RETIREMENT AGE.—Section 224(a) of the Social Security Act (42 U.S.C. 424a(a)) is amended, in the matter preceding paragraph (1), by striking ''the age of 65'' and inserting ''retirement age (as defined in section 216(l)(1))''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply with respect to any individual who attains 65 years of age on or after the date that is 12 months after the date of the enactment of this Act.

SEC. 202. ACCELERATED APPLICATION OF RELATIVE VALUE TARGETS FOR MISVALUED SERVICES IN THE MEDICARE PHYSICIAN FEE SCHEDULE.

Section 1848(c) of the Social Security Act (42 U.S.C. 1395w–4(c)) is amended—

(1) in subclause (VIII) of paragraph (2)(B)(v), as added by section 220(d)(2) of the Protecting Access to Medicare Act of 2014 (Public Law 113–93)—

(A) by striking ''2017'' and inserting ''2016''; and

(B) by redesignating such subclause as subclause (IX);

(2) in paragraph (2)(O)—

(A) in the matter preceding clause (i), by striking ''2017 through 2020'' and inserting ''2016 through 2018'';

(B) in clause (iii), by striking ''2017'' and inserting ''2016''; and

(C) in clause (v), by inserting ''(or, for 2016, 1.0 percent)'' after ''0.5 percent''; and

(3) in paragraph (7), by striking ''2017'' and inserting ''2016''.

SEC. 203. CONSISTENT TREATMENT OF VACUUM ERECTION SYSTEMS IN MEDICARE PARTS B AND D.

Section 1834(a)(1) of the Social Security Act (42 U.S.C. 1395m(a)(1)) is amended by adding at the end the following new subparagraph:

''(I) TREATMENT OF VACUUM ERECTION SYSTEMS.—Effective for items and services furnished on and after July 1, 2015, vacuum erection systems described as prosthetic devices described in section 1861(s)(8) shall be treated in the same manner as erectile dysfunction drugs

are treated for purposes of section 1860D-2(e)(2)(A).''.

SEC. 204. ONE-YEAR DELAY OF IMPLEMENTATION OF ORAL-ONLY POLICY UNDER MEDICARE ESRD PROSPECTIVE PAYMENT SYSTEM.

Section 632(b)(1) of the American Taxpayer Relief Act of 2012 (42 U.S.C. 1395rr note), as amended by section 217(a)(1) of the Protecting Access to Medicare Act of 2014 (Public Law 113-93), is amended by striking ''2024'' and inserting ''2025''.

SEC. 205. MODIFICATION RELATING TO INLAND WATERWAYS TRUST FUND FINANCING RATE.

(a) IN GENERAL.—Section 4042(b)(2)(A) is amended to read as follows:

''(A) The Inland Waterways Trust Fund financing rate is 29 cents per gallon.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to fuel used after March 31, 2015.

SEC. 206. CERTIFIED PROFESSIONAL EMPLOYER ORGANIZATIONS.

(a) EMPLOYMENT TAXES.—Chapter 25 is amended by adding at the end the following new section:

"SEC. 3511. CERTIFIED PROFESSIONAL EMPLOYER ORGANIZATIONS.

''(a) GENERAL RULES.—For purposes of the taxes, and other obligations, imposed by this subtitle—

''(1) a certified professional employer organization shall be treated as the employer (and no other person shall be treated as the employer) of any work site employee performing services for any customer of such organization, but only with respect to remuneration remitted by such organization to such work site employee, and

''(2) the exemptions, exclusions, definitions, and other rules which are based on type of employer and which would (but for paragraph (1)) apply shall apply with respect to such taxes imposed on such remuneration.

''(b) SUCCESSOR EMPLOYER STATUS.—For purposes of sections 3121(a)(1), 3231(e)(2)(C), and 3306(b)(1)—

''(1) a certified professional employer organization entering into a service contract with a customer with respect to a work site employee shall be treated as a successor employer and the customer shall be treated as a predecessor employer during the term of such service contract, and

''(2) a customer whose service contract with a certified professional employer organization is termi-

nated with respect to a work site employee shall be treated as a successor employer and the certified professional employer organization shall be treated as a predecessor employer.

''(c) LIABILITY OF CERTIFIED PROFESSIONAL EMPLOYER ORGANIZATION.—Solely for purposes of its liability for the taxes and other obligations imposed by this subtitle—

''(1) a certified professional employer organization shall be treated as the employer of any individual (other than a work site employee or a person described in subsection (f)) who is performing services covered by a contract meeting the requirements of section 7705(e)(2), but only with respect to remuneration remitted by such organization to such individual, and

''(2) the exemptions, exclusions, definitions, and other rules which are based on type of employer and which would (but for paragraph (1)) apply shall apply with respect to such taxes imposed on such remuneration.

''(d) TREATMENT OF CREDITS.—

''(1) IN GENERAL.—For purposes of any credit specified in paragraph (2)—

''(A) such credit with respect to a work site employee performing services for the customer applies to the customer, not the certified professional employer organization,

''(B) the customer, and not the certified professional employer organization, shall take into account wages and employment taxes—

''(i) paid by the certified professional employer organization with respect to the work site employee, and

''(ii) for which the certified professional employer organization receives payment from the customer, and

''(C) the certified professional employer organization shall furnish the customer and the Secretary with any information necessary for the customer to claim such credit.

''(2) CREDITS SPECIFIED.—A credit is specified in this paragraph if such credit is allowed under—

''(A) section 41 (credit for increasing research activity),

''(B) section 45A (Indian employment credit),

''(C) section 45B (credit for portion of employer social security taxes paid with respect to employee cash tips),

''(D) section 45C (clinical testing expenses for certain drugs for rare diseases or conditions),

''(E) section 45R (employee health insurance expenses of small employers),

''(F) section 51 (work opportunity credit),

''(G) section 1396 (empowerment zone employment credit), and

''(H) any other section as provided by the Secretary.

''(e) SPECIAL RULE FOR RELATED PARTY.—This section shall not apply in the case of a customer which bears a relationship to a certified professional employer organization described in section 267(b) or 707(b). For purposes of the preceding sentence, such sections shall be applied by substituting '10 percent' for '50 percent'.

''(f) SPECIAL RULE FOR CERTAIN INDIVIDUALS.—For purposes of the taxes imposed under this subtitle, an individual with net earnings from self-employment derived from the customer's trade or business (including a partner in a partnership that is a customer) is not a work site

employee with respect to remuneration paid by a certified professional employer organization.

''(g) REPORTING REQUIREMENTS AND OBLIGATIONS.—The Secretary shall develop such reporting and recordkeeping rules, regulations, and procedures as the Secretary determines necessary or appropriate to ensure compliance with this title by certified professional employer organizations or persons that have been so certified. Such rules shall include—

''(1) notification of the Secretary in such manner as the Secretary shall prescribe in the case of the commencement or termination of a service contract described in section 7705(e)(2) between such a person and a customer, and the employer identification number of such customer,

''(2) such information as the Secretary determines necessary for the customer to claim the credits identified in subsection (d) and the manner in which such information is to be provided, as prescribed by the Secretary, and

''(3) such other information as the Secretary determines is essential to promote compliance with respect to the credits identified in subsection (d) and section 3302, and

shall be designed in a manner which streamlines, to the extent possible, the application of requirements of this section and section 7705, the exchange of information between a certified professional employer organization and its customers, and the reporting and recordkeeping obligations of the certified professional employer organization.

''(h) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section.''.

(b) CERTIFIED PROFESSIONAL EMPLOYER ORGANIZATION DEFINED.—Chapter 79 is amended by adding at the end the following new section:

''SEC. 7705. CERTIFIED PROFESSIONAL EMPLOYER ORGANIZATIONS.

''(a) IN GENERAL.—For purposes of this title, the term 'certified professional employer organization' means a person who applies to be treated as a certified professional employer organization for purposes of section 3511 and has been certified by the Secretary as meeting the requirements of subsection (b).

''(b) CERTIFICATION REQUIREMENTS.—A person meets the requirements of this subsection if such person—

''(1) demonstrates that such person (and any owner, officer, and other persons as may be specified in regulations) meets such requirements as the Sec-

retary shall establish, including requirements with respect to tax status, background, experience, business location, and annual financial audits,

''(2) agrees that it will satisfy the bond and independent financial review requirements of subsection (c) on an ongoing basis,

''(3) agrees that it will satisfy such reporting obligations as may be imposed by the Secretary,

''(4) computes its taxable income using an accrual method of accounting unless the Secretary approves another method,

''(5) agrees to verify on such periodic basis as the Secretary may prescribe that it continues to meet the requirements of this subsection, and

''(6) agrees to notify the Secretary in writing within such time as the Secretary may prescribe of any change that materially affects the continuing accuracy of any agreement or information that was previously made or provided under this subsection.

''(c) BOND AND INDEPENDENT FINANCIAL REVIEW.—

''(1) IN GENERAL.—An organization meets the requirements of this paragraph if such organization—

''(A) meets the bond requirements of paragraph (2), and

''(B) meets the independent financial review requirements of paragraph (3).

''(2) BOND.—

''(A) IN GENERAL.—A certified professional employer organization meets the requirements of this paragraph if the organization has posted a bond for the payment of taxes under subtitle C (in a form acceptable to the Secretary) that is in an amount at least equal to the amount specified in subparagraph (B).

''(B) AMOUNT OF BOND.—For the period April 1 of any calendar year through March 31 of the following calendar year, the amount of the bond required is equal to the greater of—

''(i) 5 percent of the organization's liability under section 3511 for taxes imposed by subtitle C during the preceding calendar year (but not to exceed $1,000,000), or

''(ii) $50,000.

''(3) INDEPENDENT FINANCIAL REVIEW REQUIREMENTS.—A certified professional employer or-

ganization meets the requirements of this paragraph if such organization—

''(A) has, as of the most recent audit date, caused to be prepared and provided to the Secretary (in such manner as the Secretary may prescribe) an opinion of an independent certified public accountant as to whether the certified professional employer organization's financial statements are presented fairly in accordance with generally accepted accounting principles, and

''(B) provides to the Secretary an assertion regarding Federal employment tax payments and an examination level attestation on such assertion from an independent certified public accountant not later than the last day of the second month beginning after the end of each calendar quarter.

Such assertion shall state that the organization has withheld and made deposits of all taxes imposed by chapters 21, 22, and 24 in accordance with regulations imposed by the Secretary for such calendar quarter and such examination level attestation shall state that such assertion is fairly stated, in all material respects.

''(4) CONTROLLED GROUP RULES.—For purposes of the requirements of paragraphs (2) and (3), all certified professional employer organizations that are members of a controlled group within the meaning of sections 414(b) and (c) shall be treated as a single organization.

''(5) FAILURE TO FILE ASSERTION AND ATTESTATION.—If the certified professional employer organization fails to file the assertion and attestation required by paragraph (3) with respect to any calendar quarter, then the requirements of paragraph (3) with respect to such failure shall be treated as not satisfied for the period beginning on the due date for such attestation.

''(6) AUDIT DATE.—For purposes of paragraph (3)(A), the audit date shall be six months after the completion of the organization's fiscal year.

''(d) SUSPENSION AND REVOCATION AUTHORITY.—The Secretary may suspend or revoke a certification of any person under subsection (b) for purposes of section 3511 if the Secretary determines that such person is not satisfying the agreements or requirements of subsections (b) or (c), or fails to satisfy applicable accounting, reporting, payment, or deposit requirements.

''(e) WORK SITE EMPLOYEE.—For purposes of this title—

''(1) IN GENERAL.—The term 'work site employee' means, with respect to a certified professional employer organization, an individual who—

''(A) performs services for a customer pursuant to a contract which is between such customer and the certified professional employer organization and which meets the requirements of paragraph (2), and

''(B) performs services at a work site meeting the requirements of paragraph (3).

''(2) SERVICE CONTRACT REQUIREMENTS.—A contract meets the requirements of this paragraph with respect to an individual performing services for a customer if such contract is in writing and provides that the certified professional employer organization shall—

''(A) assume responsibility for payment of wages to such individual, without regard to the receipt or adequacy of payment from the customer for such services,

''(B) assume responsibility for reporting, withholding, and paying any applicable taxes under subtitle C, with respect to such individ-

ual's wages, without regard to the receipt or adequacy of payment from the customer for such services,

"(C) assume responsibility for any employee benefits which the service contract may require the certified professional employer organization to provide, without regard to the receipt or adequacy of payment from the customer for such benefits,

"(D) assume responsibility for recruiting, hiring, and firing workers in addition to the customer's responsibility for recruiting, hiring, and firing workers,

"(E) maintain employee records relating to such individual, and

"(F) agree to be treated as a certified professional employer organization for purposes of section 3511 with respect to such individual.

"(3) WORK SITE COVERAGE REQUIREMENT.—The requirements of this paragraph are met with respect to an individual if at least 85 percent of the individuals performing services for the customer at the work site where such individual performs services are subject to 1 or more contracts with the certified professional employer organization which meet

the requirements of paragraph (2) (but not taking into account those individuals who are excluded employees within the meaning of section 414(q)(5)).

''(f) PUBLIC DISCLOSURE.—The Secretary shall make available to the public the name and address of—

''(1) each person certified as a professional employer organization under subsection (a), and

''(2) each person whose certification as a professional employer organization is suspended or revoked under subsection (d).

''(g) DETERMINATION OF EMPLOYMENT STATUS.—Except to the extent necessary for purposes of section 3511, nothing in this section shall be construed to affect the determination of who is an employee or employer for purposes of this title.

''(h) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section.''.

(c) CONFORMING AMENDMENTS.—

(1) Section 3302 is amended by adding at the end the following new subsection:

''(h) TREATMENT OF CERTIFIED PROFESSIONAL EMPLOYER ORGANIZATIONS.—If a certified professional employer organization (as defined in section 7705), or a customer of such organization, makes a contribution to the

State's unemployment fund with respect to wages paid to a work site employee, such certified professional employer organization shall be eligible for the credits available under this section with respect to such contribution.''.

(2) Section 3303(a) is amended—

(A) by striking the period at the end of paragraph (3) and inserting ''; and'' and by inserting after paragraph (3) the following new paragraph:

''(4) if the taxpayer is a certified professional employer organization (as defined in section 7705) that is treated as the employer under section 3511, such certified professional employer organization is permitted to collect and remit, in accordance with paragraphs (1), (2), and (3), contributions during the taxable year to the State unemployment fund with respect to a work site employee.'', and

(B) in the last sentence—

(i) by striking ''paragraphs (1), (2), and (3)'' and inserting ''paragraphs (1), (2), (3), and (4)'', and

(ii) by striking ''paragraph (1), (2), or (3)'' and inserting ''paragraph (1), (2), (3), or (4)''.

(3) Section 6053(c) is amended by adding at the end the following new paragraph:

''(8) CERTIFIED PROFESSIONAL EMPLOYER ORGANIZATIONS.—For purposes of any report required by this subsection, in the case of a certified professional employer organization that is treated under section 3511 as the employer of a work site employee, the customer with respect to whom a work site employee performs services shall be the employer for purposes of reporting under this section and the certified professional employer organization shall furnish to the customer and the Secretary any information the Secretary prescribes as necessary to complete such reporting no later than such time as the Secretary shall prescribe.''.

(4) Section 6652 is amended by adding at the end the following new subsection:

''(n) FAILURE TO MAKE REPORTS REQUIRED UNDER SECTIONS 3511, 6053(c)(8), AND 7705.—In the case of a failure to make a report required under section 3511, 6053(c)(8), or 7705 which contains the information required by such section on the date prescribed therefor (determined with regard to any extension of time for filing), there shall be paid (on notice and demand by the Secretary and in the same manner as tax) by the person

failing to make such report, an amount equal to $50 for each report with respect to which there was such a failure. In the case of any failure due to negligence or intentional disregard the preceding sentence shall be applied by substituting '$100' for '$50'.''.

(d) CLERICAL AMENDMENTS.—

(1) The table of sections for chapter 25 is amended by adding at the end the following new item:

''Sec. 3511. Certified professional employer organizations.''.

(2) The table of sections for chapter 79 is amended by inserting after the item relating to section 7704 the following new item:

''Sec. 7705. Certified professional employer organizations.''.

(f) USER FEES.—Section 7528(b) is amended by adding at the end the following new paragraph:

''(4) CERTIFIED PROFESSIONAL EMPLOYER ORGANIZATIONS.—The fee charged under the program in connection with the certification by the Secretary of a professional employer organization under section 7705 shall be an annual fee not to exceed $1,000 per year.''.

(g) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendments made by this section shall apply with respect to wages for services performed on or after January 1 of the first

calendar year beginning more than 12 months after the date of the enactment of this Act.

(2) CERTIFICATION PROGRAM.—The Secretary of the Treasury shall establish the certification program described in section 7705(b) of the Internal Revenue Code of 1986, as added by subsection (b), not later than 6 months before the effective date determined under paragraph (1).

(h) NO INFERENCE.—Nothing contained in this section or the amendments made by this section shall be construed to create any inference with respect to the determination of who is an employee or employer—

(1) for Federal tax purposes (other than the purposes set forth in the amendments made by this section), or

(2) for purposes of any other provision of law.

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.

(a) IN GENERAL.—Section 543(a)(1) is amended—

(1) by redesignating subparagraphs (C) and (D) as subparagraphs (D) and (E), respectively, and

(2) by inserting after subparagraph (B) the following:

''(C) dividends received by a United States shareholder (as defined in section 951(b)) from a controlled foreign corporation (as defined in section 957(a)),''.

(b) EFFECTIVE DATE.—The amendments made by this Act shall apply to taxable years ending on or after the date of the enactment of this Act.

SEC. 208. INFLATION ADJUSTMENT FOR CERTAIN CIVIL PENALTIES UNDER THE INTERNAL REVENUE CODE OF 1986.

(a) FAILURE TO FILE TAX RETURN OR PAY TAX.—Section 6651 is amended by adding at the end the following new subsection:

''(i) ADJUSTMENT FOR INFLATION.—

''(1) IN GENERAL.—In the case of any return required to be filed in a calendar year beginning after 2014, the $135 dollar amount under subsection (a) shall be increased by such dollar amount multiplied by the cost-of-living adjustment determined under section 1(f)(3) determined by substituting 'calendar year 2013' for 'calendar year 1992' in subparagraph (B) thereof.

''(2) ROUNDING.—If any amount adjusted under paragraph (1) is not a multiple of $5, such amount shall be rounded to the next lowest multiple of $5.''.

(b) FAILURE TO FILE CERTAIN INFORMATION RETURNS, REGISTRATION STATEMENTS, ETC.—

(1) IN GENERAL.—Section 6652(c) is amended by adding at the end the following new paragraph:

''(6) ADJUSTMENT FOR INFLATION.—

''(A) IN GENERAL.—In the case of any failure relating to a return required to be filed in a calendar year beginning after 2014, each of the dollar amounts under paragraphs (1), (2), and (3) shall be increased by such dollar amount multiplied by the cost-of-living adjustment determined under section 1(f)(3) determined by substituting 'calendar year 2013' for 'calendar year 1992' in subparagraph (B) thereof.

''(B) ROUNDING.—If any amount adjusted under subparagraph (A)—

''(i) is not less than $5,000 and is not a multiple of $500, such amount shall be rounded to the next lowest multiple of $500, and

''(ii) is not described in clause (i) and is not a multiple of $5, such amount shall be rounded to the next lowest multiple of $5.''.

(2) CONFORMING AMENDMENTS.—

(A) The last sentence of section 6652(c)(1)(A) is amended by striking ''the first sentence of this subparagraph shall be applied by substituting '$100' for '$20' and'' and inserting ''in applying the first sentence of this subparagraph, the amount of the penalty for each day during which a failure continues shall be $100 in lieu of the amount otherwise specified, and''.

(B) Section 6652(c)(2)(C)(ii) is amended by striking ''the first sentence of paragraph (1)(A)'' and all that follows and inserting ''in applying the first sentence of paragraph (1)(A), the amount of the penalty for each day during which a failure continues shall be $100 in lieu of the amount otherwise specified, and in lieu of applying the second sentence of paragraph (1)(A), the maximum penalty under paragraph (1)(A) shall not exceed $50,000, and''.

(c) OTHER ASSESSABLE PENALTIES WITH RESPECT TO THE PREPARATION OF TAX RETURNS FOR OTHER PERSONS.—Section 6695 is amended by adding at the end the following new subsection:

''(h) ADJUSTMENT FOR INFLATION.—

''(1) IN GENERAL.—In the case of any failure relating to a return or claim for refund filed in a calendar year beginning after 2014, each of the dollar amounts under subsections (a), (b), (c), (d), (e), (f), and (g) shall be increased by such dollar amount multiplied by the cost-of-living adjustment determined under section 1(f)(3) determined by substituting 'calendar year 2013' for 'calendar year 1992' in subparagraph (B) thereof.

''(2) ROUNDING.—If any amount adjusted under subparagraph (A)—

''(A) is not less than $5,000 and is not a multiple of $500, such amount shall be rounded to the next lowest multiple of $500, and

''(B) is not described in clause (i) and is not a multiple of $5, such amount shall be rounded to the next lowest multiple of $5.''.

(d) FAILURE TO FILE PARTNERSHIP RETURN.—Section 6698 is amended by adding at the end the following new subsection:

''(e) ADJUSTMENT FOR INFLATION.—

''(1) IN GENERAL.—In the case of any return required to be filed in a calendar year beginning after 2014, the $195 dollar amount under subsection (b)(1) shall be increased by such dollar amount multiplied by the cost-of-living adjustment determined under section 1(f)(3) determined by substituting 'calendar year 2013' for 'calendar year 1992' in subparagraph (B) thereof.

''(2) ROUNDING.—If any amount adjusted under paragraph (1) is not a multiple of $5, such amount shall be rounded to the next lowest multiple of $5.''.

(e) FAILURE TO FILE S CORPORATION RETURN.—Section 6699 is amended by adding at the end the following new subsection:

''(e) ADJUSTMENT FOR INFLATION.—

''(1) IN GENERAL.—In the case of any return required to be filed in a calendar year beginning after 2014, the $195 dollar amount under subsection (b)(1) shall be increased by such dollar amount multiplied by the cost-of-living adjustment determined under section 1(f)(3) determined by substituting 'calendar year 2013' for 'calendar year 1992' in subparagraph (B) thereof.

''(2) ROUNDING.—If any amount adjusted under paragraph (1) is not a multiple of $5, such amount shall be rounded to the next lowest multiple of $5.''.

(f) FAILURE TO FILE CORRECT INFORMATION RETURNS.—Section 6721(f)(1) is amended by striking ''For each fifth calendar year beginning after 2012'' and inserting ''In the case of any failure relating to a return required to be filed in a calendar year beginning after 2014''.

(g) FAILURE TO FURNISH CORRECT PAYEE STATEMENTS.—Section 6722(f)(1) is amended by striking ''For each fifth calendar year beginning after 2012'' and inserting ''In the case of any failure relating to a statement required to be furnished in a calendar year beginning after 2014''.

(h) EFFECTIVE DATE.—The amendments made by this section shall apply to returns required to be filed after December 31, 2014.

SEC. 209. INCREASE IN CONTINUOUS LEVY.

(a) IN GENERAL.—Paragraph (3) of section 6331(h) is amended by striking the period at the end and inserting ''and by substituting '30 percent' for '15 percent' in the case of any specified payment due to a Medicare provider or supplier under title XVIII of the Social Security Act.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to payments made after 180 days after the date of the enactment of this Act.

Passed the House of Representatives December 3, 2014.

Attest:

Clerk.

113TH CONGRESS
2D SESSION

H. R. 647

AN ACT

To amend the Internal Revenue Code of 1986 to provide for the tax treatment of ABLE accounts established under State programs for the care of family members with disabilities, and for other purposes.