

ABLE ACCOUNTS

The Stephen J. Beck, Jr. **Achieving a Better Life Experience (ABLE)** Act was signed into law on December 19, 2014. This law allows eligible individuals with disabilities to have tax-free savings accounts, modeled after 529 college plan accounts. Funds in ABLE accounts (within certain limits) do not affect eligibility for means-tested government benefits such as SSI, SNAP and Medicaid. ABLE programs are developed on the state level and managed online. Most states (all but 4 in 2022) have ABLE accounts or are partnered with other states. Individuals can enroll in any state's ABLE program if the state is offering the program and accepting out of state residents. Contributions to the account (cash only) can be made by the account beneficiary, family, friends, or special needs trust.

ELIGIBILITY REQUIREMENTS

- Must be blind or disabled prior to the age of 26.
- Can be over age 26 when opening account, as long as the disability occurred prior to turning 26.
- If age criteria is met AND individual is already receiving SSI and/or SSDI benefits, then the individual is automatically eligible.
- If age criteria is met but individual is NOT receiving SSI or SSDI benefits:
 - must meet Social Security's definition of disability and
 - receive a disability certification letter from a licensed physician or qualify with a condition listed on SSA's list of Compassionate Allowances Conditions.

NOTE: The ABLE Age Adjustment Act is a congressional bill that was reintroduced on February 23, 2021, which would amend Section 529A of the Internal Revenue Code to increase the ABLE Account disability onset age from 26 to 46. Passage of this legislation would allow an additional 6 million or more people with disabilities become eligible to open an ABLE account.

ABLE ACCOUNT LIMITS (2022)

- **\$16,000 annual contribution** (tied to IRS annual gift tax exclusion amount)
 - Individual with disabilities can contribute **additional \$12,880** of his or her earned wages.
 - ABLE accounts do not shield earnings and they do not change the way government benefits are affected by the earnings.
 - Mandatory support payments (child support or alimony) and benefit payments (Title II, Veterans Administration, pensions, etc.) may be direct-deposited into an ABLE account, but still count as income.
- **\$100,000 balance limit for SSI recipients**
- **\$235,000-\$529,000 limit for Medicaid-only recipients** (varies by state)
- Only **ONE ABLE account** per beneficiary

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ABLE ACCOUNT OWNER & MANAGER

- Beneficiary is account owner.
- Beneficiary over age 18 or authorized legal representative (ALR) can open and manage account.
- Authorized legal representative:
 - Parent
 - Legal guardian
 - Power of attorney agent
 - Representative Payee in **some** states
- ALR who establishes account must certify that he or she possesses appropriate legal documents.

INVESTMENT OPTIONS

- The account manager will designate how account funds should be invested among the investment options provided. Most ABLÉ programs offer 3-5 managed allocation investment options as well as an FDIC-insured bank savings option. Funds may be allocated to one or more investment options, with some changes allowed each year.

QUALIFIED DISABILITY EXPENSES

ABLE account funds are used for qualified disability expenses (QDE's) "that relate to the individual's disability and are for the benefit of maintaining or improving health, independence or quality of life." QDE's include:

- Education
- Employment training and support
- **Housing**
- Transportation
- Assistive technology
- Personal support services
- Health, prevention & wellness
- Financial management & administrative services
- Legal fees
- Expenses for oversight & monitoring
- Funeral & burial costs
- Other expenses that might be identified by the IRS

Withdrawals may be made online by requesting paper checks or electronic withdrawals, transferring funds to a personal checking account or ABLÉ debit card, or using online bill payment methods. Withdrawals are not counted as income to the designated beneficiary, but funds used for non-qualified purposes may be considered an asset when determining eligibility for SSI and other means-tested government benefits. The earnings portion of a non-qualified withdrawal is subject to federal income taxation and an additional 10% tax will be assessed except in certain limited circumstances.

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TAX ADVANTAGES

Contributions to an ABLE account must be made using post-taxed dollars and will not be tax deductible for federal income tax purposes, but some states offer state income tax deductions for their residents.

The two primary tax advantages of investing in an ABLE program are:

1. Any investment earnings on the money contributed to a qualified ABLE program will not be subject to federal income tax until they are distributed.
2. Any investment earnings distributed as a Qualified Withdrawal will not be subject to federal income tax.

ROLLOVERS FROM 529 COLLEGE SAVINGS PLANS

- Funds in a 529 College Savings Plan (529-C) can be transferred to an ABLE Account (529-A) without incurring a penalty.
- The rollover can be in amounts up to the annual ABLE contribution limit.
- Current law requires rollovers to be completed by December 31, 2025.
- Both accounts must have the same beneficiary or be a qualified member of the beneficiary's family.

MEDICAID PAYBACK IN MOST STATES

- ABLE account requires a Medicaid payback (reimbursement) in most states when the beneficiary dies. The funds in the account may be used for qualified disability expenses such as funeral and burial before the Medicaid payback.
- Some states have passed legislation prohibiting Medicaid recovery, and additional states are considering it. Most state ABLE accounts include a Medicaid payback.
- If Medicaid's recovery claim exceeds the balance of the ABLE account, Medicaid will claim all of the funds in the account. However, Medicaid will not make any other claims on the beneficiary's family members or on the beneficiary's estate.
- Medicaid payback only affects Medicaid benefits received after the ABLE account is established.
- All funds in the ABLE account (whether donated by a third party or not) are subject to the Medicaid payback.

ABLE & ISM

ABLE accounts can often be used to eliminate in-kind support and maintenance charges for SSI beneficiaries.

- **In-kind Support and Maintenance ("ISM")** is food or shelter that somebody else provides for an SSI beneficiary.
- **General Rule:** If you live in another person's household for free, your SSI benefits will be reduced by one-third of the SSI maximum benefit.
 - 2022: $\$841 - \$280.33 = \$560.67$

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- **Fair Share Exception:** SSA will not apply ISM charge when SSI recipient pays fair share of household expense (food, rent/mortgage, property taxes, electricity, water, garbage, etc.)
 - If 4 people live in house, SSI recipient is responsible to pay 1/4 of the household expenses.
- An individual who doesn't receive enough SSI to cover the fair share of household expenses can use an ABLE account to help pay the fair share amount and consequently receive maximum SSI benefits.
 - **RATIONALE:** Funds contributed to an ABLE account from any source belong to the beneficiary/owner of the account. Funds may be used for qualified disability expenses, which includes housing.
- SSI recipient must provide fair-share plan to SSA and then follow plan precisely each month.

REPORTING TO SSA

SSI recipients must report the establishment of an ABLE account to the Social Security Administration by the 10th day of the month following the month that the account was established.

- ABL account established any day in July 2022. must be reported to SSA by August 10, 2022.

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