

**NORTH DAKOTA DEPARTMENT OF HUMAN SERVICES
BISMARCK, NORTH DAKOTA
February 24, 2017**

IM 5294

TO: County Social Service Directors
Economic Assistance Policy Regional Representatives
Economic Assistance Policy Quality Control Reviewers

FROM: Carol Cartledge, Director, Economic Assistance

SUBJECT: Achieving a Better Life Experience (ABLE) Accounts

PROGRAMS: All

EFFECTIVE: Immediately

RETENTION: Until superseded

SECTIONS

AFFECTED:

CCAP	400-28-65-09 – Asset Exclusions
LIHEAP	415-25-10-10-05 – Assets – “Liquid”
SNAP	430-05-45-35 – Asset Exclusions
TANF	400-19-55-05-30 – Exempt Assets
Non-ACA	510-05-70-30 – Excluded Assets

On December 19, 2014, the Achieving a Better Life Experience (ABLE) Act was signed into law. This act allows individuals with disabilities and their families to save for college and other expenses in tax-advantaged savings accounts.

An individual with significant disabilities that meets established criteria is eligible for one ABLE account. The account may be opened at any age but the disability must have an age of onset before the age of 26 and the disability must still exist at the time the ABLE account is opened.

- If the individual is receiving SSI and/or SSDI and meets the age criteria, that individual qualifies.
- If not receiving SSI and/or SSDI, the individual must meet Social Security’s definition and criteria regarding significant functional limitations and may be asked to provide certification from a licensed physician.

The total annual contributions for a single tax year, regardless of the number of contributors, are \$14,000. For individuals with disabilities who are recipients of SSI, the ABLE Act sets some further limitations. When the total account balance meets a Plan's maximum balance limit, additional contributions into an ABLE account will not be accepted. Each state sets its own maximum balance limit.

The funds in an ABLE account can be withdrawn to be used for a 'qualified disability expense.' A 'qualified disability expense' is any expense that results from living a life with disabilities to include education, housing, transportation, employment training and support, assistive technology, personal support services, health care expenses, financial management and administrative services and other expenses which help improve health, independence and/or quality of life.

Originally, the federal ABLE Act required each state to create their own ABLE plans. Since the passage, changes were made to allow individuals to open an account anywhere in the United States. With this new option, Bank of North Dakota (BND) determined that the residents would have lower expenses if they accessed other states' plans. BND is available as a resource to answer questions about the ABLE Act and will provide a list of resources and state plans. Go to Bank of North Dakota's website at bnd.nd.gov/able/ for more information.

All Programs

The ABLE Act requires amounts in ABLE accounts be disregarded in determining eligibility for means-tested federal programs. This includes the exclusion of any contributions to the ABLE account of the individual and any distributions for qualified disability expenses.

Exception: Individuals who open an ABLE account may lose eligibility for the following state means tested programs as these accounts are currently countable assets:

- Service Payments to Elderly and Disabled (SPED) and Expanded SPED.
- Aid to the Blind Remedial Care
- Autism Voucher
- Substance Use Disorder Voucher
- State SSI Long Term Care Subsidy Program
- Children's Special Health Services
- Basic Care Assistance Program (BCAP)

Since the funds in an ABLE account can only be withdrawn to be used for a 'qualified disability expense,' funds withdrawn from the account are also disregarded.

A transfer of funds into an ABLE Account is subject to the Disqualifying Transfer policy for each program.

Exception: For Medicaid, an individual is allowed to transfer their own funds into an ABLE Account for themselves or their spouse and this would not be treated as a Disqualifying Transfer. If they want to set aside funds for a child who is blind or disabled, money placed into an ABLE Account would be considered a Disqualifying Transfer. However policy in the Medicaid Manual, Section 510-05-80-25 #3.c. does allow them to create a Trust.

Additional Information for Medicaid

This ABLE Act also specifically states, "An individual who would be receiving payment of Supplemental Security Income' benefits but for the application of housing expenses paid by the ABLE account or due to having more than \$100,000 in the ABLE account" will continue to be treated as a SSI recipient for Medicaid purposes."

Medicaid Payback Provision:

In the event the qualified beneficiary dies (or is determined to no longer be disabled) with remaining assets in an ABLE account:

- The assets in the ABLE Account are first distributed to any State Medicaid plan that provided medical assistance to the designated beneficiary.
- The amount of any such Medicaid payback cannot exceed the amount paid by Medicaid AFTER the creation of the ABLE Account.

If you have questions, please contact your Regional Representative.