

# ABLE Fact Sheet

## Top ABLE Account Questions

### How can I or my family member qualify for an ABLE account?

First, the individual's disability must have occurred before age 26. Second, the individual must essentially meet the Social Security definition of disability. An individual who is entitled to SSI or SSDI and whose disability occurred before age 26 automatically qualifies for an ABLE account. Others who believe they meet this definition but are not currently entitled to SSI or SSDI will need to provide a certification of disability. If you are not currently entitled to SSI or SSDI (this will often be true for minors) and want to open an ABLE account, this means you need to make sure you or your loved one provides a disability certification. For most ABLE programs, the disability certification is simply a statement you make in the enrollment process that you meet the eligibility requirements and have a written diagnosis signed by a licensed physician. You do not have to submit a doctor's signed diagnosis to the Treasury Department or IRS, but you need to make sure you have it for your records.

### How do I open an ABLE account?

In Pennsylvania you will go through the Pennsylvania Treasury Department to open an ABLE account. It is expected that you will be able to open the account online or by mailing papers in.

You do not have to open an ABLE account in your home state. However, some states, including Pennsylvania, provide benefits only to residents who open an ABLE account in their states.

### Will opening an ABLE Account hurt my Supplemental Security Income (SSI) and/or Medical Assistance ("Medicaid") services?

Funds in an ABLE account will not be counted when considering if you qualify for Medicaid. And, they won't hurt your Supplemental Security Income (SSI) benefits up to a certain limit. The first \$100,000 in an ABLE account will not be counted against SSI; any amount above \$100,000 in an ABLE account *will* be counted as assets alongside any other assets you have for SSI. Any amount of funds in an ABLE account will not impact Social Security Disability (SSDI).

If you receive SSI and have more than \$2,000 in resources, your SSI payments will be suspended. Once any amount above \$100,000 in your ABLE account no longer puts you over the SSI asset limits, your SSI payments would be reinstated. This means you can save up to \$100,000 in an ABLE account without it having any kind of impact on your benefits; if you do not have anything else considered an asset, you could even save up to \$102,000 in an ABLE account without impacting SSI.

It is important to remember the Social Security Administration requires SSI recipients to report any change in circumstances that might affect SSI benefits. And, ABLE programs are required to file monthly reports with SSA for each ABLE account that includes how much is in the account and any withdrawals taken from the account.

**The Centers for Medicare and Medicaid have not yet answered if or how funds in an ABLE account would impact waiver services; while the ABLE Act states a person can have any amount of funds in an ABLE account without impacting Medicaid, we are seeking further clarification on waiver services.**

### What is the cost of opening an ABLE account?

One of the anticipated benefits of an ABLE account is that it will be low cost to open and maintain. Since Pennsylvania is still deciding how ABLE accounts will be structured in the state, it is not yet clear how much the opening cost and yearly fees of the account will be.

### How much money can I save in an ABLE Account?

The limit to how much can be put into a person's ABLE account **each year** is the IRS gift limit for the year, which for 2016 is \$14,000. Each state puts a limit on how much **total** money can be put in an ABLE account, which is the existing limit for 529 college savings accounts. In Pennsylvania that limit is \$511,758 for 2016.

Anyone can put money into an ABLE account—that includes the person with a disability who owns the ABLE account, family members, and friends.

### Who has control over the money in an ABLE account?

Under Federal Law, the person with a disability who qualifies for an ABLE account is the official account owner. Parents, guardians, and individuals with power of attorney can have “signatory authority” over the ABLE account - meaning they can manage the money on behalf of the account owner with a disability.

However, the PA ABLE Act also allows the following to be authorized signatories:

- Any person designated in writing by the parent or guardian
- A trustee of a trust for which the eligible individual is a beneficiary

- If the eligible individual is receiving SSI or SSDI, the representative payee
- Anyone else allowed by federal law.

Pennsylvania is waiting to hear a response from the IRS on this expanded list of authorized signatories.

Under the PA ABLE Act, if a parent/guardian/power of attorney opens an ABLE account on behalf of a minor (someone under the age of 18) or an adult who lacks the legal capacity to contract, they are the fiduciary *and remain the fiduciary until they decide to relinquish control of the account*. That means they can decide if and when their child with a disability takes over control of the account. This does not apply if the account is opened after the individual with a disability is 18 or older and has the legal capacity to enter into a contract.

### What can I buy or pay for using my ABLE account?

Money can be withdrawn from ABLE accounts and spent on community living expenses like education, housing, transportation, employment training and support, assistive technology, housing, personal support services, health, prevention and wellness, financial management and administrative services, legal fees, expenses for oversight and monitoring, funeral and burial expenses, and other expenses. These are all “qualified expenses” and if ABLE money is used on these, you will not pay taxes or incur additional fees on that money. The Arc of Pennsylvania is working to make sure it is very clear what counts as a “qualified expense”.

Under the normal rules of the Social Security Administration (SSA), if an individual using SSI were to receive money that helped in any way with their monthly housing cost it would result in their SSI amount for that month being reduced by one-third ( $1/3$ ). Previously there was concern that, because of how these rules around Social Security and housing are structured, if an individual were to use ABLE funds for housing (rent, mortgage, down payment) it would impact their SSI. However, the SSA has provided a work-around. A person can use ABLE money for housing expenses as long as they use the money within the same calendar month that they withdraw it into their checking account. SSA has stated they will only be looking at ABLE accounts each month at the first of the month. Using ABLE funds for non-disability related expenses could also impact SSI benefits unless, like housing payments, they are used in the same month they are withdrawn.

It is also important to know that there will be tax consequences if funds from an ABLE account are used for non-qualified expenses. If money from an ABLE account is spent

on a non-qualified expense, state and federal income tax and a 10% additional federal tax would be charged - but only on the earnings portion of that withdrawal, not the portion that was contributed.

### What type of documentation do I have to keep for an ABLE account?

Individuals who have or manage an ABLE account should find a way to keep track of their disability-related expenses, including basic living expenses. It will be important to show that you didn't take more money out of your ABLE account than you spent on disability-related expenses. This is important because it will show that ABLE funds were not used for anything except disability-related expenses. While you won't pay taxes on ABLE earnings or qualified withdrawals, there are two forms you will use to report on ABLE each year.

*From the IRS:* ABLE programs will use two forms (Form 1099-QA, Distributions from ABLE Accounts and Form 5498-QA, ABLE Account Contribution Information) (Instructions) to report relevant account information annually to designated beneficiaries and the IRS. You do not have to pay taxes on ABLE funds (unless it is an ineligible expense), but you do have to report about the ABLE funds.

As mentioned previously, if you qualify for ABLE and don't receive SSI or SSDI, you will also want to make sure you have a disability certification from a physician for your records.

### Will I pay taxes on an ABLE account?

No, as long as you use money from the ABLE account for qualified expenses. Since money that goes into an ABLE account is already taxed, you don't pay taxes when you take it out; additionally, you don't pay taxes on any of the interest income the account earns.

If you use money from an ABLE account a non-qualified expense, you will pay tax on the earning portion of that money and incur a 10% penalty.

### What is the difference between an ABLE Account and a special needs trust?

In general, ABLE accounts are less costly to set up than trusts; are tax-free accounts; have more stringent restrictions on eligibility and the amount of money that can be put into the account than trusts; can give a person with a disability more control over the account than a trust; and may be claimed by the state to pay back Medicaid, unlike many special needs trusts.

### Can I have multiple ABLE Accounts?

Because of how the federal ABLE Act is written, individuals can only have one ABLE account. Individuals cannot share ABLE accounts; for example, if there is a family who has siblings that both qualify for an ABLE account, each sibling must have their own separate account.

### What happens to money left in a person's ABLE account if the person passes away?

ABLE funds will go to the individual's estate.

Money remaining in an ABLE account or in the beneficiary's estate can be claimed by a state Medicaid agency to pay back Medicaid provided to the beneficiary while he or she had an ABLE account. The state will be able to go through a process and claim remaining ABLE funds up to the amount of Medicaid services provided.

### Where should I go to talk about long-term care planning options so I can consider ABLE accounts, special needs trusts, and other financial planning opportunities?

There are a number of resources. The Arc US has a wonderfully accessible site, <https://futureplanning.thearc.org>, that explains the basics of how to begin planning for the future of a person with disabilities with a focus on financial planning. It includes advice for people with disabilities, parents, other family members, and advocates. Lawyers that specialize in special needs trusts are also learning about ABLE accounts and how they can complement financial planning for people with disabilities.

The Arc of PA has an ABLE resources website, <http://www.thearcpa.org/able.html>, that includes information specific to Pennsylvania as well as links to information about ABLE accounts nationwide.