

**TO:** Local District Commissioners, Medicaid Directors

**FROM:** Judith Arnold, Director  
Division of Eligibility and Marketplace Integration

**SUBJECT:** Treatment of New York Achieving a Better Life Experience (ABLE) Accounts

**EFFECTIVE DATE:** Immediately

**CONTACT PERSON:** Local District Support Unit  
Upstate (518) 474-8887 NYC (212) 417-4500

The purpose of this General Information System (GIS) message is to advise local departments of social services (LDSS) of the treatment of accounts established pursuant to the federal Achieving a Better Life Experience Act of 2014 (ABLE Act) in determining eligibility for Medicaid. The ABLE Act allows individuals with disabilities the opportunity to set aside funds in an account established pursuant to Section 529A of the Internal Revenue Code for disability-related expenses, with limited impact on their eligibility for Medicaid. For Modified Adjusted Gross Income (MAGI) and non-MAGI based eligibility determinations, funds in an ABLE account, earnings on funds in the account, contributions to an ABLE account from a third party, and distributions from the account for qualified disability expenses (QDEs) are disregarded, as reflected in Section 366(2)(a)(11) of the Social Services Law. Individuals must meet certain disability criteria to be eligible for participation in an ABLE program, however the treatment of funds in an ABLE account is not contingent upon the individual being certified disabled.

Designated beneficiaries of an ABLE account can contribute their own income to their ABLE account but it does not reduce the amount of income that is countable for purposes of determining Medicaid eligibility, or reduce the amount of income that the beneficiary (Medicaid applicant/recipient) may be required to contribute toward the cost of medical care. Resources that are used to fund an ABLE account are subject to resource counting rules until the funds are deposited into an ABLE account. Assets in an ABLE account are available to the account owner to meet his/her QDEs; therefore, funds deposited to the account by the beneficiary (Medicaid applicant/recipient) him or herself are not considered a transfer of assets.

Distributions from an individual's ABLE account are not counted as income for purposes of determining Medicaid eligibility, or for purposes of post-eligibility treatment of income, provided the funds are used to pay for QDEs. For SSI-related individuals, ABLE account distributions retained after the month of receipt continue to be disregarded unless the money is used for a non-qualifying expense. If the individual uses the distribution for a non-QDE, the distribution would be subject to treatment as a countable resource in the month the distribution is spent. Since resources are reviewed as of the first day of the month to determine eligibility for an SSI-related individual, a distribution spent after the first day of the month is not considered a countable resource. For MAGI eligibility, distributions which exceed the QDEs incurred by the beneficiary in a taxable year are taxable and therefore included in determining MAGI-based income eligibility. Individuals may self-attest to this taxable income, if any.

The ABLE Act allows States the option to file a claim for reimbursement of Medicaid costs from funds remaining in an ABLE account upon death of the designated beneficiary. New York has implemented this right pursuant to 2 NYCRR Section 156.5. If such a claim is not filed, and funds remaining in the ABLE account become part of the decedent's estate, the funds are subject to Medicaid estate recovery.

In New York (NY), the ABLE program is authorized by Article 84 of the Mental Hygiene Law and is administered by the Office of the State Comptroller in accordance with regulations at 2 NYCRR Part 156. The policy for the treatment of ABLE accounts applies to accounts established with the New York ABLE Program, and to accounts established through ABLE programs administered by other states.

Information about the NY ABLE Program can be found at:

<https://www.osc.state.ny.us/savings/able.htm> and <https://www.mynyable.org/home.html>.