



MAINE ELDER LAW FIRM

ABLE Accounts: Resources and Developments, Including a Special Opportunity for Mainers 3 of 3 Articles

The ABLE account was passed by Congress in December of 2014, and it has evolved over the handful of years since then through changes in the law and the adoption of regulations expanding the understanding of, and uses for, ABLE accounts.

One recent piece of legislation increased the attraction of ABLE accounts for individuals who live in Maine. The federal ABLE legislation passed in 2014, provides that a state's Medicaid program may claim reimbursement for medical assistance provided since the ABLE account was opened. Most states seek that reimbursement. But Maine is one of a handful of states which do not require payback. In June of 2019, Governor Janet Mills signed LD [1637](#) which provides:

- ABLE balances are exempt for all means-tested benefit programs in Maine;
- Earnings remain *state* tax-free following distribution; and
- Balances are exempt from payback to the State of Maine.

This avoidance of payback will apply even if the individual is the beneficiary of an ABLE account in another state.

Other updates and improvements to ABLE accounts were ushered in under the so-called Tax Cuts and Jobs Act (TCJA) of 2017.

- In most cases, the annual contributions from all sources to a designated beneficiary's ABLE account are capped at \$15,000. Starting in 2018, a beneficiary who works can also contribute part (or possibly all) earned income to their ABLE account.
- This additional contribution is limited to the poverty level amount for a one-person household. For 2020, this amount is \$12,490. (This additional contribution may not be made if the employer contributes to a workplace retirement plan on the employee's behalf.)
- In addition, starting in 2018, ABLE account beneficiaries are able to qualify for the Saver's Credit based on contributions they make to their ABLE accounts. Up to \$2,000 of these contributions qualify for this special credit designed to help low- and moderate-income workers. Claimed on Form 8880, Credit for Qualified Retirement

Savings Contributions, this credit can reduce the amount of tax a person owes or increase their refund.

- Families who had set up a 529 account for a child with a disability who will not attend college are allowed to “roll over” up to the annual contribution limit (\$15,000 in 2020) from a 529 account to an ABLE account for that child.
- In addition, the TCJA allows rollovers from a 529 account that was set up for the benefit of certain family members of an individual with a disability to an ABLE account for the individual. Any rollover must be accomplished within 60 days. The rollover is counted as part of the \$15,000 per year ABLE contribution, and any extra amount rolled over would be treated as income to the ABLE beneficiary.

For more information about the current state ABLE accounts, consider these resources:

- Remember that the ABLE accounts spring from the Internal Revenue Code, specifically [26 U.S.C. § 529A](#).
- A September 7, 2017, letter from the Centers for Medicare and Medicaid Services titled “Implications of the ABLE Act for State Medicaid Programs” guides State Medicaid Directors.
- The Social Security Administration adopted its ABLE regulations in March of 2018, and they can be found in the Program Operations Manual System (POMS) at SI 01130.740.
- In April of 2018, the SSA issued POMS SI 01120.201 regarding trusts. At SI 01120I.1.c and h the POMS makes it clear that funds transferred from a special needs trust to an ABLE account established by the trust beneficiary, or by an individual with signing authority, are not income to the trust beneficiary.

It is possible that future legislation could increase the availability and usefulness of ABLE programs. The proposed ABLE Adjustment Act would allow individuals with a disability onset of prior to age 46 to open ABLE accounts.

To keep up-to-date on developments with ABLE accounts, watch the website of the Maine Elder Law Firm: <https://www.maineelderlaw.com/>. You may also want to receive our semiannual newsletter on special needs planning. If so, call Jennifer Millar at 207-404-4552 and provide your email address and mailing address to be added to our mailing list.