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ABLE Accounts - What You Need to Know

ABLE United is Florida's ABLE program and opened for business on July 1, 2016. www.ableunited.com Florida's ABLE program is administered under the Prepaid College Board. The ABLE law is in §529A of the Internal Revenue Code.

The Achieving a Better Life Experience (ABLE) Act allows individuals with disabilities and their family and friends to deposit funds into and thus maintain funds in an ABLE account while maintaining government benefits.

ABLE accounts (not "Trusts") can be very helpful and a powerful tool for certain individuals with disabilities. To use an ABLE account the disability has to have occurred prior to age 26, so the eligible candidates will be limited. If a person can qualify, ABLE United allows for the account to be opened online in about 15 minutes at their website. Contributions will initially be limited to a total of $15,000 (in 2018) per year and adjusts with the annual gift tax exclusion. The funds can then be invested and grow tax free.

An individual can have up to $100,000 in their ABLE account before the account starts counting for SSI (Supplemental Security Income). For Medicaid they can have up to $418,000 (Florida's limit for 529 Educational Savings Plans). The ABLE account grows tax free provided the funds are used for qualified disability expenses. Florida Medicaid has a lien on Florida ABLE accounts upon the death of an ABLE beneficiary, similar to a Special Needs Trust.

Qualified Disability Expenses include:
Education, housing, transportation, employment training and support, assistive technology and related services, health, prevention and wellness, financial management and administrative services, legal fees, expenses for ABLE account oversight and monitoring, funeral and burial, and basic living expenses, and anything added by Secretary of the Treasury

A popular question is how Special Needs Trust (SNT's) compare to ABLE accounts. There are a lot of similarities and differences. The attached chart illustrates some of these comparisons.

Trait	ABLE	d4A	d4C	Third Party SNT
Can be Established by Beneficiary Directly				
No Limited annual Contributions				
No Medicaid Payback on Death				
Can pay for food and shelter for SSI recipient without impacting benefits				
Grows Tax free				
No Lifetime Limits on account size				
Exempt from Creditors Claims		maybe not	maybe not	
Allows for some disbursements after death				
Low fees				
Distribution standard broader than just sole benefit of beneficiary				
Can be controlled by the beneficiary directly				

yes
no
maybe

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ABLE Accounts – Q & A from ABLE United Website

A. What is the ABLE Act?

The Stephen Beck, Jr. ***Achieving a Better Life Experience*** (ABLE) Act, a federal law enacted in December 2014, authorizes each state to establish a program that offers tax-free savings and investment options to encourage individuals with a disability and their families to save private funds to support health, independence, and quality of life. Money contributed to an account in one of these programs is generally disregarded when determining eligibility for federal benefit programs, such as Supplemental Security Income (SSI) and Medicaid.

B. What is an ABLE Account?

An ABLE account is a tax-free savings and investment account established to support qualified disability expenses for an individual with a disability, including living expenses. Money in an ABLE account is generally disregarded when determining eligibility for federal benefit programs, such as Supplemental Security Income (SSI) and Medicaid.

The ABLE United Program is the qualified ABLE program offered by the state of Florida. ABLE accounts in the ABLE United Program are referred to as ABLE United accounts.

C. What is the ABLE United program?

The ABLE United Program is the qualified ABLE program offered by the state of Florida. The Program is administered by Florida ABLE, Inc. (d/b/a ABLE United), a direct-support organization of the Florida Prepaid College Board (Board). The Board, established in 1987, oversees more than $10 billion in collective investments in the Stanley G. Tate Florida Prepaid College Program and the Florida 529 Savings Program.

D. What Does 529A mean?

“529A” refers to Section 529A of the Internal Revenue Code. This is the legal framework for many of the specific rules of an ABLE United account. In addition, Section 529A provides for the federal income tax exemption for earnings in an ABLE United account.

E. Do I have to receive disability benefits to be eligible?

No. ABLE United accounts allow individuals with a disability and their family to save private funds tax-free, much like a Roth IRA (Individual Retirement Account) or 529 college savings account. Money in an ABLE United account is generally disregarded when determining eligibility for government benefit programs but an individual need not receive disability benefits to be eligible to open an ABLE United account.

F. How will an ABLE account affect my federal benefits?

An ABLE United account is disregarded when determining federal benefit eligibility with the following two exceptions for individuals receiving Supplemental Security Income (SSI):

CAUTION: For the purposes of determining ***eligibility for SSI***, money in an ABLE United account in excess of $100,000 is considered an asset to the individual with a disability and may cause SSI benefits to be reduced or suspended. ***An account balance up to and including $100,000 is disregarded***. A withdrawal that will be used for a housing expense but that is not spent in the same month will be considered an asset of the individual with a disability and may cause SSI benefits to be reduced or suspended.

There is ***no impact on Medicaid benefits***, regardless of how much money is in the ABLE United account, even if SSI benefits are reduced or suspended due to the ABLE United account.

G. How will having an ABLE account affect my state benefits?

In general, ABLE accounts are *expected* to be disregarded from consideration by state benefit programs, with the exceptions addressed in "Will an ABLE United account affect my federal benefits?" To determine whether your specific state benefits may be impacted, *please contact your provider.*

For the purposes of organizing information on this site, Medicaid is considered a federal benefit by the ABLE United Program. All assets, without limitation, in an ABLE United account are disregarded when determining eligibility for Medicaid.

H. Does having an ABLE account help me qualify for disability benefits?

Qualifying for and opening an ABLE United account does not, by itself, allow an individual to qualify for any disability benefit program. However, since funds in an ABLE United account are generally disregarded when determining eligibility for disability benefit programs, contributing money into an ABLE United account will reduce countable assets considered for benefit eligibility and may help an individual qualify for a program that they were otherwise not qualified for based on countable assets.

In addition, family and friends may contribute to an ABLE United account. Contributions from a third party made directly to an ABLE account are not considered income to, or assets of, the individual with a disability when determining eligibility for federal disability benefit programs. This means that family and friends can provide financial assistance without jeopardizing eligibility for federal disability benefits.

I. How will items (or assets) purchased from an ABLE account affect benefits?

Generally, withdrawals from an ABLE United account will not affect disability benefit programs as long as they are *living and disability expenses*. Normal resource counting rules and exclusions will apply to assets and other items purchased with money from an ABLE United account.

J. What is Medicaid repayment?

Federal law requires that each state recover Medicaid expenditures from a Medicaid recipient's estate. *Federal law also allows for a state to recover Medicaid expenditures from an ABLE United account.* There are certain limitations to Medicaid recovery (also called repayment) from an ABLE United account:

A state cannot recover funds from an ABLE United account prior to the death of the individual with a disability.

A state may only request reimbursement for Medicaid benefits paid, less premiums paid to a Medicaid Buy-in program, since the date of establishment of the ABLE United account.
State recovery of Medicaid premiums from an ABLE United account occurs after payment of all outstanding Qualified Disability Expenses for the individual with a disability, *including funeral and burial expenses.*

For the purposes of Medicaid recovery, the state is a creditor of an ABLE United account, and not a beneficiary.

K. How does an ABLE account work with my special needs trust?

An ABLE United account may be used as a complement, or alternative, to a Special Needs Trust.

In general, an ABLE United account is less expensive than an Special Needs Trust. By comparison, ABLE United has waived all maintenance fees but charges an *investment management fee* of up to 0.29% of the account balance annually. A Special Needs Trust can cost $500 to $5,000 to establish and 1-3% of assets annually.

An ABLE United account allows for *direct access to funds for authorized individuals* unlike a Special Needs Trust which may require withdrawal requests to be approved by a trustee.
An ABLE United account provides *tax-free earnings* unlike a Special Needs Trust where earnings are taxed at trust rates.

L. Who may open an ABLE account?

There are three eligibility criteria for opening an ABLE United account:

- Florida Residency
The individual must be a Florida resident at the time of application.

- Disability Severity Criteria
The individual must be blind or have a disability that meets the disability and severity requirements for Supplemental Security Income (SSI) or Social Security Disability Insurance (SSDI).

- Disability Onset
The onset of blindness or disability must have occurred before the individual's 26th birthday.

M. What are the disability severity requirements for SSI/SSDI?

For the purposes of ABLE United account eligibility, the disability and severity requirements refer to the Social Security Administration's definition for a child with a disability and blindness – regardless of the current age of the individual opening an ABLE United account.

Disability (Child under 18): A medically determinable physical or mental impairment that results in marked and severe functional limitation(s), and which can be expected to result in death, or has lasted or can be expected to last for a continuous period of not less than 12 months.

Blindness: vision, with use of a correcting lens, which is 20/200 or less in the better eye or tunnel vision of 20 degrees or less.

N. What conditions qualify for an ABLE account?

The Internal Revenue Service categorizes eligible disabilities as follows:

Developmental Disorders: Autistic Spectrum Disorder, Asperger's Disorder, Developmental delays and learning disabilities,
Intellectual Disability: May be reported as mild, moderate, or severe intellectual disability
Psychiatric Disorders: Schizophrenia, Major depressive disorder, Post-Traumatic Stress Disorder (PTSD), Anorexia Nervosa, Attention Deficit/Hyperactivity Disorder (AD/HD), Bipolar Disorder
Nervous Disorders: Blindness, Deafness, Cerebral Palsy, Muscular Dystrophy, Spina Bifida, Juvenile-onset Huntington's Disease, Multiple Sclerosis, Severe sensorineural hearing loss, Congenital cataracts
Congenital Anomalies: Chromosomal abnormalities, including Down Syndrome; Osteogenesis Imperfecta, Xeroderma Pigmentosum, Spinal muscular atrophy, Fragile X Syndrome, Edwards Syndrome
Respiratory Disorders: Cystic Fibrosis
Other: Includes Tetralogy of Fallot, Hypoplastic left heart syndrome, End-stage liver disease, Juvenile-onset rheumatoid arthritis, Sickle cell disease, Hemophilia, and any other disability not listed

O. Does my condition meet the eligibility requirements for an ABLE account?

An individual meets the disability and severity criteria to open an ABLE United account if at least one of the following is true:

- The individual is entitled to Supplemental Security Income (SSI) or Social Security Disability Insurance (SSDI)

- The individual has a condition on the List of Compassionate Allowances Conditions maintained by the Social Security Administration.

- The individual has a diagnosis from a physician that the individual has a medically determinable physical or mental impairment that results in marked and severe functional limitation(s), and which can be expected to result in death, or has lasted or can be expected to last for a continuous period of not less than 12 months.

P. I am older than 26 - May I open an ABLE account?

Current age is not considered when opening an ABLE United account – except that the account must be opened by an adult 18 years of age or older. The *onset of the disability* must have occurred *before the individual's 26th birthday.*

Q. For how long must I be a resident of Florida to meet the residency requirement?

While there is no minimum residency period, the individual must be a Florida resident at the time of application for an ABLE United account.

R. What if I move out of Florida?

If the individual moves away from Florida, they may keep his or her ABLE United account and use it as he/she did when he/she was a Florida resident.

S. May I transfer my ABLE United account to an ABLE program in another state?

An individual may transfer his or her ABLE United account to another state program one time in any 12 month period without penalty.

T. May I transfer money in my ABLE account to another *eligible* individual?

Yes, the funds in an ABLE United account may be transferred to another eligible individual without penalty provided that:

- Transfer occurs prior to the death of the transferring individual.
- The receiving individual meets the eligibility requirements for an ABLE account.
- The receiving individual is the ***sibling*** (brother, sister, stepbrother, stepsister, half-brother, and half-sister) of the transferring individual.

U. How do I open an ABLE United account?

An ABLE United account can be opened quickly and easily online at www.ableunited.com. The individual with a disability may open an account independently if they are over the age of 18. If they individual cannot, or would prefer to have assistance, an individual legally authorized to act on his or her behalf (such as a parent, legal guardian, or person acting under a power of attorney) may open and manage an account.

V. What information and documentation must I provide to open an account?

If a person other than the individual with a disability is opening an account, than the following is required from that person:
- Certification of authority to open the account
- Personal identifying information

For the individual with a disability, the following is required:
- Personal identifying information
- Category of disability with onset before age 26
- Selection of at least one investment option

The following may also be necessary:
- Banking information to make an electronic contribution
- Date of diagnosis with name and address of the treating physician if certifying the individual's disability eligibility pursuant to a physician's diagnosis

To support an efficient enrollment process, source documents are not required.

W. May I have more than 1 ABLE account?

No, an individual will not be allowed to have more than one ABLE account open at any time.

X. Who owns and manages an ABLE account?

The individual with a disability is the owner of the ABLE United account and may manage the account independently. If the individual cannot, or would prefer to have assistance, an individual legally authorized to act on his or her behalf (such as a parent, legal guardian, or person acting under the power of attorney) may open and manage an account.

Y. Is the person who assists the disabled individual a co-owner?

No. The individual with a disability owns all money in the ABLE United account – including money contributed by a third-party. While the individual may have someone assist them, the individual(s) assisting do not have any ownership interest in the account. The account is to be managed exclusively for the benefit of the individual with a disability.

Z. Who may contribute to an ABLE account?

Anyone may contribute to an ABLE United account on behalf of the individual with a disability, including the individual, friends and family. Contributions are considered a completed gift.

AA. Is there a limit to the amount of money that may be contributed to an ABLE account?

The individual with a disability and others contributing on their behalf may contribute up to *$15,000 in total to an ABLE account each year*, for the year 2018.

Contributions are not allowed if and when the account balance is at, or above, $418,000.

BB. How can I contribute to an ABLE account?

Contributions may be made to an ABLE United account by check or electronic payment, including automatic withdrawal and payroll deduction.

CC. Do contributions to an ABLE account reduce taxable income?

Contributions do not reduce the taxable income of the contributor. Contributions are made with after-tax dollars, much like a Roth IRA (Individual Retirement Account) or a 529 college savings account.

DD. Are contributions to an ABLE account from family & friends considered "income?"

Contributions made directly to an ABLE United account from a third-party are not considered income to the individual with a disability; rather, contributions are considered completed gifts.

EE. Are contributions to an ABLE account considered an "asset?"

Contributions made to an ABLE United account are generally not considered an asset to the individual with a disability for the purposes of federal means-testing. However, if a third-party provides money to the individual with a disability, rather than a direct contribution to the ABLE United account, that money may be considered an asset of the individual until it is transferred to the ABLE United account.

FF. May I transfer funds from a Special Needs Trust to an ABLE account?

Yes; and transferring funds from a Special Needs Trust to an ABLE United account may be beneficial. When compared to a Special Needs Trust, an ABLE United account:
is less expensive, allows for direct access to funds for authorized individuals, and
provides tax-free earnings.

GG. May I roll-over funds from a 529 College Savings Plan to an ABLE account?

No. Federal law does not currently allow for a rollover between a 529 college savings plan and an ABLE United account. Please consult your tax adviser to discuss your specific situation and options.

HH. How are funds in an ABLE account invested?

The ABLE United Program offers multiple savings and investment options with varying degrees of investment risk. An individual with a disability, or an authorized person acting on their behalf, *may choose the most appropriate option(s).* The underlying savings and investment products for each investment option are managed by professional investment management firms selected by the ABLE United Program based on investment philosophy and strategy; performance history; and organizational experience and financial stability.

II. What are my savings/investment options in the ABLE United program?

ABLE United offers seven professionally managed investment options designed to meet the needs of most investors. These include predesigned portfolios and individual funds from which a custom portfolio may be built by allocating funds to one or more options.

Predesigned Portfolios:	Fund Options:
Conservative Portfolio	Money Market (Florida PRIME)
Moderate Portfolio	U.S. Bond Fund (Vanguard)
Growth Portfolio	U.S. Stock Fund (Vanguard)
	International Stock Fund (BlackRock)

JJ. May I change or update my investment options?

The distribution of money between investment options is called an allocation. For new contributions, you may change the allocation at any time. For money that is already in an ABLE United account, the allocation of the account balance may be modified up to two times per calendar year.

KK. Which savings or investment option should I choose?

The ABLE United Program cannot provide tax or investment advice. The U.S Securities and Exchange Commission provides general investment guidance which includes:

- Have a financial plan.
- Understand your risk tolerance.
- Diversify your investments.
- Start saving early.

For more information visit: www.investor.gov/investing-basics.
Please consult your investment adviser to discuss your specific situation and options.

LL. How do I access funds in an ABLE account?

Money in an ABLE United account may be withdrawn at any time and for any reason via electronic transfer or check. ***If*** *the money is spent on one of the following Qualified Disability Expenses, which are intended to include "living expenses" and are not required to be medically necessary, the earnings on the money withdrawn is tax-free:*

Health
Education
Housing
Transportation
Legal Fees
Financial Management
Employment Training and Support
Assistive Technology and Personal Support Services
Oversight and Monitoring
Funeral and Burial
Other expenses approved by the Secretary of the U.S. Treasury

MM. Do withdrawals require approval from the ABLE account program?

No. The ABLE United Program does not approve withdrawals from an ABLE United account. Money may be withdrawn from an ABLE United account at any time and for any reason.

NN. Who determines whether my expense is a Qualified Disability Expense?

Each year, the ABLE United Program will report the total amount of distributions to the Internal Revenue Service (IRS) as part of our annual tax reporting. The IRS may investigate the distributions from an ABLE United account to determine whether a withdrawal was for a Qualified Disability Expense.

In addition, each month, the ABLE United Program will report the date and amount of each distribution from an ABLE United account to the Social Security Administration. If the individual with a disability receives Supplemental Security Income (SSI) or Medicaid, the Social Security Administration may investigate any distribution to determine whether the withdrawal was for a Qualified Disability Expense.

In general, we recommend that documents and information adequate to justify each expense as qualified be retained by the individual or person administering the ABLE United account on their behalf.

OO. What if my expense is not a Qualified Disability Expense?

If money is withdrawn from an ABLE United account to pay a non-qualified expense, the earnings portion of the withdrawal (only the earnings) will be considered income to the individual with a disability, taxed at the individual's federal income tax rate, and will be assessed an additional 10%.

In addition, the funds withdrawn will be considered an asset to the individual with a disability. The treatment of the withdrawal as an asset and the earnings as income may result in a reduction or suspension of federal disability benefits.

ABLE United

Please contact us if you have any questions regarding setting up or managing your ABLE United account.

Phone
888-524-ABLE (2253)

For account assistance, our Account Specialists will be available:
Monday – Friday, 9 am – 6 pm, ET

The Florida Relay Service provides communications assistance to individuals with hearing, speech or vision disabilities. Dial 711.

E-mail: You can email us at customerservice@ableunited.com

ABLE United cannot accept changes to your account, including a change of address, via email. We also cannot provide account specific information via email.

Mail: Please send your correspondence and contributions to the address below.

ABLE United
PO Box 44034
Jacksonville, FL 32231

SI 01130.740 Achieving a Better Life Experience (ABLE) Accounts

Citations: Public Law 113–295 The Stephen Beck, Jr., Achieving a Better Life Experience Act (ABLE Act) – Enacted December 19, 2014

A. What is an ABLE Account?

An Achieving a Better Life Experience (ABLE) account is a type of tax-advantaged savings account that an eligible individual can use to pay for qualified disability expenses. The eligible individual is the owner and designated beneficiary of the ABLE account. An eligible individual may establish an ABLE account provided that the individual is blind or disabled by a condition that began before the individual's 26th birthday.

An ABLE program can be established by a State (or State agency or instrumentality of a State). An eligible individual can open an ABLE account through the ABLE program in any State, if the State permits it.

Some States formed partnerships to improve access for eligible individuals to enroll in ABLE programs. You may see different types of arrangements between States administering ABLE programs.

- Some States have formed a consortium where the States have their own ABLE program, but join together to provide lower administrative costs and better investment options than they could on their own.
- Some States established their own ABLE program, but contracted with private companies to manage their ABLE program for them.
- Some States established their own ABLE program, but contracted with other States to manage their ABLE program for them.
- Some States do not operate their own ABLE program, but partnered with another State to offer the other State's ABLE program to their residents.

1. One ABLE account

A designated beneficiary is limited to one ABLE account, which a qualified ABLE program administers. Except in the case of a rollover or program-to-program transfer, if a designated beneficiary has an additional account, it generally will not be treated as an ABLE account, and will be subject to normal resource counting rules.

EXCEPTION: If an additional account is closed within 90 days from the account open date, the account will not be a countable resource for any period the additional account was open.

2. Medicaid reimbursement

Upon the death of the designated beneficiary, funds remaining in the ABLE account, after payment of all outstanding qualified disability expenses, must be used to reimburse the State(s) for Medical Assistance (Medicaid) benefits that the designated beneficiary received, if the State(s) files(s) a claim for reimbursement.

B. Definition of ABLE terms

1. ABLE program

An ABLE program is the program established and maintained by a State (or agency or instrumentality thereof) through which eligible individuals can open ABLE accounts.

2. Contributions

A contribution is the payment of funds into an ABLE account. Contributions must be in cash and may be made in the form of cash or a check, money order, credit card, electronic transfer, or a similar method. Any person can contribute to an ABLE account. ("Person," as defined by the Internal Revenue Code, includes an individual, trust, estate, partnership, association, company, or corporation.) However, the total annual contributions that an ABLE account can receive from all sources is limited to the amount of the per-donee gift-tax exclusion in effect for a given calendar year. For 2018, that limit is $15,000.

3. Designated beneficiary

The designated beneficiary is the individual who owns the ABLE account and who was an eligible individual when the account was established or who succeeded the former designated beneficiary in that capacity.

To be an eligible individual, he or she must:

a. Be eligible for Supplemental Security Income (SSI) based on disability or blindness that began before age 26;
b. Be entitled to disability insurance benefits (DIB), childhood disability benefits (CDB), or disabled widow's or widower's benefits (DWB) based on disability or blindness that began before age 26; or
c. Certify (or an agent under a power of attorney or, if none, a parent or guardian must certify) that the individual:
    - has a medically determinable impairment meeting statutorily specified criteria or is blind; and,
    - the disability or blindness occurred before age 26.

NOTE: Do not draw an inference regarding disability under the Social Security Act from a disability certification.

4. Distributions

A distribution is any payment from an ABLE account. (A program-to-program transfer is not a distribution.) The designated beneficiary or person with signature authority determines when a distribution is made. Distributions (other than rollovers and returns of contributions) may be made only to or for the benefit of the designated beneficiary.

5. Member of the family

A member of the designated beneficiary's family means a sibling whether by blood or adoption, and includes a brother, sister, stepbrother, stepsister, half-brother, and half-sister.

6. Person with signature authority

A person with signature authority can establish and administer an ABLE account for a designated beneficiary who is a minor child or is otherwise incapable of managing the account. Signature authority is not the equivalent of ownership. The person with signature authority must be the designated beneficiary's agent acting under power of attorney, or if none, a parent or legal guardian of the designated beneficiary. For SSI purposes, always consider the designated beneficiary to be the owner of the ABLE account, regardless of whether someone else has signature authority over it.

7. Program-to-program transfer

A program-to-program transfer means the direct transfer of:

- The entire balance of an ABLE account into an ABLE account of the same designated beneficiary in which the first ABLE account is closed upon the transfer of the funds; or
- Part or all of the balance to an ABLE account of an eligible individual who is a member of the family of the designated beneficiary.

8. Qualified disability expenses

Qualified disability expenses (QDEs) are expenses related to the blindness or disability of the designated beneficiary and for the benefit of the designated beneficiary. In general, a QDE includes, but is not limited to, an expense for:

- Education;
- Housing;
- Transportation;
- Employment training and support;
- Assistive technology and related services;
- Personal support services;
- Health;

- Prevention and wellness;
- Financial management and administrative services;
- Legal fees;
- Expenses for ABLE account oversight and monitoring;
- Funeral and burial; and,
- Basic living expenses.

9. Housing expenses

Housing expenses for purposes of an ABLE account are similar to household costs for in-kind support and maintenance purposes, with the exception of food. Housing expenses include expenses for:

- Mortgage (including property insurance required by the mortgage holder);
- Real property taxes;
- Rent;
- Heating fuel;
- Gas;
- Electricity;
- Water;
- Sewer; and
- Garbage removal.

10. Rollover

A rollover is the contribution to an ABLE account of a designated beneficiary (or a family member of the designated beneficiary), of all or a portion of an amount withdrawn from the designated beneficiary's ABLE account, provided that the contribution is made within 60 days of the date of the withdrawal. In the case of a rollover to the designated beneficiary's ABLE account, no rollover should have been made to an ABLE account of the designated beneficiary within the prior 12 months.

C. When to exclude ABLE account contributions, balances, earnings, and distributions

1. Exclude contributions as income

A payment made into an ABLE account constitutes a contribution. Consider the contribution made by the person to whom the funds belong or are due. Exclude contributions to an ABLE account from the income of the designated beneficiary. Excluded contributions include rollovers from a member of the family's ABLE account to an SSI applicant, recipient, or deemor's ABLE account.

NOTE: The fact that a person uses his or her income to contribute to an ABLE account does not mean that his or her income is not countable for SSI purposes as it normally would be. Income received by

the designated beneficiary and then deposited into his or her ABLE account is income to the designated beneficiary. For example, an applicant, recipient, or deemor can have contributions automatically deducted from his or her paycheck and deposited into an ABLE account. In this case, include the income used to make the ABLE account contribution in the applicant, recipient or deemor's gross wages.

a. First party contributions

A contribution made by the designated beneficiary into his or her ABLE account is not income to the designated beneficiary. However, income received by the designated beneficiary and deposited into his or her ABLE account is income to the designated beneficiary. That is, the income is income in the first instance, but the contribution is not income.

An individual cannot use direct deposit to avoid income counting.

So, when a payment that belongs or is due to the designated beneficiary is direct-deposited into his or her ABLE account, the payment is considered to be received by the designated beneficiary, it is counted as income to the designated beneficiary as it otherwise would be, the designated beneficiary is considered the contributor for ABLE purposes, and the ABLE contribution is not considered income to the designated beneficiary.

Examples of payments that might be direct-deposited into an ABLE account, but still are counted as income as they otherwise would be, include:

- Wages;
- Benefit payments (Title II, Veterans Administration, pensions, etc.); and
- Mandatory Support payments (child support or alimony).

b. Third party contributions

Third party contributions are contributions made by persons other than the designated beneficiary. Further, third party contributions are made with funds that do not otherwise belong, or are not otherwise due, to the designated beneficiary; that is, they are made with the third party's funds. Accordingly, an ABLE contribution by a person other than the designated beneficiary is treated as a completed gift.

NOTE: A transfer of funds from a trust, of which the designated beneficiary is the beneficiary and which is not considered a resource to him or her, to the designated beneficiary's ABLE account generally will be considered a third party contribution for ABLE purposes because the contribution is made by a person or entity other than the designated beneficiary (namely, the trustee) and because the designated beneficiary does not legally own the trust. You may seek guidance from your regional trust lead if you have questions regarding the trust transfer to an ABLE account.

2. Exclude ABLE account earnings

The funds in an ABLE account can accrue interest, earn dividends, and otherwise appreciate in value. Earnings increase the account's balance. Exclude earnings an ABLE account receives from the income of the designated beneficiary.

3. Exclude up to and including $100,000 of balance

Exclude up to and including $100,000 of the balance of funds in an ABLE account from the resources of the designated beneficiary.

4. Do not count ABLE account distributions as income

A distribution from an ABLE account is not income but is a conversion of a resource from one form to another. See SI 01110.600B.4.

Do not count distributions from an ABLE account as income of the designated beneficiary, regardless of whether the distributions are for a QDE not related to housing, for a housing expense, or for a non-qualified expense.

5. Exclude retained distributions for a QDE not related to housing

a. Distribution for a QDE not related to housing

Exclude a distribution for a QDE not related to housing from the designated beneficiary's countable resources if he or she retains it beyond the month received.

This exclusion applies while:

- The designated beneficiary maintains, makes contributions to, or receives distributions from the ABLE account;
- The distribution is unspent;
- The distribution is identifiable. (**NOTE**: Identify excludable funds commingled with non-excludable funds. See SI 01130.700A); and
- The individual intends to use the distribution for a QDE not related to housing.

NOTE: Apply normal SSI resource counting rules and exclusions to assets or other items purchased with funds from an ABLE account.

b. Previously excluded distribution used for non-qualified expenses or housing expenses

If a designated beneficiary uses a distribution previously excluded per SI 01130.740C.5.a. in this section, for a non-qualified expense or a housing expense, or the individual's intent to use it for a qualified disability expense (not related to housing) changes, see SI 01130.740D.3. in this section.

c. Example of an excluded distribution

Eric takes a distribution of $500 from his ABLE account in June 2016 to pay for a health-related QDE. His health-related expense is not due until September, and Eric deposits the distribution into his

checking account in June. The distribution is not income in June. Eric's distribution is both unspent and identifiable until Eric pays his health-related expense in September. Exclude the $500 from Eric's countable resources in July, August, and September. For instructions to identify commingled, excluded, and non-excluded funds, see SI 01130.700.

d. Example of an excluded QDE purchase

Fred takes a distribution of $1,500 from his ABLE account in September 2016 to buy a health-related item that is a QDE. The item is an excluded resource in October and continuing, because it is the individual's personal property required for a medical condition. For instructions on household goods, personal effects, and other personal property, see SI 01130.430.

D. When to count ABLE account balances and distributions

1. Count ABLE account balance amounts over $100,000

Count the amount by which an ABLE account balance exceeds $100,000 as a resource of the designated beneficiary.

a. Rule for indefinite benefit suspension and continuing eligibility for Medicaid during periods of excess resources attributable to an ABLE account

A special rule applies when the balance of an SSI recipient's ABLE account exceeds $100,000 by an amount that causes the recipient to exceed the SSI resource limit--whether alone or with other resources. When this situation happens, we will place the recipient into a special SSI suspension during which:

- We suspend the recipient's SSI benefits without time limit (as long as he or she remains otherwise eligible);
- The recipient is SSI eligible for Medical Assistance (Medicaid) purposes; and
- The individual's eligibility does not terminate after 12 continuous months of suspension.

Reinstate the recipient's regular SSI eligibility for all months in which the individual's ABLE account balance no longer causes the recipient to exceed the resource limit and he or she is otherwise eligible.

NOTE: "SSI-eligible for Medicaid purposes" means that the individual is eligible for Medicaid in States where Medicaid eligibility is based on SSI eligibility (For SSA determinations of Medicaid Eligibility in 1634 States see SI 01730.000). No SSI recipients will reach this suspension status for several years (that is, until it is possible for an ABLE account balance to exceed $100,000; that is not yet possible due to the limitation on contributions described in SI 01130.740B.2. in this section).

EXAMPLE: Excess resources — recipient is suspended but retains eligibility for Medicaid

Paul is the designated beneficiary of an ABLE account with a balance of $101,000 on the first of the month. Paul's only other countable resource is a checking account with a balance of $1,500. Paul's countable resources are $2,500 and therefore exceed the SSI resource limit. However, since Paul's

ABLE account balance causes him to exceed the resource limit (i.e., his countable resources other than the ABLE account are less than $2,000), suspend Paul's SSI eligibility and stop his cash benefits, but he retains eligibility for Medicaid in his State.

b. Ineligibility due to excess resources other than an ABLE account

The special suspension rule does not apply when:

- The balance of an SSI recipient's ABLE account exceeds $100,000 by an amount that causes the recipient to exceed the SSI resource limit; but
- The resources other than the ABLE account alone make the individual ineligible for SSI due to excess resources.

When this situation happens, suspend the recipient's SSI benefits using the payment status code N04. While in N04, the recipient loses eligibility for Medical Assistance (Medicaid) and the individual's SSI eligibility terminates 12 months later if the suspension continues throughout this period. Reinstate the recipient's regular SSI eligibility and Medicaid benefits for all months in which the individual's resources, including the ABLE account, no longer cause the recipient to exceed the resource limit.

EXAMPLE: Combination of resources — recipient loses SSI eligibility

Christine is the designated beneficiary of an ABLE account with a first of the month balance of $101,000. Christine's only other countable resource is a checking account with a balance of $3,000. Christine's countable resources are $4,000 and therefore exceed the SSI resource limit.

However, because her ABLE account balance is not the cause of her excess resources (i.e., her countable resources other than the ABLE account are more than $2,000), the special rule does not apply, and Christine is not eligible for SSI because of excess resources. Suspend Christine's SSI benefits using payment status N04. Her Medicaid benefits stop.

c. Ineligibility for other reasons

If an individual is ineligible for any reason other than excess resources in an ABLE account, the special suspension status does not apply. Suspend the individual's SSI eligibility using normal procedures.

EXAMPLE: Ineligibility for a reason other than excess resources in an ABLE account

In April, Sam's ABLE account balance is $102,500 as of the first of the month. However, Sam also has excess deemed income in April and is N01 despite the excess funds in his ABLE account. Before the end of April, Sam leaves the U.S. and does not return until July 1. Sam is N03 for May June, and July. If Sam still has excess resources in his ABLE account effective August 1 and is otherwise SSI eligible, place him in the special ABLE resource suspension status. He is eligible for Medicaid.

2. Count retained distributions for housing expenses or expenses that are not QDEs as a resource

A distribution from an ABLE account is not income, but is a conversion of a resource from one form to another. For more information see SI 01110.600B.4.

Count a distribution for a housing expense or for an expense that is not a QDE as a resource, if the designated beneficiary retains the distribution into the month following the month of receipt. If the designated beneficiary spends the distribution within the month of receipt, there is no effect on eligibility. However, apply normal SSI resource counting rules and exclusions to items purchased with funds from an ABLE account.

EXAMPLE: Retained distribution intended for housing expenses is a resource

Amy takes a distribution of $500 from her ABLE account in May to pay a housing expense for June. She deposits the $500 into her checking account in May, withdraws $500 in cash on June 3, and pays her landlord. This distribution is a housing expense and part of her checking account balance as of June 1, which makes it a countable resource for the month of June.

3. Count previously excluded distributions used for a non-qualified purpose or housing expense

Count the amount of funds used for a non-qualified expense or housing expense as a resource as of the first moment of the month in which the funds were spent if the designated beneficiary uses the distribution (that was previously excluded per SI 01130.740C.5.a.in this section) for a non-qualified purpose or a housing expense.

If an individual's intent to use the funds for a QDE changes at any other time, but he or she has not spent the funds, count the retained funds as a resource as of the first of the following month.

a. Example of a previously excluded distribution used for a non-QDE

Sam takes a distribution of $25,000 from his ABLE account in May for an assistive technology and related service. He pays a $10,000 deposit. While waiting for the service to be completed, Sam takes a trip to a local casino in July where he loses $1,000 of his ABLE distribution gambling. The $1,000 he lost gambling is a countable resource in July. The other $14,000 Sam retains is an excluded resource while it meets the requirements of SI 01130.740C.5.a. in this section.

b. Example of a previously excluded distribution used for a housing expense

In June, Jennifer takes a $7,000 distribution from her ABLE account to pay an educational expense that is a QDE. Her educational expense is due in September. However, she has to make a $750 advance rent payment to her landlord for her college apartment in August. She uses some of the distribution she took in June to make the rent payment – a housing expense. The $750 is a countable resource in August. Exclude the remaining $6,250 of the retained distribution while it continues to meet the requirements of SI 01130.740C.5.a. in this section.

c. Example of a change of intent on the use of a distribution

In June, Jennifer takes a $7,000 distribution from her ABLE account to pay an educational expense that is a QDE. Her educational expense is due in September. In August, Jennifer gets a job offer and decides not to return to school. The $7,000 becomes a countable resource in September because she

no longer intends to use it for an educational expense that is a QDE, unless Jennifer re-designates it for another QDE or returns the funds to her ABLE account prior to September.

E. How to verify, document, and record ABLE account balances

You may become aware of an individual's ownership of an ABLE account if he or she tells you during an initial claim or redetermination or contacts the office to report it.

1. Obtain evidence of the ABLE account

When an applicant, recipient, or deemor alleges being the designated beneficiary of an ABLE account, obtain evidence and enter the following information:

- Select yes to the ABLE account question;
- Select the program State where the ABLE account was established or indicate unknown;
- Enter the unique account number assigned by the State or indicate Unknown;
- Enter the account opened date or indicate unknown;
- If the account is closed, input the account closed date or indicate unknown, or leave the field blank;
- Enter the name of the person with signature authority (if different from the designated beneficiary); and
- Enter the account balance information in the values field.

If the available evidence does not provide the necessary information, contact the appropriate ABLE program to obtain it.

Beginning October 1, 2017, States report the first-of-the-month account balances and the prior month's distribution information for all ABLE accounts in their program to us. Not all States began reporting in October 2017, but eventually all State ABLE programs will report. If you become aware of a new ABLE account via the monthly data exchange, see SI 01130.740E.4. in this section.

2. Document the evidence

Fax the evidence into the certified electronic folder (CEF) or Non-disability Repository for Evidentiary Documents (NDRED). If you contact the ABLE program directly, document the information you received on a Report of Contact (DROC) in the Supplemental Security Income (SSI) claims system or on an SSA-5002 (Report of Contact) in paper claims.

3. Record the account on the SSI claim system "Achieving a Better Life Experience (RABL)" page

Record the account information and balance on the SSI claim system Achieving a Better Life Experience (RABL) page. For instructions to complete RABL, see MS INTRANETSSI 013.038.

NOTE: The designated beneficiary of an ABLE account is always the owner of the account for SSI purposes. Review ABLE account balances during redeterminations and when potential ineligibility exists due to the ABLE account balance.

4. Determine status of mismatched account data

State ABLE programs notify us through a monthly data exchange when individuals establish new accounts. The pending Achieving a Better Life Experience (RAPN) page displays new account information. The following information will be included:

- Account Owner Name;
- Account Owner SSN;
- Account Owner Birth date;
- Program State;
- Account Number;
- Account Opened Date;
- Account Closed Date;
- Name of Signature Authority;
- Balance Month/Year; and
- Balance Amount.

If the data on the RAPN page does not match an existing ABLE account on the RABL page, determine whether the ABLE data received applies to the person for whom it was received. Select one of the options in the SSI claim system:

- update an existing ABLE page;
- add this ABLE account;
- reject this ABLE account; or
- decide later.

If you chose "decide later," address the pending RAPN page before closing an initial claim, redetermination, or appeal event.

NOTE: Once you document the ABLE account information in the SSI claim system, subsequent reports received from the State that have matching data automatically update the account balance information. However, distribution data will not be available until a future systems release.

F. How to verify, document, and record ABLE account distributions

1. When to develop

Verify a distribution only when an applicant, recipient, or deemor alleges retaining, or other evidence indicates that he or she retained, all or part of the distribution into months following the month of

receipt. The distribution is material only to determine whether the applicant, recipient, or deemor's countable resources exceed the resource limit, since distributions do not count as income.

2. Verify the distribution

Obtain evidence that shows distribution amount(s), distribution date(s), and the distribution recipient(s) (for example, the designated beneficiary paid the distribution directly to a vendor). Obtain and accept the applicant, recipient, or deemor's allegation that he or she used or intends to use the distribution for:

- a QDE not related to housing;
- a housing expense; or
- an expense that is not a QDE.

3. Exclude retained distributions for QDEs not related to housing

Exclude any retained distribution, or part of a distribution, for a QDE not related to housing, from the designated beneficiary's countable resources per SI 01130.740C.5. in this section.

Example of a retained QDE not related to housing

Elizabeth takes a distribution of $500 from her ABLE account in May to pay for a health-related QDE that she expects to pay in September. She deposits the distribution into her checking account in May and withdraws it in September to pay the health-related QDE. Exclude the $500 from Elizabeth's countable resources from June through September. Starting in June, document the deposit on the Financial Institution Account (RFIA) page. Input $500 as the "excluded amount." Select "Other" as the exclusion reason and input "ABLE QDE distribution" as the "other reason."

4. Count retained distributions for housing expenses and expenses that are not QDEs

Count as a resource any distribution or part of a distribution for a housing expense or an expense that is not a QDE if it is retained into the month following the month of receipt.

Example of a retained distribution for a housing expense

Amy takes a distribution of $500 from her ABLE account in May to pay a housing expense for June. She deposits the $500 into her checking account in May, withdraws $500 in cash on June 3, and pays her landlord. This distribution is a housing expense and is part of her checking account balance as of the first of the month in June, which makes it a countable resource for the month of June.

5. Count previously excluded distributions used for a non-qualified purpose or housing expense

Count the amount of funds used for a non-qualified expense or housing expense as a resource as of the first moment of the month in which the funds were spent if the designated beneficiary uses the distribution (that was previously excluded per SI 01130.740C.5.a.in this section) for a non-qualified purpose or a housing expense.

If an individual's intent to use the funds for a QDE changes at any other time, but he or she has not spent the funds, count the retained funds as a resource as of the first of the month following the month of change of intent. Document the individual's change of intent on a Report of Contact (DROC) in the SSI claim system or on an SSA-5002 (Report of Contact) in paper claims. For examples, see SI 01130.740D.3. in this section.

6. Record the amount excluded on the appropriate resource page

ABLE account distributions are the conversion of a resource from one form to another. Accordingly, they continue to be a resource if retained into the month following the month of receipt. Exclude from resources a distribution retained for a QDE not related to housing, per SI 01130.740C.5.a. in this section. Document ABLE account distributions on the appropriate SSI claim system resources page (e.g., cash, financial institution account).

NOTE: Distribution information obtained from the State by data exchange is in the SSI claim system, but you cannot access it until additional system enhancements are completed.

G. Handling and recording ABLE prepaid debit card information

1. Handling ABLE prepaid debit cards

Some ABLE programs provide designated beneficiaries with a prepaid debit card, which may be used to control the issuance of distributions and provide designated beneficiaries with convenient access to their ABLE funds.

2. Handling ABLE debit cards in the SSI claim system

If a designated beneficiary has an ABLE prepaid debit card, record the ABLE prepaid debit card on the Other Resource (ROTH) page in SSI claim system. You need the program State and account number. Monies distributed onto an ABLE prepaid debit card are considered a qualified distribution unless we determine otherwise. Enter the intended use of the funds in the Description field. Enter the alleged Value of the ABLE prepaid debit card. Enter the entire alleged value as an excluded amount and as qualified distributions when funds are added onto the debit card. Use the new exclusion reason of "Qualified Disability Expenses" on the ROTH page to exclude monies on a prepaid ABLE debit card.

DEPARTMENT OF HEALTH AND HUMAN SERVICES
Centers for Medicare & Medicaid Services
7500 Security Boulevard, Mail Stop S2-26-12
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SMD# 17-002

RE: Implications of the ABLE Act for State Medicaid Programs

September 7, 2017

Dear State Medicaid Director:

The Stephen Beck, Jr., Achieving a Better Life Experience Act of 2014 (the ABLE Act), enacted as Division B of Pub. L. No. 113-295, and as amended by the Protecting America from Tax Hikes Act of 2015 (Pub. L. No. 114-113), enables individuals with disabilities to save money in tax-advantaged accounts which they can later use for meeting their disability-related needs, with limited impact on their eligibility for certain means-tested benefits.[1] The purpose of this letter is to provide guidance to states on the implications of the ABLE Act for state Medicaid programs.

Background

The ABLE Act amended the Internal Revenue Code of 1986 to create section 529A ("Qualified ABLE Programs"), permitting states to establish ABLE programs within which people with disabilities can open accounts that will generally be exempt from taxation. The purpose of the ABLE Act is to permit people with disabilities to save money in and withdraw funds from their ABLE accounts to pay for disability-related expenses, in support of their efforts to maintain health, independence and quality of life. The law states that ABLE accounts should "supplement, but not supplant" benefits available to ABLE account beneficiaries under Medicaid, the Supplemental Security Income program (SSI), and other programs. [2]

Section 103 of the ABLE Act (hereinafter referred to as "section 103") provides that, for the purpose of determining an individual's eligibility to receive, or the amount of, any assistance provided by a needs-based federal program (such as Medicaid), amounts in, contributions to, and certain distributions from, ABLE accounts shall be disregarded. This letter provides guidance to states on the treatment of funds in, contributions to, and distributions from an ABLE account, under section 103, for purposes of Medicaid eligibility. We also address the treatment of funds in an ABLE account for purposes of the post-eligibility treatment of income, and the disposition of amounts remaining in a Medicaid beneficiary's ABLE account upon the death of the beneficiary.

Eligibility to Participate in a Qualified ABLE Program

[1] State agencies should apply the guidance set forth in this letter to the Children's Health Insurance Program (CHIP) where applicable to determine the income of the family unit to which the applicant belongs.
[2] ABLE Act, section 101(2)

Section 103 applies to individuals who have an ABLE account in a *qualified* ABLE program. Eligibility for an ABLE account is open to an individual of any age who has blindness or a disability, provided, however, that the individual's blindness or disability occurred before the age of 26. An individual is permitted to have only one ABLE account. The individual may open the account in the program of the state of which the individual is a resident, or in another state's ABLE program. The determination of eligibility for an ABLE account is the responsibility of the ABLE program in which an individual seeks to establish the account.

Under section 102(a) of the ABLE Act (codified at 26 U.S.C. §529A(e)), an individual is eligible for an ABLE account if the individual is receiving SSI or Social Security Disability Insurance (SSDI) benefits based on a disability or blindness that occurred before age 26. Alternatively, an individual (or a parent or guardian acting on the individual's behalf) may establish eligibility by filing a disability certification (and obtaining a signed physician's diagnosis) with the qualified ABLE program indicating that the individual has a medically determinable impairment meeting certain criteria that occurred before age 26. However, while sufficient to establish eligibility to participate in an ABLE program, section 102(a) of the ABLE Act provides that "no inference" may be drawn from a disability certification for purposes of establishing eligibility for Medicaid.

Although the statute refers to "qualified" ABLE programs, the ABLE Act does not provide for formal federal certification of a state ABLE program as a "qualified" program. Moreover, the Department of Treasury and Internal Revenue Service (IRS) have not proposed to establish a formal certification process in a proposed rule that is designed to implement the ABLE act.[3] We have concluded that state Medicaid agencies should presume that an ABLE program established by a state is a qualified program in the absence of evidence to the contrary (CMS will issue additional guidance if a formal certification process for ABLE programs is established).

Treatment of Funds in an ABLE Account

Generally, an account containing funds that a Medicaid applicant or beneficiary can access is considered a resource in determining Medicaid eligibility if a resource test is applied, as is generally the case in determining eligibility for individuals excepted from application of Modified Adjusted Gross Income (MAGI)-based methodologies. Section 103 requires that funds in an ABLE account, including earnings on the account (*e.g.,* interest), be disregarded in determining eligibility for Medicaid and other federal need-based programs.[4] We interpret section 103 to mean that state Medicaid agencies must disregard all funds in an ABLE account in determining the resource eligibility of Medicaid applicants and beneficiaries who are subject to a resource test.[5] Additionally, although earnings generated by funds in an account generally will

[3] "Guidance Under Section 529A: Qualified ABLE Programs," 80 F.R. 35602 (June 22, 2015). We note that a proposed rule does not have the force of law and is not legally effective. Moreover, an agency may make changes from a proposed rule based on the timely public comments and other factors. The Department of Treasury and IRS have not issued a final rule at this time.

[4] We interpret section 103 to apply to an individual's ABLE account, regardless of whether the individual opens his or her ABLE account in the state of which the individual is a resident or in another state's ABLE program.

[5] Section 103(a)(1) and (2) state that, "in the case of the supplemental security income program . . . , a distribution for housing expenses . . . shall not be so disregarded," and "any amount . . . in [an] ABLE account shall be considered a resource to the designated beneficiary to the extent that such amount exceeds $100,000." However, while SSI methodologies are typically applied for non-MAGI eligibility determinations, these limitations on the

be countable income in determining eligibility for both MAGI and non-MAGI based eligibility groups, the disregard required under the ABLE Act applies "notwithstanding any other provision of Federal law," which we interpret as including the general prohibition on application of disregards in determining income eligibility using MAGI-based methods under section 1902(e)(14)(B) of the Social Security Act ("the Act"). Accordingly, under section 103, earnings on the account should be excluded from income for both individuals subject to and those excepted from application of MAGI-based methodologies.[6]

Contributions to ABLE Accounts

Contributions by a Third Party

For MAGI and SSI-based eligibility determinations, under section 103, third party contributions to an ABLE account are disregarded in determining Medicaid eligibility. This is different than the treatment of such contributions in determining financial eligibility using SSI-based methodologies and, in narrow circumstances, different than the treatment of such contributions under MAGI-based methodologies.

Under SSI-based methodologies, applied to most non-MAGI eligibility groups, money contributed by a third party to an account which an individual can access generally is considered countable income in the month in which the contribution is received and, if not spent, a resource in the month following. Per section 103, however, third party contributions to an ABLE account are not counted either as income or included in total resources of the account beneficiary.

For MAGI-based individuals, a third-party contribution to an account that is accessible to the individual would generally qualify as a gift which usually is not taxable to the gift recipient. Even in the rare circumstance in which a gift could be subject to a gift tax lien against the recipient (e.g., where the donor does not pay a tax due on gifts), section 103 directs that its disregards apply "notwithstanding any other provision of Federal law," which means the third party contribution must be disregarded in a MAGI-based income determination.[7]

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disregard of distributions from or funds in an ABLE account are expressly described as applying exclusively "in the case of the [SSI] program." In fact, section 103(b)(2), entitled "No Impact on Medicaid Eligibility," requires that SSI beneficiaries whose benefits are suspended on the basis of resources exceeding the $100,000 limit shall be considered to be receiving SSI for purposes of Medicaid eligibility. Therefore, we interpret section 103 to require that states, in determining Medicaid eligibility of ABLE account beneficiaries, disregard distributions used for housing expenses (provided the expense is a qualified disability expense, as discussed below), and all funds in an ABLE account, regardless of the amount in the account.

[6] For SSI-based individuals, we also interpret the disregard to apply to the ABLE accounts of individuals whose income or resources are deemed available to a Medicaid applicant. Under the SSI program's rules, which apply in most states to individuals who seek Medicaid on the basis of being 65 years old or older, or having blindness or a disability, the income and resources of a spouse or parent (a "deemor") are generally disregarded in the applicant's SSI eligibility determination where such income or resources would be disregarded if received or owned exclusively by the SSI applicant. We consider this to be the most reasonable approach, as we believe it would be inconsistent with the ABLE Act's goals to count as available to a Medicaid applicant the ABLE account of the applicant's deemor.

[7] Section 529A(b)(2)(B) of the Internal Revenue Code generally limits aggregate annual contributions to an individual's ABLE account to the annual gift tax exclusion, which means a third-party's accepted contribution to an ABLE account, when it is the third party's only gift during the taxable year, will not be taxable to either the donor or ABLE account beneficiary.

Some ABLE account beneficiaries may also be a beneficiary of a special needs trust (SNT) or pooled trust, as described in section 1917(d)(4) of the Act. Distributions from such trusts made on behalf of the trust beneficiary to the beneficiary's ABLE account should be treated the same as contributions to ABLE accounts from any other third party. Thus, while disbursements from an SNT or pooled trust can be considered in some circumstances income to the trust beneficiary,[8] disbursements from an SNT or pooled trust to the ABLE account of the trust beneficiary are not counted as income under section 103. Therefore, states should disregard as income a distribution from an SNT or pooled trust that is deposited into the ABLE account of the SNT or pooled trust beneficiary.

Contributions by the ABLE Account Beneficiary

Designated beneficiaries of an ABLE account can contribute their own income or resources to their ABLE account. If an ABLE account beneficiary transfers some of his or her own (otherwise countable) resources to his or her ABLE account, the effect would be a corresponding reduction in total countable resources. By contrast, if a beneficiary of an ABLE account transfers some of his or her income in the month received to his or her ABLE account, the effect would *not* be a reduction in countable income. This is because how an individual uses income generally does not change its designation as income at the point of its receipt, and there is nothing in the ABLE Act which supersedes this general rule. Consistent with this interpretation, the Treasury's and IRS's NPRM does not propose that income contributed to an ABLE account by the designated beneficiary reduces the individual's taxable income. Similarly, SSA's Program Operations Manual System (POMS) directs that income contributed to an ABLE account by the account beneficiary is counted as available income.[9] Therefore, income contributed to an ABLE account by the applicant or beneficiary him- or herself is not disregarded from income, unless the state utilizes its authority under section 1902(r)(2) of the Act and 42 CFR §435.601(d) (regarding less restrictive methodologies), if available.[10]

Contributions by Third Parties who Apply for Medicaid

It is possible that a third party who has made a contribution to an ABLE account of someone else may apply for Medicaid and seek coverage of long-term services and supports (LTSS). Section 103 of the ABLE Act does not provide for any special treatment of contributions made to an ABLE account benefiting another person. Thus, for example, a contribution from a grandfather to the ABLE account of his grandchild, whether from the grandfather's income or resources, would constitute a transfer of assets from the grandfather to his grandchild's account which may need to be evaluated under the requirements in section 1917(c)(1) of the Act (depending on when the transfer occurred), if the grandfather subsequently seeks Medicaid coverage of LTSS. The

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[8] This determination is generally made under the rules of SI 01120.200 of the Social Security Administration's Program Operations Manual System (POMS) ("Trusts, General – Including Trusts Established Prior to 1/1/00, Trusts Established with the Asset of Third Parties and Trusts Not Subject to Section 1613(e) of the Social Security Act," available at https://secure.ssa.gov/apps10/poms.nsf/lnx/0501120200)).

[9] *See* "Achieving a Better Life Experience (ABLE) Accounts, Program Operations Manual Systems, SI 01130.740 available at https://secure.ssa.gov/apps10/poms.nsf/lnx/0501130740

[10] Per section 1902(e)(14)(B) of the Act, states cannot disregard in MAGI-based eligibility determinations income as a less restrictive methodology under the authority of section 1902(r)(2) of the Act and 42 CFR §435.601(d).

amount transferred by the grandfather to his grandchild's ABLE account would not be an exempt transfer by virtue of section 103 in the determination of the grandfather's eligibility for Medicaid coverage of LTSS.[11]

Distributions from ABLE Accounts

Like *funds in* and *contributions to* ABLE accounts, *distributions from* ABLE accounts are not included in the beneficiary's taxable income or counted as income in eligibility determinations for federal programs such as Medicaid as long as they are used for "qualified disability expenses" (QDEs). Section 529A(e)(5) of the Internal Revenue Code broadly defines QDEs as any expenses related to the eligible individual's blindness or disability which may include, but are not limited to, expenses incurred for education, housing, transportation, employment training and support, and assistive technology. The Treasury's and IRS's NPRM explains that QDEs can include ones not identified in the statute, and that the term should be broadly construed "in order to implement the legislative purpose" of the ABLE Act.[12] As long as distributions from an ABLE account are used for QDEs of the designated beneficiary, they are not included as income for purposes of determining Medicaid eligibility for MAGI-based and non-MAGI eligibility categories.

In some cases, however, ABLE account beneficiaries may receive distributions that exceed their QDEs in a taxable year or are paid toward expenses that do not qualify as QDEs. Distributions from an ABLE account that are not for QDEs do not fall within the scope of the protection afforded by section 103, and may be countable as income under both MAGI-based and non-MAGI financial methodologies. The extent to which distributions exceeding total QDEs are countable as income for Medicaid eligibility purposes depends on whether the individual is being evaluated for eligibility under a MAGI-based or non-MAGI category.

<u>Treatment of Distributions Exceeding QDEs for Non-MAGI Determinations</u>

For individuals whose financial eligibility is determined using SSI-based methodologies, receipt of cash from a resource, whether the resource itself is counted or excluded, generally is not considered to be income, but rather the conversion of a resource from one form to another. The protection afforded under section 103, however, does not require that distributions from an ABLE account be used within the month the distribution is made, or within any particular time frame. Accordingly, a distribution from an ABLE account may be countable as a resource only if (1) it is retained beyond the month in which the distribution is made and (2) it is used for something other than a QDE in that or a subsequent month. Thus, we interpret section 103 to mean that states should continue to disregard ABLE account distributions retained after the month of receipt unless used for a non-qualifying expense.

For example, if an SSI-based individual receives an ABLE account distribution in August, but does not spend the distribution until December (and uses the distribution for a QDE in that month), the amount of the distribution is not counted in any month. If the individual uses the

[11] Section 1917(c) would not apply to a Medicaid applicant's contribution of income or resources to his or her own ABLE account, as the individual retains the ability to use the funds for his or her own needs.
[12] 80 F.R. at 35608.

distribution in December for a non-QDE, the distribution would be counted as a resource in the month of December.

Treatment of Distributions Exceeding QDEs for MAGI-Based Eligibility

A portion of ABLE account distributions which exceed the QDEs incurred by the account beneficiary in a taxable year is taxable and therefore, per section 1902(e)(14)(A) of the Act and 42 CFR §435.603(e), included in determining MAGI-based income eligibility. The taxable portion will be determined based upon Department of Treasury and IRS rulemaking. Based on the formula proposed and preamble discussion in Treasury's and IRS's NPRM, we expect that, in nearly all circumstances, the taxable portion of such distributions will be *de minimus;*[13] nonetheless, however small, the taxable portion is included in an individual's MAGI-based income. Under 42 CFR §435.945(a), states may accept self-attestation of income for which no electronic data for verification purposes is available. Because the amount of taxable income from ABLE account distributions exceeding QDEs is likely to be negligible, a state may want to consider exercising the option to take self-attestation. If additional verification is necessary, documentation should only be required in accordance with 42 CFR §435.952. Pursuant to 42 CFR §435.945(j), a state must update its verification plan to reflect its procedure for verifying taxable income from ABLE account distributions.

Post-Eligibility Treatment of Income

Under regulations at 42 CFR §435.700 et. seq. and §435.832, the extent of medical assistance provided to certain individuals receiving LTSS in institutions or through home and community-based services (HCBS) waivers under sections 1915(c) or (d) of the Act is reduced by the amount of the individual's available income. Under these regulations, the Medicaid agency determines the beneficiary's total income. After making certain deductions, the individual is required to apply the remaining income toward the cost of LTSS received. The requirement that affected individuals apply most of their total available income to the cost of LTSS before federal financial participation for medical assistance is available is referred to as post-eligibility treatment of income (PETI).

Under long-standing CMS policy, reflected in section 3701.2 of the State Medicaid Manual, all income is taken into account for purposes of PETI, including types or amounts of income that are not counted in making an initial eligibility determination. Consistent with this policy, distributions from an ABLE account, including earnings, typically would be counted. However, section 103 of the ABLE Act provides that its provisions apply "notwithstanding any other provision of Federal law." Accordingly, for purposes of PETI, states should disregard from an individual's total income any ABLE account distributions that are used for a QDE. To the extent that a distribution is counted as income in determining the individual's eligibility for other Medicaid benefits, discussed above, the distribution also would be counted for purposes of PETI.

Transfers of ABLE Account Funds to States and Estate Recovery

[13] See 80 Fed. Reg. at 35607.

Section 529A(f) requires that certain amounts remaining in an ABLE account upon the death of the account beneficiary, subject to any outstanding payments due for QDEs, shall be distributed to a state that provided medical assistance to the beneficiary after the establishment of the ABLE account upon the filing of a claim for payment by such state ("section 529A claim"). The amount that may be so distributed is limited to the excess of the total medical assistance paid for the account beneficiary after the establishment of the ABLE account over the amount of premiums paid from the ABLE account or paid by or on behalf of the beneficiary to a Medicaid "Buy-In program" under the state's Medicaid plan.[14]

The Treasury's and IRS's NPRM does not propose mandating that states file section 529A claims. However, even in the absence of a Treasury and IRS mandate regarding claims against ABLE accounts, pursuant to section 1917(b) of the Act, states are required to seek recovery against the estates of certain deceased Medicaid beneficiaries.[15] Thus, consistent with section 1917(b) of the Act, states are required to seek recovery of funds in an ABLE account that have become part of an estate subject to recovery under the statute. If the estate of an ABLE account beneficiary is not subject to Medicaid estate recovery, states have discretion whether to file a section 529A claim against the ABLE account of a deceased individual who had been enrolled in a Medicaid Buy In program.

CMS is committed to realizing the goals of the ABLE program and facilitating the program's implementation. If you have questions about this guidance, please contact Gene Coffey at 410-786-2234, or gene.coffey@cms.hhs.gov, or contact your SOTA team lead.

Sincerely,

/s/

Brian Neale
Director

cc:
National Association of Medicaid Directors
National Academy for State Health Policy
National Governors Association
American Public Human Services Association
Association of State Territorial Health Officials
Council of State Governments
National Conference of State Legislatures
Academy Health

[14] Neither the ABLE Act nor the Treasury's and IRS's NPRM define a Medicaid "buy in" program. We are working with the Treasury and IRS to provide clarification to stakeholders on the scope of this language.
[15] The specific individuals whose estates state Medicaid agencies must seek recovery from are those who received Medicaid at the age of 55 or older, or who received coverage for certain LTSS and were subject to PETI rules.