



## Montana ABLE Accounts Webinar

March 24, 2020

### Questions and Answers

- 1. Does money that is withdrawn in one year from an ABLE account count as an asset if applying for Section 8 that same year?**

Unless funds were used for non-disability related purposes or are kept in an individual's account past the month in which they were withdrawn, they are not counted as an asset and/or income.

The US Department of Housing and Urban Development (HUD) issued a memo on April 26, 2019 (<https://www.hud.gov/sites/dfiles/OCHCO/documents/2019-09pihn.pdf>), which states

"Individuals have to be income eligible to receive assistance under HUD programs. Per 24 CFR 5.609, annual income is defined as the anticipated total income from all sources received by every family member which are not specifically excluded in 24 CFR 5.609(c). The exclusion found at 24 CFR 5.609(c)(17) instructs PHAs and owners to exclude from income all amounts that are specifically excluded by other Federal statute when the statute is applicable to HUD programs. Given that the ABLE Act creates a federally mandated exclusion for ABLE accounts applicable to HUD programs, in determining a family's income, HUD will exclude amounts in the individual's ABLE account pursuant to 24 CFR 5.609(c)(17). The entire value of the individual's ABLE account will be excluded from the household's assets. This means actual or imputed interest on the ABLE account balance will not be counted as income. Distributions from the ABLE account are also not considered income."

All wage income received, regardless of which account the money is paid to, is included as income, which means if a beneficiary deposits wage income into an ABLE account, those earnings are counted as income for eligibility purposes but once the money is deposited into an ABLE account it will not count against that individual's asset calculation or as income again when the beneficiary receives a distribution from the account.

- 2. Can a worker with a disability contribute to the ABLE Program in addition to buying into the Medicaid Program if their wages exceed \$2000 per month?**

Yes. In Montana, a worker with a disability may "buy into" the Medicaid program through the Montana Medicaid for Workers with Disabilities (MWD) eligibility category as long as they meet the eligibility criteria listed in the Montana Medicaid Manual 201-6 (<https://dphhs.mt.gov/Portals/85/hcsd/documents/mamanual/ABD201-6Oct012019.pdf>), which has a higher resource limit than traditional Medicaid programs of \$15,000 for an individual and \$30,000 for a couple, and they may also contribute funds to an ABLE account as long as they

meet the eligibility requirements for having an ABLE account. Any funds contributed to an ABLE account will not count towards the \$15,000 individual/\$30,000 couple resource limit for the MWD program.

### **3. How do investments work? Can you choose what stock shares to buy?**

Name	Unit value as of 03/31/2020			APY as of 03/31/2020	Month Ending 03/31/2020	YTD as of 03/31/2020	Average annual total returns as of 03/31/2020			Inception date
	Unit value	Change					1 year	3 year	Since inception <sup>1</sup>	
Aggressive Option	\$10.65	-\$0.10	-0.93%	—	-14.87%	-21.40%	-12.92%	0.57%	1.93%	12/15/2016
Moderately Aggressive Option	\$10.79	-\$0.08	-0.74%	—	-12.35%	-17.57%	-9.63%	1.20%	2.34%	12/15/2016
Growth Option	\$10.89	-\$0.06	-0.55%	—	-9.93%	-13.84%	-6.52%	1.71%	2.62%	12/15/2016
Moderate Option	\$10.97	-\$0.04	-0.36%	—	-7.58%	-10.08%	-3.52%	2.09%	2.85%	12/15/2016
Moderately Conservative Option	\$10.85	-\$0.03	-0.28%	—	-5.24%	-6.71%	-1.54%	2.01%	2.51%	12/15/2016
Conservative Option	\$10.69	-\$0.01	-0.09%	—	-1.75%	-1.84%	1.23%	1.91%	2.05%	12/15/2016
Checking Option	—	—	—	—	0.00%	0.00%	0.00%	0.00%	0.00%	03/30/2017

<sup>1</sup> Since Inception returns for less than one year are not annualized.

The performance data shown represents past performance. Past performance - especially short-term performance - is not a guarantee of future results. Performance information is current as of the most recent timeframe referenced above and is net of the weighted average operating expense ratio of the underlying fund, program management fee and the state administrative fee. Investment returns and principal value will fluctuate, so that investors' units, when sold, may be worth more or less than their original cost. Current performance may be lower or higher than the performance data cited. For performance data current to the most recent quarter-end, view quarter-end returns.

Website: <https://savewithable.com/mt/home/investment-options.html> Individuals cannot choose which items are their investment. They only choose what percentage of the three options are in cash, stocks, and bonds.

### **4. Can a person choose to close an account and no longer participate in ABLE?**

Yes, an ABLE account can be closed at any time. To close out an ABLE account, contact your ABLE program administrator. Keep in mind, any funds taken out of an ABLE program must be used for qualified disability expenses so if you are withdrawing a sum of money in closing out your ABLE account, it may be subject to income taxation, a 10% federal tax penalty, and may affect eligibility for SSI and other federal benefits if not used for a qualified disability expense.

If the funds are spent on non-qualified disability expenses, then they are subject to taxes on the distribution of any earned investment income. When withdrawn, the funds are no longer protected and would be a countable resource for many benefit programs. This may affect eligibility for SSI and other federal benefits if not used within the month or used for a qualified disability expense.

**5. Can an existing ABLE account, upon death of the owner, be rolled over to another qualified individual?**

Yes, if the beneficiary of the new ABLE account is an eligible family member (brother, sister, stepbrother, stepsister, etc.) of the beneficiary who has died, and the transfer occurs before death. Some plans allow for a beneficiary to be named within the ABLE plan. Otherwise remaining ABLE funds are distributed as defined within the person's Last Will and Testament.

Go to page 6 column 2 of the Federal Register/Vol. 80, No. 119/Monday, June 22, 2015/Proposed Rules for more information on the transfer of ABLE to a sibling: <https://www.govinfo.gov/content/pkg/FR-2015-06-22/pdf/2015-15280.pdf>. Keep in mind, the designated beneficiary will be subject to gift and/or generation-skipping transfer tax if the successor designated beneficiary is not a sibling of the designated beneficiary.

For more information regarding direct and indirect Rollovers and potential tax considerations concerning Rollovers, go to page 23 and 26 of the National ABLE Alliance Montana ABLE Member Plan Addendum October 2018: <https://cdn.unite529.com/jcdn/files/UABLE/pdfs/mt-programdescription.pdf>

**6. What happens to the money in an ABLE account if a person passes away?**

Upon the death of the beneficiary, the state in which the beneficiary lived may file a claim to all or a portion of the funds in the account equal to the amount in which the state spent on the beneficiary through their state Medicaid program. In other words, federal law authorizes state Medicaid agencies to become a creditor and seek reimbursement for Medicaid services a beneficiary received after he or she opened the ABLE account. It is up to the individual state Medicaid agencies whether to seek reimbursement from ABLE accounts.

This is commonly known as the Medicaid Payback provision and the claim could recoup Medicaid related expenses from the time the ABLE account was opened. Please note that if you are not receiving Medicaid services during the period of time in which you have an ABLE account, you would not be subject to the payback rule. Some states have waived Medicaid payback subject to federal and state probate laws.

Even if they do pursue claims, all outstanding qualified disability expenses, including funeral and burial expenses, will be given priority over the Medicaid claims. The remainder of assets in an ABLE account go to the beneficiary's estate. Remaining funds in a deceased individual's ABLE account belong to account holder's estate. They are no longer required to be used for qualified disability expenses and can be distributed according to the governing laws of the deceased's estate.

From the National ABLE Resource Center: Medicaid Repayment Provision

To learn more, go to page 3, example 3 in Treatment of ABLE Accounts in HUD-Assisted Programs: <https://www.hud.gov/sites/dfiles/OCHCO/documents/2019-09pihn.pdf>

**7. If there is a payback clause for the ABLE account that you choose, is all of the money in the ABLE account subject to this or just the money that the beneficiary has deposited?**

It's all the money that is in the able account regardless of who the contributor was. It might be beneficial to think about what other options are available that would not have a clawback feature. Whether it is Montana or another state, it is important to be aware of the clawback feature within the state you own the account.

**8. What are your thoughts about the reasons to have an ABLE account vs. having a First Party Special Needs Trust, keeping in mind that the funds from the latter cannot be used for housing expenses?**

Answer by Travis Hoffman: The advantage of an ABLE account is it does not affect your benefits and anybody can contribute to it. For an ABLE account you only need \$25 to open it and you can contribute to it. Whereas the fees that go along with a special needs trust are quite a bit higher than an ABLE account.

Answer by Theresa Baldry: A first party trust means the individual themselves are contributing money to it. A third party trust means individuals—not the individual themselves—are contributing to that trust fund. Also in a third party trust the individual is not able to access the funds. In a first party trust the individual can access the funds. ABLE accounts are aligned with social security in a meaningful way and that's something to be considering when you're looking at an ABLE account.

Another piece when considering trusts and ABLE accounts, money can be moved into an ABLE account from a third party trust to help with some of those expenses that you can't have happen in a first party trust. You can also consider how easy funds are to be withdrawn from each type of account. I don't know if it's easy to withdraw from a special needs trust or what that process is. But with an ABLE account a lot of states have a debit card that you can just make purchases with as well.

For more information, go to : <https://www.ablenrc.org/wp-content/uploads/2019/07/ABLE-Accounts-Versus-Trusts.pdf>

**9. Could a crowd funding source like GoFundMe be put into ABLE account?**

Answer by Theresa Baldry: To me that's going to go back to how much has already been put in an ABLE account. Remember there's that \$15,000 max. In my understanding of go fund me pages, someone is in charge in receiving that money and could then contribute the money to an ABLE account. Another piece that as Isaac said he's never tried is listing on Facebook directly to make a deposit to the ABLE account. Just realize regardless of how many sources contribute the money, once a \$15,000 max contribution is made for the year no other contributions can be made except for an exception in regard to individual contributions from someone in their employment, which Travis will help us more another time.

Answer by Travis Hoffman: Another thing I would be careful about a GoFundMe is if the ABLE beneficiary is the one who sets up that GoFundMe and the money goes directly to that person;

it may be subject to resource limits. If that money is held onto for a while and is not deposited into the ABLE account before the end of a month, it could count towards that limit.

**10. Isaac, did I see you listed rent as expense from the ABLE Account? In an audit do any of you fear the government would say the SSI was for housing and deny the expense?**

Answer by Isaac Baldry: Yes, I did list rent. In an audit it is listed as one of the allowable expenses from an ABLE account. Recently they've changed the language in regard to food being allowed to be spent out of an ABLE account. Here is a piece straight from Social Security identifying qualified expenses, including listing those considered household expenses. (Go to #9 on the Program Operations Manual System, What is an ABLE Account?

<https://secure.ssa.gov/apps10/poms.nsf/lrx/0501130740>

More from ABLE National Resource Center: The Social Security Administration (SSA) counts shelter costs that someone else provides or pays as "unearned income," which reduces the SSI payment dollar for dollar after a \$20 exclusion. An ABLE account owner, however, is in a unique position where contributions made by others into their ABLE account can help pay for housing and related expenses without an impact upon SSI or other means-tested benefits.

Housing expenses are considered a qualified disability expense distribution from an ABLE account. The following housing and related expenses are identified in the SSA POMS and include: Mortgage payments, including property taxes required by the mortgage holder, real property taxes, rent, heating fuel, gas, electric, water, sewer and garbage removal.

To learn more about expenses included as countable resources, go to page 41 of the National ABLE Alliance Montana ABLE Member Plan Addendum October 2018:

<https://cdn.unite529.com/jcdn/files/UABLE/pdfs/mt-programdescription.pdf>.

**11. What if you bought a TV with your ABLE account. Could I say that it increased my quality of life?**

ABLE account funds may be used for qualified disability expenses, or QDEs, which may include any expense related to the beneficiary as a result of living a life with a disability. A follow-up question might be, how is the purchase of a TV being expensed related to the result of a disability? For someone who is blind, the purchase of a TV could be considered a related expense, if purchase of the TV was to allow for a larger view of information.

**12. How can we get more information as to what you can spend money on? How is this regulated?**

There is information on the handout for qualified disability related expenses.

It is also addressed in the Disclosure Documents: **Qualified Disability Expenses:** Any expenses that (1) are incurred at a time when the Account Owner is an Eligible Individual, (2) relate to the blindness or disability of the Account Owner, and (3) are for the benefit of the Account Owner in maintaining or improving his or her health, independence, or quality of life. Such expenses include, but are not limited to, expenses related to the Account Owner's education, housing, transportation, employment training and support, assistive technology and related services,

personal support services, health, prevention and wellness, financial management and administrative services, legal fees, expenses for ABLE account oversight and monitoring, funeral and burial expenses, basic living expenses and other expenses that may be identified from time to time by the IRS. Housing expenses include expenses for mortgage (including property insurance required by the mortgage holder), real property taxes, rent, heating fuel, gas, electricity, water, sewer and garbage removal.

Individuals should document and keep receipts for funds distributed through an ABLE account.

For more information go to the ABLE National Resource Center: <https://www.ablenrc.org/get-started/what-can-funds-be-used-for/>

**13. Does anyone know if they have ABLE accounts or if people in New Mexico are going to have to go out of state to manage their own account?**

New Mexico does have their own ABLE program. A good way to find out whether New Mexico or another state has an ABLE program is go to the ABLE national resource center Web site (<https://www.ablenrc.org/>). This website has a tool where you can compare the ABLE account details of three states at a time (<https://www.ablenrc.org/compare-states/>) .