

## ABLE Accounts: Savings that are Exempt for SSI and Medicaid

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*This document is based on the federal ABLE Act, proposed federal regulations, 2016 federal SSI policy, and 2017 federal Medicaid policy.*

### What is an ABLE Account?

- Achieving a Better Life Experience (ABLE) accounts are authorized by section 529A of the Internal Revenue Code.
- ABLE account is used to save for disability-related expenses of a “designated beneficiary.”
- In August 2017, New York, through its State Comptroller’s office, opened the NY ABLE program, <https://www.mynyable.org/home.html>.

### Disability Requirement

- Eligible for Social Security Disability Insurance (SSDI) or SSI disability benefits, based on disability that began before age 26; or
- Person/parent/guardian certifies that applicant has a medical impairment meeting certain disability or blindness criteria; and, disability or blindness occurred before age 26.

### Contributions to ABLE Account

- Any “person” can contribute, including designated beneficiary.
- Person, as defined by IRS rules, includes a trust or estate.
- Combined contributions cannot exceed current year's IRS gift tax exempt amount, \$15,000 in 2020.

### Qualified Disability Expenses (QDEs)

QDEs are expected to be related to the blindness or disability of the designated beneficiary and for his or her benefit. However, as you review examples of approved QDEs, it becomes clear that some, such as basic housing expenses are not traditionally linked to having a disability yet clearly approved expenses.

In general, a QDE includes, but is not limited to, the following types of expenses:

- Education, housing, and 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
- Basic living expenses (These appear in SSI policy and proposed IRS regulations, but not in ABLE Act.)

## **Qualified Disability Expenses for Housing Include the Following:**

- Mortgage, rent, property insurance required by the mortgage holder
- Real property taxes
- Heating fuel, gas, electricity, water, sewer, garbage removal

## **SSI and IRS: Exclusion, Non- Exclusion of Contributions**

- Contributions of individual to ABLE account still count as income for SSI and IRS.
- Contributions from all others not counted by SSI or IRS as income of designated beneficiary.
- Earnings from ABLE account are excluded and not counted by SSI or IRS.

## **SSI and Medicaid: Exclusion, Non-Exclusion of Resources in ABLE Account**

New York limits deposits to \$100,000 and some believe the state may raise that limit in the future.

- Up to \$100,000 of account balance excluded and not counted by SSI
- What happens to SSI if ABLE account balance is over \$100,000 in the future?
  - SSI will count any additional amount toward the SSI \$2,000 resource limit.
  - If ABLE resources cause person to exceed \$2,000 limit, SSI payments are indefinitely suspended, but not terminated.
  - If ABLE account goes below \$100,000 in the future, SSI payments could start again even if several years of ineligibility occurred.
  - During the suspension period, Medicaid will continue.
  - See Program Operations Manual Systems (POMS) SI 01130.740 for policy details.
- What about 1619(b) Medicaid?
  - 1619(b) allows continued Medicaid when SSI payments stop due to earned income.
  - 1619(b) must ignore resources in ABLE account even if above \$100,000.
- What about New York Medicaid Buy-In for Working People with Disabilities (MBI-WPD)?
  - MBI-WPD allows individuals with earned income to obtain Medicaid, without a spend-down, with annual income of \$60,000 or more in some cases.
  - MBI-WPD must ignore resources in ABLE account even if above \$100,000.

## **ABLE Account Distributions Not Counted as Income by SSI Program**

- Distributions to pay for Qualified Disability Expenses (QDEs) are not counted as income by SSI.
- Even distributions to pay for rent, mortgage or other housing QDEs will not be treated as income.
- Ordinarily, payment of housing expenses by a third party or by a trust would be treated as in-kind income and could result in a reduced SSI payment of up to \$261 per month in 2020.
  - When the same payments are made through an ABLE account the SSI payment is unchanged.
  - For example, if a trust pays for rent, SSI will consider that as in-kind income and a reduction in payment amount will result. If the same trust deposits the money in an ABLE account and the ABLE account pays the rent, the SSI payment is unchanged.

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