Date: September 20, 2019

TO: ALL COUNTY WELFARE DIRECTORS Letter No.: 19-21
ALL COUNTY ADMINISTRATIVE OFFICERS
ALL COUNTY MEDI-CAL PROGRAM SPECIALISTS/LIAISONS
ALL COUNTY HEALTH EXECUTIVES
ALL COUNTY MENTAL HEALTH DIRECTORS

SUBJECT: Information on the California Achieving a Better Life Experience Program

The purpose of this All County Welfare Directors Letter is to provide counties with an overview of California's Achieving a Better Life Experience (ABLE) program, including treatment of ABLE accounts for Medi-Cal eligibility purposes.

Background

In 2014, President Barack Obama signed the Stephen Beck, Jr. ABLE Act into federal law, which allows individuals with disabilities to establish tax-free savings accounts without losing eligibility to public benefit programs. These accounts were codified by the Tax Increase Prevention Act of 2014 and are included under Section 529A of the Internal Revenue Code of 1986, as amended. The law allows each state to decide whether to offer a qualified ABLE program to its residents.

On October 11, 2015, Governor Brown signed the California ABLE Act into law through Senate Bill 324 (Chapter 796, Statutes of 2015) and Assembly Bill 449 (Chapter 774, Statutes of 2015) (Welfare & Institutions Code, Sections 4875–4885), which became effective January 1, 2016. In October 2017, Section 4880 of the California ABLE Act was amended. The California ABLE Act allows qualified individuals with disabilities to open tax-advantaged ABLE accounts in California under California's ABLE program, which is called CalABLE. The CalABLE program and the CalABLE accounts are administered through the California Department of Treasury via the California ABLE Act Board. The CalABLE program was launched in December 2018.

County Responsibilities

County Responsibilities	Not County Responsibilities
Verifying that the account is an ABLE account	Determining if an individual is eligible to open an ABLE account
Documenting initial account information in case record: • Which state's ABLE program • The designated beneficiary • Account number • Account balance • Date account was opened/closed • Name of person with signature authority	Determining if an individual has exceeded annual or lifetime contribution limits
Verifying a contribution was made to an ABLE account when necessary to determine Medi-Cal eligibility	Reviewing all ABLE account transactions
Assessing whether a distribution for a non-qualified disability expense affects the beneficiary's Medi-Cal eligibility	Determining whether distributions are for qualified disability expenses
	Determining whether or not a distribution is taxable

Who is eligible to open an ABLE account?

Under Section 102(a) of the ABLE Act (codified at 26 U.S.C. § 529A(e)), an individual is eligible for an ABLE account if the individual is disabled or blind with onset prior to age 26 and meets certain criteria. ABLE program administrators are responsible for determining eligibility for opening an ABLE account. County Eligibility Workers (CEW) are not responsible for determining if an individual is qualified to open an ABLE account. Also, per Section 102(a) of the ABLE Act (26 U.S.C. § 529A(e)(2)(B)), no inference may be drawn from an ABLE account disability certification for purposes of establishing eligibility for Medi-Cal.

Account Features

Who can contribute funds?

Any person, including an individual, trust, estate, partnership, association, company, or corporation can contribute funds to an ABLE account.

- Self

  ABLE account beneficiaries can contribute their own income or property to their ABLE account. A beneficiary may transfer countable property to their ABLE account to spenddown excess property. Income received by the beneficiary and then contributed to his or her ABLE account is counted as income in the month received. For example, a beneficiary has their income of $500 directly deposited into their ABLE account each month; the $500 is still countable income in that month even though it is directed to an ABLE account. The result is the same if the beneficiary first deposits their income into a Non-ABLE checking account and then transfers that income to an ABLE account. The income is counted one time, when it is received.

- Third party

  Third party contributions (made by persons other than the designated beneficiary) to an ABLE account are disregarded in determining Medi-Cal eligibility.

  A transfer of funds from a trust, such as a special needs trust (SNT) or pooled trust, to the beneficiary's ABLE account, are treated the same as third-party contributions. Distributions from an SNT or pooled trust that would normally be counted as income are disregarded if they are contributed into the beneficiary's ABLE account.

Limits on contributions

The total annual contribution that an ABLE account can receive from all sources is currently $15,000. This amount is based upon the federal gift-tax exclusion and, therefore, is subject to change. Beneficiaries may save up to the lifetime maximum of $529,000 and still be eligible for federal means-tested public benefit programs, including Medi-Cal. CEWs are not responsible for determining if an individual has exceeded ABLE account contribution limits, except as needed to verify spend down of excess property.

Supplemental Security Income/State Supplementary Payment (SSI/SSP) recipients are subject to a $100,000 contribution limit. If the recipient exceeds the $100,000 limit, their

SSI/SSP eligibility will be suspended until the ABLE account balance is brought within the $100,000 limit. For individuals with SSI/SSP-linked Medi-Cal, the suspension of the SSI/SSP does not result in a loss of their Medi-Cal eligibility. The SSI/SSP linked Medi-Cal eligibility will continue unless the SSI/SSP eligibility is terminated.

*Note: It would take several years for an ABLE account balance to exceed the $100,000 due to the $15,000 annual contribution limit.

Out-of-State ABLE Accounts

Federal law granted states the option to expand their state ABLE program nationwide. California residents who meet the ABLE account criteria may open an ABLE account in any state that offers a national plan. Each state will have their own program administrator for their state ABLE program. The ABLE National Resource Center is a helpful resource on current state ABLE programs. CEWs will see ABLE accounts from other states as well as CalABLE accounts. ABLE accounts are treated the same for Medi-Cal eligibility purposes regardless of the state in which they are opened.

Verification and Documentation of an ABLE Account for Medi-Cal Eligibility

The CEW shall verify the ABLE account by documenting which state ABLE program the account is from, the designated beneficiary, account number assigned by the state program, account open and closed dates, name of person with signature authority and account balance. Individuals are only allowed one ABLE account at a time. An ABLE account statement is an acceptable form of verification and documentation. If a statement is not available from the applicant or beneficiary, follow the Medi-Cal verification process to get a signed release from the applicant or beneficiary to obtain a statement from the applicable ABLE administrators and, if necessary, accept self-attestation.

Counties are not responsible for reviewing the ABLE account contributions and distributions, or for evaluating whether or not distributions were for "qualified disability expenses" (QDEs). QDEs are broadly defined as any expenses related to the eligible individual's blindness or disability. These may include, but are not limited to, education, housing, transportation, employment training and support, assistive technology and related services, health, prevention and wellness, financial management and administrative services, legal fees, expenses for ABLE account oversight and monitoring, funeral and burial, and basic living expenses. Beneficiaries will be required to report to the county any distributions that are used for a Non-QDE, or when a beneficiary no longer intends to use a QDE distribution for a Non-QDE. The county will be required to evaluate whether a reported Non-QDE account distribution affects Medi-Cal eligibility. For example, when the beneficiary makes a deposit of the distribution to other financial institution account(s), such as a checking account, and the county is evaluating property eligibility or when the county is determining whether such a distribution is countable income.

Medi-Cal Treatment of ABLE Account Funds

Under federal law, funds in, contributions to, and specified distributions from an ABLE account must be disregarded, and income earned on the funds in the ABLE account and retained in the ABLE account are not counted as income, when determining eligibility for federal means-tested public benefit programs, such as Medicaid. California law is aligned with federal law for treatment of an ABLE account when determining eligibility for Medi-Cal.

Modified Adjusted Gross Income (MAGI) Eligibility

Funds held in an ABLE account are not subject to federal or state income tax; therefore, they are not counted as income for MAGI eligibility. Similarly, contributions to an ABLE account by a third party are considered a gift, and are not counted as income in the MAGI determination because the amount is under the annual federal gift tax exclusion. Income received and contributed or directly deposited into an ABLE account is counted as income in the month received.

Non-MAGI Eligibility

Property

All funds in an ABLE account must be disregarded in determining property eligibility for Non-MAGI Medi-Cal eligibility. Third party contributions and contributions from an SNT or pooled trust to an ABLE account are not included in the property reserve.

Income

Income received and contributed or directly deposited into an ABLE account is counted as income. Contributions such as third-party contribution funds and distribution(s) from an SNT or pooled trust contributed into ABLE accounts are excluded as income for Non-MAGI purposes.

Example: Sam received State Supplemental Disability Insurance (SSDI) income and had it directly deposited into his ABLE account in the same month. Sam’s SSDI income is counted as income in that month.

Treatment of ABLE Account Earnings

ABLE accounts can accrue interest, earn dividends, and appreciate in value. These ABLE account earnings are excluded from income of the designated beneficiary for both MAGI and Non-MAGI Medi-Cal.

Medi-Cal Eligibility Treatment of Distributions from ABLE Accounts

Distributions from ABLE accounts are not counted for Medi-Cal eligibility purposes when they are used for QDEs. Distributions for Non-QDEs may affect Medi-Cal eligibility and, therefore, must be reported by the beneficiary to the county and the county must determine if the distribution is countable as income or property.

<u>Medi-Cal Eligibility Treatment of Retained Distributions for QDEs</u>

The ABLE Act does not require that distributions from an ABLE account be used within the month the distribution is made, or within any specific period. The retained distribution from an ABLE account should continue to be disregarded after the month of receipt unless it was used for non-qualifying expenses.

It is not the responsibility of the CEW to track distributions for QDEs. If a distribution is retained for a future QDE, the county may inquire whether or not the distribution is for a QDE in order to determine how the retained distribution is treated for Medi-Cal eligibility purposes. Please see example below.

<u>Example</u>: A designated beneficiary takes out $1,000 from their ABLE account in June and reports that it is for a health-related QDE but does not spend the $1,000 until November when the health-related QDE is due. The $1,000 is not counted as income or as part of the property reserve from June through November as long as it is used to pay for the QDE.

<u>Treatment of Previously Excluded QDEs Distribution Used for Non-Qualified purpose</u>

MAGI Eligibility

Funds distributed from an ABLE account and used for non-qualified expenses are taxable and the amount that is taxable is countable income for the eligibility determination. The taxable amount is calculated using a formula established by the Internal Revenue Service. Counties must accept self-attestation of the amount of taxable income received due to distribution of ABLE account funds for non-qualified expenses. If the reported taxable income cannot be electronically verified, the income must be administratively verified.

Non-MAGI Eligibility

The amount of funds distributed from an ABLE account that are used for non-qualified expenses are included in the property reserve. However, if the funds are spent down or returned to the ABLE account, the beneficiary may still be property eligible for that month if they are within the property limits at some point during the month. Similarly, a distribution that was previously excluded or retained for a QDE counts as property if used for a Non-qualified expense. CEWs should counsel applicants with an ABLE account that using funds from an ABLE account for non-qualified expenses may affect their Medi-Cal eligibility, and inform them of their duty to report. It is not the responsibility of the CEW to track QDEs. It is the beneficiary's responsibility to report a change of circumstances to the county if they use funds in an ABLE account for non-qualified expenses. The CEW should apply regular property rules for Non-MAGI eligibility to determine if the reported funds used for non-qualified expenses would affect the beneficiary's Medi-Cal eligibility.

Example 1: John takes out $10,000 from his ABLE account for a pre-ordered medical device in July. He pays a $5,000 deposit. While waiting for the medical device to be available, John gives his sister $1,000 from his ABLE distribution for her personal use in September. The $1,000 that John gave his sister is countable property and must be reported to the county. The county must follow 10-day notice requirements for adverse action, if appropriate. The remaining $4,000 that is retained is still an excluded resource if used to pay for a QDE.

Once the beneficiary no longer intends to use the distribution, or a portion thereof, for a QDE, it is counted as property.

Example 2: Mary takes out $6,000 from her ABLE account to pay for her educational expense that is a QDE. Before school started, Mary got a job, decided not to go to the school, and reports her change of intent to the county. The $6,000 would count as property starting in the month that she decided to use it for a Non-QDE. The county must counsel Mary about spend down. Mary may spend down the $6,000, use it for another QDE or return the funds to her ABLE account before the end of the month in order to spend down any excess property.

If you have any questions, or if we can provide further information, please contact Phoua Moua at (916) 345-8064 or by email at Phoua.Moua@dhcs.ca.gov.

Original Signed by

Yingjia Huang for
Sandra Williams, Chief
Medi-Cal Eligibility Division