



State of New Jersey
DEPARTMENT OF HUMAN SERVICES

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES
PO Box 712
TRENTON, NJ 08625-0712

PHILIP D. MURPHY
Governor

SHEILA Y. OLIVER
Lt. Governor

CAROLE JOHNSON
Commissioner

CAROL GRANT
Acting Director

MEDICAID COMMUNICATION NO. 19-09

DATE: June 17, 2019

TO: NJ FamilyCare Eligibility Determining Agencies

SUBJECT: Achieving a Better Life Experience (ABLE) Act

The Achieving a Better Life Experience Act (ABLE) of 2014¹ establishes a tax-advantaged savings program for eligible individuals who are blind or disabled. ABLE accounts are savings accounts established through a qualified ABLE program that an eligible individual can use to pay for qualified disability expenses, which include expenses for education, housing, transportation, employment training and support, and assistive technology.

ABLE accounts 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; and provide secure funding for disability-related expenses of beneficiaries with disabilities that will supplement, but not supplant, benefits provided through private insurance, title XVI (Supplemental Security Income) and title XIX (Medicaid) of the Social Security Act, the beneficiary's employment, and other sources. The State of New Jersey has an agreement with the National ABLE Alliance to operate a qualified ABLE program. "Qualified disability expenses" are those expenses that relate to the designated beneficiary's blindness or disability and are for the benefit of that designated beneficiary.

An individual may establish an ABLE account provided that the individual is blind or disabled by a condition that occurred prior to the individual's 26th birthday. Funds that are in a qualified ABLE account are not generally countable as income or assets when determining an individual's eligibility for Medicaid if properly spent. The Supplemental Security Income (SSI) program counts ABLE account contributions in excess of \$100,000 as assets, but the New Jersey Medicaid program only counts ABLE account contributions in excess of \$305,000 (2018 and 2019 limit for New Jersey) as assets. SSI beneficiaries whose benefits are suspended on the basis of assets exceeding the \$100,000 limit are still considered to be receiving SSI for purposes of Medicaid eligibility. ABLE funds distributed as housing costs are counted for the SSI program; however, distributions for qualified

¹ Federal law: 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). State law: P.L. [2015, c. 185](#), § 2, eff. Nov. 1, 2016; N.J.S.A. 52:18A-250 entitled "New Jersey Achieving a Better Life Experience (ABLE) Program." provides: The Department of the Treasury, in cooperation with the Department of Human Services, shall establish, in accordance with [section 529A of the federal Internal Revenue Code of 1986, 26 U.S.C. § 529A](#), the "New Jersey Achieving a Better Life Experience (ABLE) Program." The departments may contract with a third party provider to administer and operate the program.

disability expenses that are housing expenses are disregarded in determining Medicaid eligibility.

Other important parameters regarding ABLE accounts are as follows:

- These accounts are not to be used as a determination of disability.
- Individuals can only have one ABLE account, which a qualified ABLE program administers, and the designated beneficiary must be the owner of the account.
- Contributions to an ABLE account from a beneficiary's income do not reduce their income for Medicaid eligibility counting purposes.
- Individuals alone, or in combination with other parties on behalf of the individual, may contribute to the ABLE account an annual maximum amount equal to the federal gift tax exclusion, subject to annual adjustment (\$15,000 for 2018 and 2019), plus, if eligible, *certain other income* up to the poverty limit (100% FPL) as allowed by federal law (\$12,140 for 2018 and \$12,490 for 2019). *Certain other income* is defined as either the beneficiary's gross income for the taxable year or 100% FPL, whichever is less. For the beneficiary to qualify to contribute *certain other income* he or she must not have made a contribution for the taxable year to an annuity contract, a defined contribution or deferred compensation plan. If no such contribution is made, the maximum contribution limits to the ABLE account are as follows: 2018 = \$27,140 and 2019 = \$27,490. The addition of *certain other income* up to the poverty limit expires January 1, 2026.
- Third party contributions to an ABLE account are not counted as income to the ABLE account beneficiary. However, a contribution from a third party to the ABLE account of another person, like a grandchild, would constitute a transfer of assets from the third party contributor to the ABLE account beneficiary, which may need to be evaluated under the transfer rules if the third party contributor subsequently applies for long term care Medicaid benefits.
- While disbursements from a Special Needs Trust (SNT) or pooled trust can be considered in some circumstances income to the trust beneficiary, disbursements from an SNT or pooled trust to the ABLE account of the trust beneficiary are not counted as income.
- Balances can be carried over and accumulated year-to-year up to a total of \$305,000 for 2018 and 2019 (dependent on the IRS maximum limit for 529 accounts in New Jersey and adjusted annually). Any amount exceeding this should be included in an individual's countable assets. ABLE account balances can also be transferred to family members that qualify for an ABLE account.
- ABLE accounts may have transaction, quarterly and annual fees.
- If a designated beneficiary is not able to manage their own ABLE account, they may have someone designated to have signature authority to manage the ABLE account. This can be a parent, guardian, or power of attorney.

- An eligible individual is not obligated to enroll in an ABLE Program in their state of residence. ABLE accounts established in other states are permissible for New Jersey residents.

Note: All Medicaid beneficiaries with an **out-of-state** ABLE account must have their information reported to DMAHS' Office of Legal and Regulatory Affairs.

At application and renewal, Medicaid eligibility determining agencies should ask if the beneficiary has an ABLE account, and inquire about qualified disability expenditures received during the prior year and how they were spent. The qualified ABLE Program is required to file reports of ABLE expenditures each quarter with the Social Security Administration which may assist DMAHS in learning about ABLE account distributions. Beneficiaries may receive statements that detail their distributions or they may have documentation to explain increases in their personal bank account balances that evidence their activity with ABLE account distributions.

Generally, for NJ FamilyCare Aged, Blind and Disabled (ABD) Programs, assets in an ABLE account and distributions for qualified disability expenses (QDEs) will be disregarded when determining eligibility for Medicaid. However, for ABD eligible beneficiaries, an ABLE account distribution may be counted as an asset if the distribution:

1. Is retained by the beneficiary beyond the month in which the distribution is made; and
2. It is used for something other than a qualified disability expense in that or any subsequent month.

Examples of a non-qualified disability expense may consist of gambling, gifting money, supplanting Medicaid, etc. Examples of a qualified disability expenses may include, but are not limited to:

- | | |
|-----------------------------------|--------------------------------------------------------|
| ▪ Education | ▪ Oversight and monitoring |
| ▪ Employment training and support | ▪ Personal support services |
| ▪ Assistive technology | ▪ Financial management |
| ▪ Health, prevention and wellness | ▪ Prepaid funeral and burial expenses (prior to death) |
| ▪ Transportation | ▪ Housing* |
| ▪ Legal fees | |

*Housing expenses include: mortgage (including property insurance required by the mortgage holder); real property taxes; rent; heating fuel; gas; electricity; water; sewer; and garbage removal.

A distribution from an ABLE account, including both non-qualified and qualified disability expenses, is not income but is a conversion of a resource from one form to another. Do not count distributions from an ABLE account as income of the designated beneficiary, regardless of its use.

For MAGI eligible beneficiaries, a portion of the distributions from an ABLE account that exceed qualified disability expenses for a tax year or the taxable portion of non-qualified disability expenditures shall be counted as income. This information will be reported in Box 2 on the beneficiary's annually issued Form 1099-QA.

After Death: Subject to any outstanding payments due for qualified disability expenses, upon the death of the designated beneficiary, all amounts remaining in the qualified ABLE account not in excess of the amount equal to the total medical assistance paid for the designated beneficiary after the establishment of the account, net of any premiums paid from the

account or paid by or on behalf of the beneficiary to a Medicaid Buy-In program under any State Medicaid plan established under title XIX of the Social Security Act, shall be distributed to the State upon filing of a claim for payment by such State.

ABLE Account Tracking: DMAHS-Office of Legal and Regulatory Affairs (OLRA) will track ABLE accounts for recovery after death similar to its tracking of SNTs and QITs. OLRA will receive a listing of *New Jersey* ABLE accounts from New Jersey's certified ABLE program. If you receive information about a beneficiary having an account with an **out-of-state ABLE program**, please forward that account and beneficiary information to Catherine Gancarz (DMAHS-OLRA) by fax at 609-588-7343 or by secure email or regular mail at:

Division of Medical Assistance and Health Services
Office of Legal and Regulatory Affairs
ATTN: Catherine Gancarz
P.O. Box 712
Trenton, NJ 08625-0712
Fax: 609-631-4761

Eligible individuals can sign up for ABLE accounts through the program's website at:
<https://savewithable.com/nj/home.html>

If you have any questions regarding this Medicaid Communication, please refer them to the Division's Office of Eligibility field staff for your agency at 609-588-2556.

MD:oeep

c: Carole Johnson, Commissioner
Department of Human Services

Sarah Adelman, Deputy Commissioner
Department of Human Services

Elisa Neira, Deputy Commissioner
Department of Human Services

Valerie Mielke, Assistant Commissioner
Division of Mental Health and Addiction Services

Jonathan Seifried, Assistant Commissioner
Division of Developmental Disabilities

Natasha Johnson, Director
Division of Family Development

Peri Nearon, Director
Division of Disability Services

Louise Rush, Director
Division of Aging Services

Christine Norbut Beyer, Commissioner
Department of Children and Families

Shereef Elnahal, M.D., M.B.A., Commissioner
Department of Health