

Mike McCormick

**Authorized Signature**

**Number: APD-PT-16-028**

**Issue date: 7/11/2016**

**Topic: Medical Benefits**

**Transmitting (check the box that best applies):**

- New policy   
  Policy change   
  Policy clarification   
  Executive letter  
 Administrative Rule   
  Manual update   
  Other: \_\_\_\_\_

**Applies to (check all that apply):**

- |  |  |
|--|--|
| <input type="checkbox"/> All DHS employees                             | <input type="checkbox"/> County Mental Health Directors                      |
| <input checked="" type="checkbox"/> Area Agencies on Aging             | <input type="checkbox"/> Health Services                                     |
| <input checked="" type="checkbox"/> Aging and People with Disabilities | <input type="checkbox"/> Office of Developmental Disabilities Services(ODDS) |
| <input type="checkbox"/> Self Sufficiency Programs                     | <input type="checkbox"/> ODDS Children’s Intensive In Home Services          |
| <input type="checkbox"/> County DD Program Managers                    | <input type="checkbox"/> Stabilization and Crisis Unit (SACU)                |
| <input type="checkbox"/> ODDS Children’s Residential Services          | <input type="checkbox"/> Other (please specify):                             |
| <input type="checkbox"/> Child Welfare Programs                        |  |

Policy/rule title:	ABLE Act Accounts		
Policy/rule number(s):	OAR 461-145-0000	Release no:	
Effective date:	July 1, 2016	Expiration:	
References:	P.L. 113-614		
Web address:			

**Discussion/interpretation:** The Achieving a Better Life Experience (ABLE) Act of 2014 was passed by Congress and signed into law by President Obama in December, 2014. The ABLE Act allows states to set up special accounts under Section 529 of the Internal Revenue Code for people with disabilities who qualify. These accounts are monitored and regulated nationally by the Internal Revenue Service, and when Oregon’s ABLE Act program is implemented in early 2017, they will be monitored and regulated by the Oregon Department of the Treasury. Other states have already implemented the ABLE Act, so APD must implement eligibility policy for those individuals in Oregon who open an account in another state immediately. This transmittal is meant to give APD staff instructions on how ABLE Act accounts impact eligibility for agency programs. Individuals who inquire at a local APD/AAA office about

how to open an ABLE Act account should be directed to Oregon's 529 program at 1-866-772-8464.

Individuals can qualify to open an ABLE Act account (or have one opened for them) if:

1. The individual is blind or has a disability that does or would qualify them to receive SSI or Social Security based on blindness or disability; and
2. The onset of the blindness or the disability occurred before the age of 26.

To establish an ABLE Act account with a *financial institution*, individuals who are not receiving SSI or Social Security based on blindness or disability can self-attest in writing that they meet the blindness or disability requirements for an ABLE Act account. However, self-attestation for purposes of obtaining an ABLE Act account does not establish blindness or disability as a basis of need for OSIPM or any other program administered by APD or AAA offices. In order to be considered blind or disabled for OSIPM eligibility purposes, an individual must still be eligible for SSI or SSB, have a favorable determination from PMDDT, or meet the other requirements of OARs 461-125-0310, 461-125-0330 and 461-125-0370.

There can be only one ABLE Act account per individual. If an individual states that they have an ABLE Act account, local office staff need only obtain verification of the ABLE account from the financial institution, and only for the purpose of EAU collecting when the person passes. Except under extremely questionable circumstances, staff will not need to monitor ABLE Act account balances or disbursements. Contributions to an ABLE Act account cannot exceed \$14,000 per year, per individual. Any balances greater than \$100,000 in an ABLE Act account will count toward the individual's SSI resource limit. The Oregon Department of the Treasury reports the existence of ABLE Act accounts, and balances that are in them, directly to the Social Security Administration (SSA). Individuals' ABLE Act balances are not expected to reach \$100,000 for at least seven years. When an individual's ABLE Act account balance does reach \$100,000, APD/AAA staff are not required to report that balance to the SSA with a 538A form, as the SSA will already have been informed.

Balances in ABLE Act accounts are excluded for OSIPM and SNAP, even if an individual's ABLE Act account balance reaches \$100,000 or greater. Medicare Savings Programs have no resource limit, and would not be impacted by ABLE Act account balances.

Withdrawals from ABLE Act accounts are excluded for eligibility purposes if they are made for Qualified Disability Expenses, or QDEs. QDEs include the following:

- Housing expenses, which include: mortgage payments, real property taxes, rent, heating fuel, gas, electricity, water, sewer, or garbage removal;
- Education;

- Transportation;
- Employment training or 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.

Disbursements from ABLE Act accounts for purposes other than the QDEs listed above count as unearned income in the month of the disbursement, and any money left is considered a resource in the month after the month of withdrawal. However, it is important to remember that Congress' intent in creating the ABLE Act was to increase the access of people with disabilities to greater resources and fulfillment in their lives. Therefore, Congress created QDEs to be very general in nature, and are intended to allow maximum flexibility to individuals with blindness or disabilities to spend money from ABLE Act accounts without those payments being counted as income for public assistance programs. Given the general nature and broad range of QDEs available to ABLE Act participants, and due to staff workload considerations, APD/AAA staff are only being asked to request verification of ABLE Act account balances and disbursement histories in extraordinary circumstances, as noted above.

When narrating information about ABLE Act accounts in Oregon ACCESS, please note in the Resource Type field that the individual has an ABLE Act account, and the amount of money in the account, if that information is available.

**Implementation/transition instructions:** A temporary administrative rule, OAR 461-145-0000, has been filed for a July 1, 2016 implementation. The text of the rule accompanies this Policy Transmittal. The Counting Client Assets B section of the APD Staff Tools will be updated with ABLE Act information. APD applications and other forms will be updated in the coming months to include questions about ABLE Act accounts. Until then, when applicants or individuals completing a redetermination indicate that they have a bank account, staff may want to ask the individual if they have an ABLE Act account. Staff will receive further instructions in the near future.

**Training/communication plan:** APD training curricula and materials will be updated with ABLE Act information in July and in the coming months.

**Local/branch action required:** Managers and lead workers should review the information in this transmittal with staff in July.

**Central office action required:** Update administrative rules, manuals, forms, and

training materials as outlined above.

**Field/stakeholder review:**  Yes  No

**If yes, reviewed by:** APD Policy

**Filing instructions:** None.

*If you have any questions about this policy, contact:*

<b>Contact(s):</b>	APD Medicaid Programs: Jeff Stell, Medicaid Program Analyst, APD SNAP: <a href="mailto:SNAP.POLICY@dhsoha.state.or.us">SNAP.POLICY@dhsoha.state.or.us</a>		
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### **461-145-0000 (This is a new rule)**

#### **Achieving a Better Life Experience (ABLE) Act**

1. For all programs, funds held in ABLE Act accounts are excluded.
  
2. For all programs, monies withdrawn from ABLE Act accounts are excluded if they are used for Qualified Disability Expenses. For purposes of this rule, “Qualified Disability Expenses” include, but are not limited to, the following:
  - a. Education;
  - b. Housing;
  - c. Transportation;
  - d. Employment training and support;
  - e. Assistive technology and personal support services;
  - f. Health;
  - g. Prevention and wellness;
  - h. Financial management and administrative services;
  - i. Legal fees;
  - j. Expenses for oversight and monitoring; and
  - k. Funeral and burial expenses.
  
3. For all programs, funds withdrawn from ABLE Act accounts for purposes other than those listed in section (2) (a) through (k) are counted as unearned income.