

## **MA ABLE Program Launched: The Attainable Savings Plan<sup>SM</sup>**

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The Stephen Beck Jr. Achieving a Better Life Experience Act of 2014 (known as the ABLE Act) was signed into law by President Obama on December 16, 2014. The ABLE Act amended the Internal Revenue Code of 1986 to extend certain expiring provisions and to make technical corrections to the IRS code. This legislation, which took nearly nine years to pass, provides tax-free savings accounts to help individuals with disabilities and/or their families save funds in excess of \$2,000 without jeopardizing eligibility for means-based programs such as SSI, SSDI, Medicaid, SNAP and Section 8. Many compromises were made to gain passage of the bill. The bill, as passed, limits ABLE accounts to those persons who were disabled prior to the age of 26. Another compromise was the inclusion of a “pay-back” provision, which requires that if there are any funds left in the account when the disabled beneficiary dies, the state is entitled to reimbursement for the cost of all Medicaid-funded services received since the establishment of the ABLE account. For this reason, ABLE accounts are sometimes referred to as Medicaid payback accounts.

Massachusetts launched its own ABLE program in May 2017. Massachusetts is the 21st state to launch such a program. The Massachusetts ABLE program is called the Attainable Savings Plan<sup>SM</sup>. The Attainable Savings Plan will be established and maintained by the Massachusetts Educational Financing Authority (MEFA). Fidelity Investments will be managing the funds and all distributions. The Massachusetts ABLE program allows qualifying individuals to save a maximum of \$15,000 per year without losing eligibility for means-based programs. The accounts can accumulate up to \$100,000 without jeopardizing receipt of SSI benefits and up to \$400,000 without jeopardizing Medicaid eligibility. The funds must be used for disability-related expenses that enhance or maintain an individual’s health or quality of life.

In order to utilize an ABLE account, the beneficiary must show “proof of disability.” Proof of disability may be that the person was receiving SSI or SSDI prior to age 26. In those cases where a person did not receive benefits, he can have his or her disability certified by medical providers and qualify to use an ABLE account. The ABLE account allows disabled individuals to accumulate funds that will grow tax-free. The account can be funded only with after-tax funds – and will be treated similar to a Roth IRA account. All contributions to the account must be in the form of cash and not in the form of stocks or other assets.

Any person can make a non-tax-deductible gift to the account. The income earned on the account will not be taxed, and distributions for qualified goods and services will not be taxed. However, should a withdrawal be made for a nonqualified good or service, the withdrawal will be subject to a tax as well as a penalty. Qualified distributions include distributions made for education, housing, transportation, employment training and support, assistive technology and personal support services, health, prevention and wellness, financial management and administrative services, legal fees, expenses for oversight and monitoring, and funeral and/or burial expenses.

ABLE accounts should be seen as another planning vehicle to help create a more comfortable and enriched life for persons with disabilities. Families should be cautioned that while these accounts have been compared to 529 accounts, they have a distinct difference in that the 529 account can be distributed to named remainder beneficiaries when the primary account holder dies. A 529 account can also receive multiple gifts of up to \$15,000 per year from several family members. An ABLE account is only allowed to receive a total of up to \$15,000 per year from all sources. With an ABLE account, the funds remaining in the trust at the death of the account holder are first used to pay back the state Medicaid agency for the cost of Medicaid-funded services the beneficiary received since the date of the creation of the ABLE account.

SSI will only disregard up to \$100,000 in an ABLE account as a resource of the beneficiary. If an ABLE account has more than \$100,000 at any time, SSI will suspend SSI benefits until the account is spent down below the \$100,000 level. Once the account is spent down to below \$100,000, SSI will be reinstated without the need for reapplication. As stated above, keep in mind that total annual contributions from all sources is \$15,000 per year, and the maximum value of the ABLE account will be restricted to the state limit for 529 plans. Currently, in Massachusetts, the state limit for a 529 plan is \$400,000. An individual will retain Medicaid eligibility as long as the ABLE account in Massachusetts has no more than \$400,000. It is important to note that if more than \$15,000 is contributed in any one year, the ABLE account will lose its exempt status and the entire account will be deemed an available resource.

Other key features of ABLE include the following:

- Contributions into an ABLE account can be made by any person, including the disabled individual
- Contributions will not be tax-deductible
- Income earned by the accounts will not be taxed
- Account withdrawals, including portions attributable to investment earnings generated by the account, for qualified expenses would not be taxable
- Individuals are limited to one ABLE account, and total annual contributions by all individuals to any one account would be subject to the gift tax limit, which is currently \$15,000 per year;
- Aggregate contributions to an ABLE account would be subject to an overall limit matching the state limit for 529 accounts (\$400,000 in Massachusetts).

The following is a list of rules for ABLE accounts:

- **Disability Qualifications:** In order to open an ABLE account, one must swear under penalty of perjury that s/he has a disabling condition that manifested itself prior to the age of 26 or show proof that s/he was eligible for SSI or SSDI prior to the age of 26.
- Only one account is allowed per person. If a second account is opened, the funds in the second account will be deemed as available by needs-based programs.
- Anyone can contribute money to an ABLE account. This includes a trust or the owner of the account who is disabled.
- Contributions are capped at \$15,000 per year. This limit is equal to the annual personal gift tax exclusion, so it may increase over time. The limit is to one account per person, not per donor. The owner of the account is responsible for keeping track of all contributions to be sure that they do not exceed \$15,000 per year.
- If one is receiving SSI, the account cannot exceed \$100,000. As stated above, SSI eligibility will be suspended if the account exceeds \$100,000. SSI will resume when the account is spent down to below \$100,000.

- If one is receiving Mass Health (Medicaid), eligibility will be lost if the account exceeds \$400,000.
- Funds must be used for Qualified Disability Expenses (QDEs). QDEs are expenses that are related to the disability of the account owner.
- If used for QDEs, the account funds are not taxed. Distributions made for QDEs are tax-free, and income earned in an ABLE account is not taxed.
- Unused funds remaining in the account following the death of the owner are paid to Medicaid for the cost of all Medicaid benefits received. Only after Medicaid has been reimbursed for all Medicaid-funded services can remaining funds in the account be distributed to the account owner's legal beneficiaries.
- Persons from other states can invest in the Massachusetts ABLE account.

For more information on a Massachusetts ABLE account, known as the Attainable Savings Plan, you can contact a special needs law attorney at Fletcher Tilton PC. Fletcher Tilton PC can also provide you with a chart that compares the First Party Special Needs Trust, Third Party Special Needs Trust and Attainable Savings Plan. The following sources can also provide more information on ABLE/the Attainable Savings Plan:

ABLE National Resource Center - [ablenrc.org](http://ablenrc.org)  
[Fidelity.com/able](http://Fidelity.com/able)  
[mefa.org/attainablesm-able-savings-plan](http://mefa.org/attainablesm-able-savings-plan)

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