



Online CLE

# **Achieving a Better Life Experience (ABLE) Accounts: Social Security Rules for Maximizing the Oregon ABLE Savings Plan**

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## Chapter 4

# Achieving a Better Life Experience (ABLE): Maximizing the Oregon ABLE Savings Plan

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### Contents

|   |      |
|---|------|
| Introduction . . . . .  | 4-1  |
| Eligibility and Requirements . . . . .  | 4-1  |
| Similarities and Differences Between ABLE Accounts and Supplemental Needs Trusts . . . . .      | 4-2  |
| Able as a Valuable Adjunct to SNTs . . . . .  | 4-2  |
| Scenario A . . . . .  | 4-3  |
| Scenario B . . . . .  | 4-3  |
| Scenario C . . . . .  | 4-3  |
| Scenario D . . . . .  | 4-4  |
| Scenario E . . . . .  | 4-4  |
| 26 USC § 529A, Qualified ABLE Programs . . . . .  | 4-5  |
| Oregon ABLE Savings Plan Physician Form . . . . .   | 4-9  |
| OAR 461-145-0000, Achieving a Better Life Experience (ABLE) Act . . . . .                       | 4-11 |
| Social Security POMS—SI 01130.740, Achieving a Better Life Experience (ABLE) Accounts . . . . . | 4-13 |
| ORS 178.380, Establishment of Qualified ABLE Program . . . . .                                  | 4-33 |



## INTRODUCTION

The ABLE Act of 2014. It was enacted and is codified at *26 USC 529A*: Qualified ABLE programs. *See Attachment 1*. The Act provides a tool for disabled individuals to be able to save money that, prior to the Act, would have disqualified them from government needs-based benefits and services because of the \$2,000 asset threshold. Because the intent of the act is focused on the disabled individual having the ability to build wealth while on needs-based benefits, and because the Act was trying to bridge a gap for disabled individuals, there are almost no restrictions on the available used from the ABLE account.

The Act defines a “qualified ABLE program” as a program that is established and maintained by a State. Oregon enacted its ABLE program and can be found in *OAR 461-145-0000*.

## ELIGIBILITY AND REQUIREMENTS

Not all individuals with disabilities are eligible to open an ABLE account. The requirements for eligibility, as outlined in *26 USC 529A(e)*, are that the individual must be blind or disabled, and the onset of the blindness or disability must have occurred before the individual attained the age of 26 years.

If the individual meets the above disability requirement and already receives SSI or SSDI, then the individual is automatically eligible to establish the account.

If the individual meets the above disability requirement but is not receiving SSI or SSDI, the individual may still be eligible if they meet Social Security’s criteria for blindness or disability and receive a letter of certification from a licensed physician indicating the diagnosis, that the individual is disabled and that the disability’s onset was prior to age 26. *See Attachment 2*. Also, be sure to check <https://www.oregonablesavings.com/forms> for additional information on eligibility.

An individual can only have one ABLE account. *26 USC 529A(b)(1)(B)*; *26 USC 529A(c)(4)*.

The amounts allowed to be deposited to an ABLE account are tied to the federal annual gift tax exclusion amount, currently \$15,000 per year in 2019, from all sources. This includes the beneficiary, parents, grandparents, friends, etc. Unlike the gift tax exclusion, where an individual can receive multiple gifts and amounts in a year from various sources, the ABLE account is limited to \$15,000 total.

The maximum amount that can be maintained, or kept, in an ABLE account is \$100,000. Total. It can be replenished, but the ABLE account can not exceed more than \$100,000 at any point.

In Oregon, *OAR 461-145-0000(1)* provides the ABLE Act rule, establishing that in all programs, funds held in an ABLE account are excluded as resources. *See Attachment 3*.

## SIMILARITIES AND DIFFERENCES BETWEEN ABLE ACCOUNTS AND SUPPLEMENTAL NEEDS TRUSTS

The main similarity between the ABLE account and the SNT is the fact that in Oregon, funds held in either are excluded as resources. *OAR 461-145-0000(1)*; *OAR 461-145-0540(10) and (11)*. First Party SNTs and ABLE accounts are permitted to be funded by the disabled individual's money directly. Third Party SNTs and ABLE accounts are permitted to be funded by parents and grandparents, etc. All SNTs and ABLE accounts are for the disabled individual's benefit.

While ABLE accounts and SNTs have lists regarding the permitted expenses of each, there are significant differences for each. Both are permitted to be spent on items that are supplemental to the needs of the disabled individual, but the SNT Trustee may not pay for food or shelter and may not pay any money directly to the individual. This is a strict provision. ABLE accounts have no such restriction. Because there is no trustee of an ABLE account, the disabled individual who owns the account may access and control the money directly, and the individual may pay for items that are deemed Qualified Disability Expenses, listed under *OAR 461-145-000(2)*. See *Attachment 4* for the full list in the March 2018 POMS. If an expense from the ABLE account is a Qualified Disability Expense, then the withdrawal to pay for that expense is not considered taxable income to the individual, nor is it considered income for SSI or other needs-based benefits, such as housing.

The POMS specifically list housing expenses as an allowed expense from the ABLE account. This is absolutely at opposite of the SNT rules. This means that the ABLE account funds can be used for housing expenses, such as taxes, insurance, utilities, etc. that have often prevented disabled individuals from owning a home.

ABLE accounts must be funded with cash, under *26 USC 529A(b)(2)*, whereas a SNT, can be funded with other types of property, such as houses, oil rights, vehicles, etc. In addition, there is no asset limit for a SNT, in contrast to the ABLE account.

Finally, first party SNTs also have additional restrictions regarding age, beneficiary must be under 65, and a necessary payback provision to the State as a remainder beneficiary for the amount of any government benefits paid to the beneficiary during their lifetime. Oregon Revised Statutes 178.380 prohibits the Department of Humans Services from recovering monies from an ABLE account. See *Attachment 5*.

## ABLE AS A VALUABLE ADJUNCT TO SNTS

There are more differences than similarities, which explains why these accounts work well together. As long as a disabled individual meets the requirements for both the ABLE account and SNT, the two can work efficiently together. The best example of this is that the SNT can hold property the ABLE account cannot, while the ABLE account can pay for items that the Trust cannot.

SNTs are best utilized when a disabled individual is receiving a large settlement or inheritance. The money to the beneficiary can be deposited into the limitless SNT while a portion,

under \$15,000, of it can go into the ABLE account for the beneficiary's direct use. The Trustee can pay for larger items, like a trip for the beneficiary and travel expenses for a companion, while the ABLE account can pay for the food on the trip.

#### SCENARIO A:

A blind 25-year old individual states that she is worried about the status of her SSI as she settles a personal injury settlement, which is expected to be about \$100,000.00. She currently has one bank account with \$1,000.00.

Because she seems to have a clear plan of going back to school full time to earn her bachelor's degree, you believe she will be able to handle her money well. Her goal is to protect as much money as possible and pay for her school and housing expenses.

The best scenario for her to achieve her goals is a two-pronged approach: (1) create a first-party SNT that will protect the settlement proceeds and allow her to maintain her current benefits, and (2) open an ABLE account, using \$15,000 from the settlement to establish the account.

The SNT can be used to pay expenses, but must be managed by the Trustee, while the ABLE account can be managed by the client herself, giving her freedom to manage her own funds, to save some of her money for future larger expenses, to pay for food and housing without losing her benefit eligibility.

#### SCENARIO B:

The family of a 46-year old individual with a physical disability has requested your help. He's been disabled forever and is receiving SSI and Medicaid benefits forever that is managed by a representative payee. His parents are moving out of their home, where they live with their son. However, they believe he would like to continue living there with a caregiver. The individual has regular outings to all the state capitol cities with his caregiver, and they would like to continue that for him. The family also has sufficient means to gift the son to allow for future expenses of the home.

What do we do with the house? Transfer to the son or to a 3<sup>rd</sup>-Party SNT (avoiding future pay-back), or directly to the son (allowing for future pay-back).

What do we do with the monies/gift from the parents for future home expenses?

Can we open an ABLE account?

Who can open it?

Who can access it?

#### SCENARIO C

ABLE account/Third-Party Special Needs Trust/Both?

Sam was disabled before the age of 26. He is 26 and has a life expectancy of 40 due to his disability. Sam's family does not expect to be able to reach \$100,000 over Sam's lifetime.

Projected annual needs, outside of Medicaid benefits, are minimal. The family anticipates gifts of \$7,000 per year for the next 14 years, approximately a \$98,000. What do we do?

SCENARIO D

Darla has cerebral palsy and a life expectancy of 70 or more. Her disability requires extensive medical care that will greatly exceed \$100,000 over her lifetime and available funding exceeds \$15,000 per year. Darla is college-bound with caregivers. Now what?.

SCENARIO E

SSI recipient in Portland is ABLE eligible and has been receiving distributions from a third-party SNT for housing, therefore reducing SSI. What could we do?

**§ 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, and

(C) 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 member of the family 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, income 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 of the designated beneficiary and such other information as the Secretary may require.

**(4) Electronic distribution statements**

For purposes of section 103 of the Achieving a Better Life Experience Act of 2014,<sup>1</sup> 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—

<sup>1</sup>See References in Text note below.

(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<sup>2</sup> 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.

**(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

<sup>2</sup>So in original. The word “subparagraph” probably should not appear.

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.

(Added Pub. L. 113-295, div. B, title I, §102(a), Dec. 19, 2014, 128 Stat. 4056; amended Pub. L. 114-113, div. Q, title III, §303(a)-(c), Dec. 18, 2015, 129 Stat. 3087.)

REFERENCES IN TEXT

The Achieving a Better Life Experience Act of 2014, referred to in subsec. (d)(4), probably means div. B of Pub. L. 113-295, Dec. 19, 2014, 128 Stat. 4056, known as the “Stephen Beck, Jr., Achieving a Better Life Experience Act of 2014” and also as the “Stephen Beck, Jr., ABLE Act of 2014”. Section 103 of div. B of Pub. L. 113-295 is set out as a note under this section.

The Social Security Act, referred to in subsecs. (e)(1)(A), (2) and (f), is act Aug. 14, 1935, ch. 531, 49 Stat. 620. Titles II, XVI, and XIX of the Act are classified generally to subchapters II (§401 et seq.), XVI (§1381 et seq.), and XIX (§1396 et seq.) respectively, of chapter 7 of Title 42, The Public Health and Welfare. Sections 1614 and 1861 of the Act are classified to sections 1382c and 1395x, respectively, of Title 42. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

AMENDMENTS

2015—Subsec. (b)(1)(B) to (D). Pub. L. 114-113, §303(a), inserted “and” at end of subpar. (B), redesignated subpar. (D) as (C), and struck out former subpar. (C) which read as follows: “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”.

Subsec. (c)(1)(C)(i). Pub. L. 114-113, §303(c)(2), substituted “member of the family” for “family member”.

Subsec. (d)(3). Pub. L. 114-113, §303(b)(1), struck out “and State of residence” after “the name”.

Subsec. (d)(4). Pub. L. 114-113, §303(c)(1), substituted “section 103” for “section 4”.

Subsec. (e)(7). Pub. L. 114-113, §303(b)(2), struck out par. (7). Text read as follows: “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.”

#### EFFECTIVE DATE OF 2015 AMENDMENT

Pub. L. 114-113, div. Q, title III, §303(d), Dec. 18, 2015, 129 Stat. 3087, provided that: “The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2014.”

#### EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 2014, see section 102(f)(1) of Pub. L. 113-295, set out as an Effective Date of 2014 Amendment note under section 552a of Title 5, Government Organization and Employees.

#### REGULATIONS

Pub. L. 113-295, div. B, title I, §102(f)(2), Dec. 19, 2014, 128 Stat. 4062, provided that: “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 [Dec. 19, 2014].”

#### PURPOSES

Pub. L. 113-295, div. B, title I, §101, Dec. 19, 2014, 128 Stat. 4056, provided that: “The purposes of this title [title I of div. B of Pub. L. 113-295, enacting this section, amending sections 26, 529, 877A, 4965, 4973, and 6693, of this title, section 552a of Title 5, Government Organization and Employees, sections 521, 541, and 707 of Title 11, Bankruptcy, and section 5517 of Title 12, Banks and Banking, and enacting provisions set out as notes under this section, section 529 of this title, section 552a of Title 5, and section 521 of Title 11] 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 [42 U.S.C. 1396 et seq.], the supplemental security income program under title XVI of such Act [42 U.S.C. 1381 et seq.], the beneficiary’s employment, and other sources.”

#### TREATMENT OF ABLE ACCOUNTS UNDER CERTAIN FEDERAL PROGRAMS

Pub. L. 113-295, div. B, title I, §103, Dec. 19, 2014, 128 Stat. 4063, provided that:

“(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 [42 U.S.C. 1381 et seq.]—

“(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 [42 U.S.C. 1396 et seq.] 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 [Dec. 19, 2014].”



## Physician Form

This form is for you to use to obtain a disability diagnosis certification from a licensed health care provider\*

**As this ABLE Applicant's licensed health care provider, I certify, to the best of my knowledge:**

### 1 Please check one

- A. This Individual has a severe medically determinable impairment\*\* that results in marked and severe functional limitations which have lasted or can be expected to last for a continuous period of not less than 12 months and/or can be expected to result in death. I understand that "marked and severe functional limitations" means functional limitations that meet, medically equal, or functionally equal the severity of any listing in appendix 1 of subpart P of 20 CFR part 404 (the "Listing"), but without regard to age. The Listing can be found at [www.ssa.gov/OP\\_Home/cfr20/404/404-app-p01.htm](http://www.ssa.gov/OP_Home/cfr20/404/404-app-p01.htm). I further understand that the level of severity is determined by taking into account the effect of the individual's prescribed treatment.
- B. This individual is blind, meaning that [I have] [the beneficiary has] central visual acuity of 20/200 or less in the better eye with the use of a correcting lens. An eye which is accompanied by a limitation in the fields of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees shall be considered as having a central visual acuity of 20/200 or less.

2 This Individual's severe and marked medically determinable impairment or blindness occurred before the Individual's twenty-sixth birthday.

3 I am a Medical Doctor (MD) or Doctor of Osteopathy (DO), licensed to practice as such in the state in which I performed this diagnosis,

continued on next page

\*Must be a doctor of medicine (MD) or a doctor of osteopathy (DO) who is legally authorized to practice medicine and surgery by the state in which s/he performs the diagnosis.

\*\*A medically determinable physical or mental impairment is an impairment that results from anatomical, physiological, or psychological abnormalities, which can be shown by medically acceptable clinical and laboratory diagnostic techniques. The medical evidence must establish a physical or mental impairment consisting of signs, symptoms, and laboratory findings—not only by the individual's statement of symptoms. 20 CFR 404.1528, 404.1529, 416.928, and 416.929 provide that symptoms, such as pain, fatigue, shortness of breath, weakness or nervousness, are an individual's own perception or description of the impact of his or her physical or mental impairment(s). 20 CFR 416.928 further provides that, for an individual under age 18 who is unable to adequately describe his or her symptom(s), the Social Security Administration will accept as a statement of this symptom(s) the description given by the person most familiar with the individual, such as a parent, other relative, or guardian. However, when any of these manifestations is an anatomical, physiological, or psychological abnormality that can be shown by medically acceptable clinical diagnostic techniques, it represents a medical "sign" rather than a "symptom." (See Social Security Ruling 96-4p)



## Physician Form

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continued from page 1

As this ABLE Applicant's: \_\_\_\_\_ licensed health care provider, I am documenting the Individual's primary diagnosis as required by the Stephen Beck, Jr., Achieving a Better Life Experience (ABLE) Act of 2014 and Oregon Administrative Rule 173-005-0000:

\_\_\_\_\_  
**Primary Diagnosis (ICD-10)**

\_\_\_\_\_  
**Provider Print Name/Title**

\_\_\_\_\_  
**Provider Signature**

\_\_\_\_\_  
**Date (mm/dd/yyyy)**

<https://apps.state.or.us/cfl/caf/arm/A/461-145-0000.htm>

**461-145-0000 Effective 07/01/18**  
**Achieving a Better Life Experience (ABLE) Act**

1. In all programs, funds held in ABLE Act accounts are excluded as resources.
2. In all programs except the OSIP, OSIPM, and QMB programs, monies withdrawn from ABLE Act accounts are excluded as income if they are used for Qualified Disability Expenses. For purposes of this rule, "Qualified Disability Expenses" include, but are not limited to, the following:
  - a. Education;
  - b. Housing;
  - c. Transportation;
  - d. Employment training and support;
  - e. Assistive technology and personal support services;
  - f. Health;
  - g. Prevention and wellness;
  - h. Financial management and administrative services;
  - i. Legal fees;
  - j. Expenses for oversight and monitoring; and
  - k. Funeral and burial expenses.
3. In all programs except the OSIP, OSIPM, and QMB programs, funds withdrawn from ABLE Act accounts for purposes other than Qualified Disability Expenses (see section (2) of this rule) are counted as unearned income.
4. In the OSIP, OSIPM, and QMB programs, funds withdrawn from ABLE Act accounts for any purpose are excluded as income.

Statutory/Other Authority: ORS [329A.500](#), [409.050](#), [411.060](#), [411.070](#), [411.083](#), [411.404](#), [411.816](#), [412.014](#), [412.049](#), [413.085](#), [414.685](#)

Statutes/Other Implemented: ORS [178.375](#), [178.380](#), [329A.500](#), [409.010](#), [411.060](#), [411.070](#), [411.083](#), [411.404](#), [411.816](#), [412.014](#), [412.049](#), [Section 103 of Public Law 113-295](#)



## Social Security

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### **Program Operations Manual System (POMS)**

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Effective Dates: 04/30/2019 - Present

**TN 75 (04-19)**

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 2019, 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

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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**

A third party contribution is not income to the designated beneficiary. 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:**

"Completed gift" refers to the IRS definition for gift-tax rules, not the definition of a gift in SI 00830.520. For ABLE, we exclude third party contributions, regardless of their status as a gift for SSI purposes.

A transfer of funds from a trust, of which the designated beneficiary is the

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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;

<https://secure.ssa.gov/apps10/poms.nsf/lnx/0501130740>

- 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

### **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

1. 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:

<https://secure.ssa.gov/apps10/poms.nsf/lnx/0501130740>

- 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**

<https://secure.ssa.gov/apps10/poms.nsf/lnx/0501130740>

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

<https://secure.ssa.gov/apps10/poms.nsf/lnx/0501130740>

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

<https://secure.ssa.gov/apps10/poms.nsf/lnx/0501130740>

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.

*To Link to this section - Use this URL:*

<http://policy.ssa.gov/poms.nsf/lnx/0501130740>

*SI 01130.740 - Achieving a Better Life Experience (ABLE) Accounts - 04/30/2019*

*Batch run: 04/30/2019*

*Rev:04/30/2019*



## 2017 ORS 178.380<sup>1</sup>

### Establishment of qualified ABLE program

- requirements for program
- treatment of contributions to ABLE account
- rules

- (1) The Oregon 529 Savings Board shall establish by rule and maintain a qualified ABLE program in accordance with the requirements of the ABLE Act.
- (2) The rules must:
  - (a) Allow a person to make contributions for a taxable year to an ABLE account established for the purpose of meeting the qualified disability expenses of the designated beneficiary of the account;
  - (b) Limit a designated beneficiary to one ABLE account for purposes of this section;
  - (c) Require cash-only contributions to ABLE accounts;
  - (d) Provide for a separate accounting for each designated beneficiary of an ABLE account;
  - (e) Provide that a designated beneficiary of an ABLE account may not, directly or indirectly, direct the investment of contributions to the account, or earnings on the account, more than two times in any calendar year;
  - (f) Prohibit the use of a designated beneficiary's interest in an ABLE account as security for a loan;
  - (g) Establish limitations on aggregate contributions to an ABLE account on behalf of a designated beneficiary; **and**
  - (h) Satisfy all other requirements of section 529A of the Internal Revenue Code, the ABLE Act, rules adopted by the United States Secretary of the Treasury under the ABLE Act and other applicable federal law.
- (3) Notwithstanding any other provision of law that requires consideration of one or more financial circumstances of an individual for the purpose of determining the eligibility to receive, or the amount of, any assistance or benefit authorized by law to be provided to or

<https://www.oregonlaws.org/ors/178.380>

for the benefit of the individual, any amount in an ABLE account of the individual, including earnings on the account, any contributions to the ABLE account of the individual and any distribution for qualified disability expenses, shall be disregarded for such purpose with respect to any period during which the individual maintains, makes contributions to or receives distributions from the ABLE account.

- (4)** (a) Except as provided by federal law, upon the death of a designated beneficiary, amounts in an ABLE account may be transferred to the estate of the designated beneficiary or an ABLE account of another eligible individual specified by the designated beneficiary or the estate of the designated beneficiary.
- (b) Except as required by federal law, the Department of Human Services and the Oregon Health Authority may not seek payment under ORS 416.350 (Recovery of medical assistance) or section 529A(f) of the Internal Revenue Code from amounts in an ABLE account or from amounts transferred from an ABLE account under paragraph (a) of this subsection. [2015 c.843 §2; 2016 c.33 §1b; 2017 c.367 §1]

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<sup>1</sup> Legislative Counsel Committee, *CHAPTER 178—State Treasurer; Oregon Retirement Savings Plan; Oregon 529 Savings Network*, [https://www.oregonlegislature.gov/bills\\_laws/ors/ors178.html](https://www.oregonlegislature.gov/bills_laws/ors/ors178.html) (2017) (last accessed Mar. 30, 2018).