

What You Need to Know About ABLE Accounts

Presented by:

Patricia E. Kefalas Dudek

Patricia E. Kefalas Dudek & Associates
Attorneys at Law

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ABLE Accounts - The More You Look, The Better They Are

A limited amount of money can be contributed to an ABLE account without disqualifying the beneficiary from needs-based public assistance.

Money in an ABLE account is not an available resource for needs-based public benefit programs.

But a person has to qualify to be able to use an ABLE account, and there are restrictions on how money in an ABLE account can be used without adverse consequences.

ABLE Accounts - The More You Look, The Better They Are

At first special needs and elder law attorneys didn't like ABLE accounts

- ▶ They payback Medicaid upon death!!!!!!
- ▶ Only a small amount of money can be deposited
- ▶ Only a person disabled under age 26 can use them

But the more we learned about ABLE accounts and the rules for their use, more possibilities presented.

They are now a great tool to use.

ABLE Account - Summary

- ▶ Stephen Beck, Jr., Achieving a Better Life Experience Act of 2014 (the “ABLE Act”)
 - ▶ 26 U.S.C. § 529A
- ▶ Allows States to establish and maintain a tax-advantaged savings program (an “ABLE program”) that benefits certain individuals who have a disability. Qualified individuals can open an “ABLE account”
- ▶ Proper contributions to and distributions from ABLE account are NOT “income” or “gifts” for tax or needs-based public assistance programs – including but not limited to SSI and Medicaid
- ▶ Earnings or gain in ABLE account are not taxable income

ABLE Account – The Law

- ▶ Stephen Beck, Jr., Achieving a Better Life Experience Act of 2014 (the “ABLE Act”) Pub. L. No. 113-295
 - [Appendix A and hyperlink](#) 26 U.S.C. § 529A - [Appendix B and hyperlink](#)
- ▶ POMS SI 01130.740 – [Appendix C and hyperlink](#)
- ▶ Proposed IRS Regulations 80 Fed. Reg. 35602, June 22, 2015 - [Appendix D and hyperlink](#)
- ▶ Technical Corrections to proposed regulations. – [Appendix E and hyperlink](#)
- ▶ IRS Notice 2015-81 - [Appendix F and hyperlink](#)
- ▶ Pub. L. No. 114-113, Div Q, Title III, Subtitle A, Sec. 303 – Removes residency requirement (12-18-2015)
- ▶ State Medicaid Director Letter visit: <http://www.Medicaid.gov/federal-policy-guidance/federal-policy-guidance.html>
[Appendix G and hyperlink](#)

FOR APPENDICES REFER TO:

<http://www.pekdadvocacy.com/wp-content/uploads/2016/11/PEKD-10.11.17-What-You-Need-to-Know-About-Able-Acts.pdf>

ABLE Account - Requirements

1. Must be “sufficiently disabled” prior to age 26
 - A. Receiving SSI, SSDI, Childhood Disability Benefits, or Disabled Widow’s(er’s) benefits
 - 1) As result of disability or blindness
 - 2) That began prior to age 26.
 - B. Or have a satisfactory “disability certification”
 - 1) Prepared by the individual, parent, or guardian
 - 2) Accompanied by copy of the diagnosis
 - 3) Signed by a licensed physician
 - C. Satisfy this to become an **“eligible individual”**

ABLE Account - Requirements

2. Can be only one ABLE account per person
 - A. Established by the “eligible individual”, or
 - B. Parent, guardian, or DPA agent
3. Only cash can be given to an ABLE account
4. Maximum contribution is present interest gift tax exclusion (\$14,000/year in 2017)
5. SSI suspended if > \$100,000 in ABLE acct
6. Medicaid never affected; but contributions “may” be prohibited if account too large

ABLE Account - Requirements

7. Cannot be pledged as security for a loan
8. Can be rolled over to another ABLE account
 - ▶ Once every 12 months
9. Designated beneficiary can change to brother or sister, whether step or adopted
10. If already have guardianship, may require conservatorship & annual court accounting – as usual depends on the Judge

ABLE Account - Distributions

How ABLE Account Money Should Be Used

To pay for

- “qualified disability expenses” (QDE)
of the
- “designated beneficiary”
(the “eligible individual” who established and is the owner of the ABLE account)

ABLE Account - Distributions

“Qualified Disability Expenses”

“any expenses related to the eligible individual's blindness or disability which are made for the benefit of an eligible individual who is the designated beneficiary [of the ABLE account], including the following expenses:”

Education	Housing	Transportation	Employment training and support
Assistive technology and personal support services	Expenses for oversight and monitoring	Prevention and wellness	Financial management and administrative services
Legal fees	Health	Funeral and burial expenses	Other approved expenses
Basic living expense (added by POMS)			

ABLE Account - Distributions

“Housing Expenses”

“Housing expenses” are the same expenses used for SSI in-kind support and maintenance:

Mortgage (including property insurance required by lender)	Real property taxes	Rent
Heating fuel	Gas	Electricity
Water	Sewer	Garbage removal

ABLE Account - Distributions

From the IRS:

QDEs “should be broadly construed to permit . . . *basic living expenses* and should not be limited to expenses for which there is a medical necessity or which provide no benefits to others. . .”

Appendix D

FOR APPENDIX REFER TO:

<http://www.pekadvocacy.com/wp-content/uploads/2016/11/PEKD-10.11.17-What-You-Need-to-Know-About-Able-Acts.pdf>

ABLE Account - Distributions

Consequences of Distributions for QEDs

1. Distribution for the beneficiary's "qualified disability expenses" is **NOT**:
 - A. Included in beneficiary's gross taxable income,
 - B. Deemed to be a taxable gift
 - C. Deemed to be "income" for Medicaid and SSI.
 - ▶ Instead is a resource converted from one form to another.

ABLE Account - Distributions

Consequences of Distributions Not for QEDs

2. Distribution from ABLE account NOT spent on “qualified disability expense” is:
 - A. NOT disqualifying “income” for SSI
 - ▶ and, presumably, also Medicaid
 - B. POMS SI 01130.740.C.4
 - ▶ “A distribution from an ABLE account 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 whether the distributions are for non-housing QDEs, housing QDEs, or non-qualified expenses.”

ABLE Account - Distributions

Consequences of Distributions Not for QEDs

3. Distribution from ABLE account NOT spent on “qualified disability expense” is:
 - A. Taxable income to beneficiary
 - B. But taxed under Code § 72
 - C. + 10% additional tax as a penalty

ABLE Account - Death of Beneficiary

Medicaid Must be Repaid, but...

1. Only repay Medicaid paid after ABLE account established
 - ▶ Unlike d4A and d4C (First Party SNTs) trusts that must repay ALL Medicaid received during life
2. Qualified disability expenses can be paid first
 - ▶ Includes funeral and burial!
3. Medicaid Buy-In premiums are deducted before repayment

ABLE Account - When to Use

- ▶ If Designated Beneficiary has capacity to manage money, an ABLE account allows an additional \$14,000/year to be accumulated, in addition to \$2,000
- ▶ Plus beneficiary will have SSI, SSD, plus other income (may be working under SGA)

ABLE Account - When to Use

Avoiding ISM for Housing Expenses

- ▶ If Designated Beneficiary receiving SSI
- ▶ Payment of housing expenses from any source other than the SSI recipient is ISM
 - ▶ Causes reduction in SSI, usually equal to Presumed Maximum Value (\$265 in 2017)
- ▶ But distributions from ABLE account for housing expenses are NOT ISM
 - ▶ Therefore, won't cause reduction in SSI

ABLE Account - Illustrations

1. SNT distributions to ABLE account

- Each year SNT distributes to beneficiary's ABLE account
 - ▶ Third party-settled SNT – should be allowed
 - ▶ Self-settled SNT
- ABLE account pays for QEDs, especially housing if beneficiary on SSI

ABLE Account – Illustrations

2. Gifts from others to ABLE account

- Family and friends gift to beneficiary's ABLE account
 - ▶ Gets more money to beneficiary to control
 - ▶ Will not cause reduction in benefits
 - ▶ Downside – subject to payback at death!!
- ABLE account then
 - ▶ Allows beneficiary to have more spending money
 - ▶ Pays for beneficiary's QEDs, especially housing if receiving SSI

ABLE Account - Illustrations

3. Structured settlement to ABLE account

- Set up structured settlement to distribute directly to ABLE account
 - ▶ Advantages
 - ▶ Money to beneficiary without benefit reduction
 - ▶ Will last for beneficiary's lifetime
 - ▶ Disadvantages
 - ▶ What if congress repeals law?
 - ▶ What if beneficiary dies soon?
 - ▶ Possible Solutions
 - ▶ Contingent beneficiary for annuity; to SNT?
 - ▶ Court modification of annuity beneficiary

ABLE Account - Illustrations

4. Small inheritance or settlement to ABLE account

- If beneficiary receiving inheritance or settlement
 - ▶ Up to \$14,000 can be put in ABLE account
 - ▶ Do not need to quickly spend or establish self-settled SNT

ABLE Account - Illustrations

5. UTMA account to ABLE account

- If child with UTMA account turning age 18, account deemed available resource
- To avoid disqualification from SSI and Medicaid, money must disappear
 - ▶ Up to \$14,000 can be put in ABLE account
 - ▶ Do not need to quickly spend or establish self-settled SNT

ABLE Account - Illustrations

6. Excess resources to ABLE account

- If beneficiary cannot spend income fast enough and will have >\$2,000 at end of month
 - ▶ Can transfer excess to ABLE account
 - ▶ Will avoid eligibility penalty for public benefits
- If beneficiary wants to save up money to pay for something, can do so in an ABLE account
 - ▶ To take a trip, or purchase car, furniture, computer, games, phone, etc.

Current Status of ABLE Programs

26 States & DC have ABLE programs open

20 programs are open to non-residents

Alabama	Alaska	District of Columbia	Illinois
Indiana	Iowa	Kansas	Massachusetts
Michigan	Minnesota	Montana	Nebraska
Nevada	North Carolina	Ohio	Oregon ABLE for All*
Pennsylvania	Rhode Island	Tennessee	Virginia

Current Status of ABLE Programs

26 States & DC have ABLE programs open

8 programs are restricted to residents

Florida	Georgia	Kentucky	Louisiana
Missouri	New York	Oregon ABLE*	Vermont

* Oregon has two programs: one for residents only and the other for non-residents

Current Status of ABLE Programs

5 programs are STABLE
Account members

Georgia
Kentucky
Missouri
Ohio
Vermont

Current Status of ABLE Programs

11 programs are National ABLE Alliance members

Alaska	District of Columbia	Illinois	Indiana
Kansas	Minnesota	Montana	Nevada
North Carolina	Pennsylvania	Rhode Island	

Current Status of ABLE Programs

Where to find information on ABLE programs

1. The Arc website
 - <http://www.thearc.org/what-we-do/public-policy/issues/able-program-implementation>
2. ABLE National Resource Center website
 - <http://www.ablenrc.org/state-review>
3. Accompanying Excel Spreadsheet
 - Current as of August 6, 2017

**Comparison of ABLE Programs
as of August 6, 2017**

State	Open to other States	State income tax deduction	Administrator	Initial Minimum	Annual fee	Minimum contribution required	Disbursement fee or restriction
Georgia	No, STABLE Account Plan member	No	Ohio STABLE Accounts, backed by Intuition ABLE Solutions, LLC	\$50	\$42/yr; \$3.50/mo	No	No
Hawaii							
Idaho							
Illinois	Yes, National Able Alliance member	No	Office of Illinois State Treasurer	\$25	\$45/yr; \$11.25/qtr; \$60/yr if paper statements	\$25	\$2/mo for checking option; waived if electronic statement delivery or over \$250 average daily balance

**Comparison of ABLÉ Programs
as of August 6, 2017**

State	Rollover to other ABLE	Debit Card	Investment Manager	Number invest- ment options	Fees for different invest- ments	Website	Imple- mentation status	Contribution limit
Georgia	Yes, no fee	Yes, no cost	Vanguard Group, Inc. and Fifth Third Bank	5	Yes, .19% to .34%	http://www.georgiastable.com/	Open	\$235,000 (appears to be the 529 plan limit)
Hawaii							Law signed, but not open yet	
Idaho							Law Signed, but state will not open own program	
Illinois	Yes, no fee	Yes	BlackRock, Schwab, Vanguard, and for high- yield savings Sallie Mae	7	Yes, .34% to .38%	https://savewithable.com/il/home.html	Open	\$400,000

Pending Legislation Changing ABLE Act

1. **529 and ABLE Account Improvement Act of 2017** - H.R.529
 - Permits tax free rollovers from 529 plans
2. **ABLE Financial Planning Act** - S.816; H.R. 1897
 - Permits tax free rollovers from 529 plans
3. **The ABLE Age Adjustment Act** - S.817; H.R. 1874
 - Changes age for eligibility to 46
4. **The ABLE to Work Act of 2017** - S.818; H.R. 1896
 - Allows excess contributions from work to ABLE account

What Else is New?

- ▶ Special Needs Trust Fairness Act
- ▶ The Rise of ABLE Accounts
- ▶ The HCBS Waiver Rule
- ▶ The Affordable Care Act Debate

Special Needs Trusts

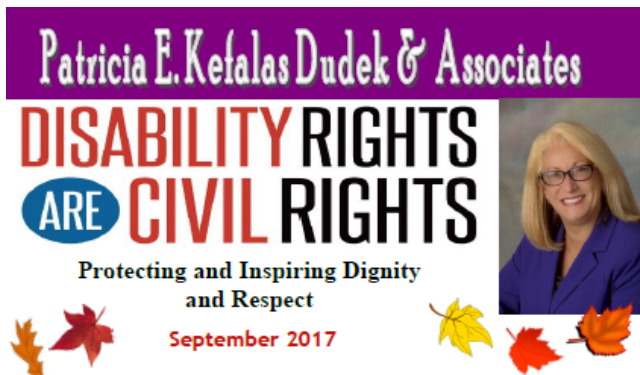
- ▶ The 21st Century Cures Act

Included the former Special Needs Trust Fairness Act

- ▶ Amended 42 USC 1396p(d)(4)(A) to allow individuals to establish SNTs

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Attorneys at Law

Patricia E. Kefalas Dudek & Associates

30445 Northwestern Hwy, Ste. 310

Farmington Hills, MI 48334

248-254-3462 tel

248-928-9233 fax

pdudek@pekdadvocacy.com

www.pekdadvocacy.com