

DATE: July 10, 2017

OPERATIONS MEMORANDUM #17-07-01

SUBJECT: Policy Changes Due to the Achieving a Better Life Experience (ABLE) Act

TO: Executive Directors

FROM: Inez Titus
Director
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PURPOSE

To provide information about policy changes due to the Achieving a Better Life Experience (ABLE) Act.

BACKGROUND

On December 19, 2014, President Obama signed the ABLE Act into law. The federal law allows states to establish and administer their own ABLE programs. On April 18, 2016, Governor Wolf signed the Pennsylvania ABLE Act into law. The ABLE Act requires changes to eligibility policies.

DISCUSSION

The Act allows an individual who meets disability or blindness criteria to open one ABLE savings account, which is a specific type of savings account defined by the PA Department of Treasury. ABLE accounts are tax-advantaged savings accounts that allow individuals to retain additional assets for qualified disability expenses while maintaining eligibility for benefits. The balance of the ABLE savings account is excluded from resource eligibility determinations for most federal means-tested benefits, including the Supplemental Nutrition Assistance Program (SNAP), Medical Assistance (MA), Long Term Care (LTC), Home and Community Based Services (HCBS), and Temporary Assistance for Needy Families (TANF). In certain circumstances, withdrawals from ABLE accounts count as resources.

Although the full balance of the account is excluded for SNAP, MA, LTC, HCBS, and TANF, the federal law includes a \$100,000 limit on the resource exclusion for Supplemental Security Income (SSI) recipients with ABLE accounts. If an SSI recipient with an ABLE account has a balance that exceeds \$100,000, the excess funds above \$100,000 count toward the SSI resource limit of \$2,000 for a single individual. While the

individual's SSI benefits would be suspended due to exceeding the SSI resource limit, the individual maintains eligibility for MA. Because of an annual contribution limit of \$14,000 to an ABLE account, SSI recipients with ABLE accounts will not accumulate an excess balance for approximately seven years. The contribution limit is subject to change in accordance with Internal Revenue Service guidelines.

When an applicant or recipient states that they own an ABLE savings account, he or she must provide an account statement. ABLE account numbers have the format 91XXXXXX-01. This format is a unique identifier that distinguishes an ABLE account. Obtain documentation of the following information to identify an ABLE account:

- The name of the designated beneficiary
NOTE: The designated beneficiary is the ABLE account owner.
- The name of the person who has signature authority
- The unique account number of the ABLE account
- The date the account opened
- Account balance

Increases in the value of the account due to interest or dividends received must not be counted as income.

WITHDRAWALS

Withdrawals from ABLE accounts must be spent on qualified disability expenses (QDE) to be excluded from resources. When an individual states that a withdrawal or expenditure is for a QDE, no additional documentation of how the money was spent is required. When the source of funds for a QDE expenditure is questionable, a worker must request account statements to verify that funds originated from an ABLE account. QDE are any expenses related to the individual's disability which are made for the benefit of the beneficiary of the ABLE account and include:

- Education
- 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
- Housing
 - Mortgage
 - Property taxes
 - Rent
 - Heating fuel
 - Gas

- Electricity
- Water
- Sewer
- Garbage removal

Any other expenditure is a non-qualified disability expense (non-QDE).

Any unused funds withdrawn for a QDE continue to be excluded from eligibility determinations as long as:

- The designated beneficiary on the account remains the same.
- The withdrawal is unspent and identifiable.
- The individual intends to use the withdrawal for a QDE.

If the individual does not use the funds for a QDE, the remaining withdrawn funds count as a resource that is subject to resource reporting requirements.

Example: In November, Ms. Styles withdraws \$6,000 from her ABLE account to pay her college tuition—a QDE. Her tuition payment is due in January. In December, Ms. Styles gets a job offer and decides not to return to school. Since she no longer intends to use the funds for tuition, the \$6,000 becomes a countable resource in January. The funds could be excluded if Ms. Styles designates it for another QDE or returns the funds to her ABLE account before January.

NOTE: Withdrawals for non-QDE count as resources under federal and state law.

FAIR CONSIDERATION

Contributions to ABLE accounts must be evaluated for fair consideration. For contributions, an individual may be ineligible for payment of Long Term Care and Home and Community Based Services unless:

- The individual adds to his or her own ABLE account, **and**
- The individual remains the owner of the account.

Example: Mrs. Bradford is single. She has \$50,000 in a deferred compensation fund which she converts to cash on June 5, 2013. She spends \$30,000 on living expenses. A nursing facility admits her on January 3, 2017, and she applies for nursing facility care. On January 2, 2017, she transferred \$14,000 into her newly opened ABLE account. The transfer occurred within the lookback period. Because she is the owner of the account, the resource transfer is not subject to fair consideration as long as Mrs. Bradford remains the owner of the account.

Example: Mr. Burns makes a \$4,000 cash contribution to his friend's ABLE account on December 14, 2016. On January 11, 2017, Mr. Burns applies for LTC nursing facility care. Mr. Burns is not the account owner, so the contribution

is subject to fair consideration. He meets all other criteria for LTC eligibility. Mr. Burns received nothing in return for the cash transfer, so a penalty period will be calculated using the full uncompensated value of \$4,000.

ESTATE RECOVERY

Under certain circumstances, the Department will recover MA payments made during the period the individual had an ABLE account. Funds from an ABLE account that are part of a deceased individual's probate estate will be subject to recovery by the Department. However, the Department's recovery is limited to certain Medical Assistance services provided to an individual age 55 or older. Payments made to the Department from the decedent's estate will be limited to the amount of total MA paid for the beneficiary as of the date the ABLE account was established.

Individuals must disclose ABLE accounts in response to Estate Recovery inquiries.

NEXT STEPS

1. Review this Operations Memorandum with appropriate staff.
2. Check "What's New" for updates to policy and eCIS introduced due to the ABLE Act.
3. Direct questions regarding this Operations Memorandum to your Area Manager.