

Title of Rule: Revision to the Medical Assistance Rule Concerning Achieving Better Life Experience (ABLE) Accounts added to Definitions and Resource Requirements as an exempt resource
Rule Number: MSB 17-05-22-B
Division / Contact / Phone: Eligibility / Eric Stricca / 4475

STATEMENT OF BASIS AND PURPOSE

1. Summary of the basis and purpose for the rule or rule change. (State what the rule says or does and explain why the rule or rule change is necessary).

The purpose of this rule is to amend 10 CCR 2505-10 § 8.100.1 and 8.100.5.M.2 by adding Achieving Better Life Experience (ABLE) accounts to the definitions and as an exempt asset. ABLE accounts are special savings accounts that can be set up by (or for) certain individuals with disabilities. They will not count as a resource for eligibility purposes for any Medicaid category that has an asset test. This rule adds a new exempt resource for the eligibility groups that have an asset test.

2. An emergency rule-making is imperatively necessary

- to comply with state or federal law or federal regulation and/or
 for the preservation of public health, safety and welfare.

Explain:

3. Federal authority for the Rule, if any:

26 U.S.C. § 529A; Stephen Beck Jr. ABLE Act of 2014, Pub. L. 113-295, Div B § 103(a)

4. State Authority for the Rule:

25.5-1-301 through 25.5-1-303, C.R.S. (2016);
C.R.S. 23-3.1-311 (2016); C.R.S. § 25.5-1-303(3)(b)

Initial Review

07/14/17 Final Adoption

08/11/17

Proposed Effective Date

09/30/17 Emergency Adoption

DOCUMENT #01

Title of Rule: Revision to the Medical Assistance Rule Concerning Achieving Better Life Experience (ABLE) Accounts added to Definitions and Resource Requirements as an exempt resource

Rule Number: MSB 17-05-22-B

Division / Contact / Phone: Eligibility / Eric Stricca / 4475

REGULATORY ANALYSIS

1. Describe the classes of persons who will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule.

The classes of individuals who will be impacted are certain disabled individuals who are eligible under the categories that have an asset test. These individuals will be able to save money in this type of account without jeopardizing their eligibility.

2. To the extent practicable, describe the probable quantitative and qualitative impact of the proposed rule, economic or otherwise, upon affected classes of persons.

ABLE account can be accessed for expenses made for the benefit of a disabled individual 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; funeral and burial expenses; and any other expenses approved under the regulations.

3. Discuss the probable costs to the Department and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues.

The Department does not anticipate that this rule change would have a fiscal impact because there is already a provision that allows individuals with disabilities to hold assets in a pooled disability trust, which can be disregarded for purposes of Medicaid eligibility. Qualified distributions from these accounts can also be disregarded for purposes of Medicaid eligibility similar to the qualified expenses allowed by this change. Additionally, since the individual would have had a disability prior to age 26 the Department does not anticipate that this change would provide a new mechanism for older adults to shelter assets in order to become eligible for Medicaid for long term care purposes.

4. Compare the probable costs and benefits of the proposed rule to the probable costs and benefits of inaction.

The rule implements federal and state law. Inaction would be in violation of those laws.

5. Determine whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule.

Title of Rule: Revision to the Medical Assistance Rule Concerning Achieving Better Life Experience (ABLE) Accounts added to Definitions and Resource Requirements as an exempt resource

Rule Number: MSB 17-05-22-B

Division / Contact / Phone: Eligibility / Eric Stricca / 4475

There are not less costly methods.

6. Describe any alternative methods for achieving the purpose for the proposed rule that were seriously considered by the Department and the reasons why they were rejected in favor of the proposed rule.

There are not alternative methods.

1 **8.100 MEDICAL ASSISTANCE ELIGIBILITY**

2 **8.100.1 Definitions**

3 300% Institutionalized Special Income Group is a Medical Assistance category that provides
4 Long-Term Care Services to aged or disabled individuals.

5 1619b is section 1619b of the Social Security Act which allows individuals who are eligible for
6 Supplemental Security Income (SSI) to continue to be eligible for Medical Assistance coverage
7 after they return to work.

8 AB - Aid to the Blind is a program which provides financial assistance to low-income blind
9 persons.

10 ABD - Aged, Blind and Disabled Medical Assistance is a group of Medical Assistance categories
11 for individuals that have been deemed to be aged, blind, or disabled by the Social Security
12 Administration or the Department.

13 [Achieving a Better Life Experience \(ABLE\) accounts – Special savings accounts that are set up
14 by \(or for\) certain individuals with disabilities in a qualified ABLE program that are exempt for
15 eligibility. They can be established by any state’s qualified ABLE Program. Colorado’s ABLE
16 program is administered by the Department of Higher Education.](#)

17 Adult MAGI Medical Assistance Group provides Medical Assistance to eligible adults from the
18 age of 19 through the end of the month that the individual turns 65, who do not receive or who are
19 ineligible for Medicare.

20 AND - Aid to Needy Disabled is a program which provides financial assistance to low-income
21 persons over age 18 who have a total disability which is expected to last six months or longer and
22 prevents them from working.

23 AFDC - Aid to Families with Dependent Children is the Title IV federal assistance program in
24 effect from 1935 to 1997 which was administered by the United States Department of Health and
25 Human Services. This program provided financial assistance to children whose families had low
26 or no income.

27 AP-5615 is the form used to determine the patient payment for clients in nursing facilities
28 receiving Long Term Care.

29 Alien is a person who was not born in the United States and who is not a naturalized citizen.

30 Ambulatory Services is any medical care delivered on an outpatient basis.

31 Annuity is an investment vehicle whereby an individual establishes a right to receive fixed
32 periodic payments, either for life or a term of years.

- 1 Applicant is an individual who is seeking an eligibility determination for Medical Assistance
2 through the submission of an application.
- 3 Application Date is the date the application is received and date-stamped by the eligibility site or
4 the date the application was received and date-stamped by an Application Assistance site or
5 Presumptive Eligibility site. In the absence of a date-stamp, the application date is the date that
6 the application was signed by the client.
- 7 Application for Public Assistance is the designated application used to determine eligibility for
8 financial assistance. It can also be used to determine eligibility for Medical Assistance.

DRAFT

8.100.5.M. Resource Requirements

1. Consideration of resources: Resources are defined as cash or other assets or any real or personal property that an individual or spouse owns. The resource limit for an individual is \$2,000. For a married couple, the resource limit is \$3,000. If one spouse is institutionalized, refer to Spousal Protection-Treatment of Income and Resources for Institutionalized Spouses. Effective January 1, 2011, the resource limits for the Qualified Medicare Beneficiaries (QMB), Specified Low Income Medicare Beneficiaries (SLMB), and Qualified Individuals 1 (QI-1) programs are \$8,180 for a single individual and \$13,020 for a married individual living with a spouse and no other dependents. The resource limits for the QMB, SLMB, and QI programs shall be adjusted annually by the Centers for Medicare and Medicaid Services on January 1 of each year. These resource limits are based upon the change in the annual consumer price index (CPI) as of September of the previous year. Resources are not counted for the Medicaid Buy-In Program for Working Adults with Disabilities or the Medicaid Buy-In Program for Children with Disabilities.
2. The following resources are exempt in determining eligibility:
 - a. A home, which is any property in which an individual or spouse of an individual has an ownership interest and which serves as the individual's principal place of residence. The property includes the shelter in which an individual resides, the land on which the shelter is located and related outbuildings.
 - i) Only one principal place of residence is excluded for a single individual or a married couple.
 - ii) The individual's ownership interest in the home must have an equity value that:
 - 1) From January 1, 2006 thru December 31, 2010 is \$500,000 or less, or;
 - 2) Is less than the amount that results from the year to year percentage increase to the \$500,000 limit. The increase is based upon the consumer price index for all urban consumers (all items; United States city average), rounded to the nearest \$1,000.
 - iii) If an individual or spouse of an individual owns a home of any value located outside Colorado, and if the individual intends to return to that home, then the individual does not meet the residency requirement for Colorado Medicaid eligibility.
 - iv) If an individual or spouse of an individual owns a home of any value located outside Colorado, and if the individual does not intend to return

to that home, then the home is a countable resource unless the individual's spouse or dependent relative lives in the home.

- v) If an individual or spouse of an individual owns a home located inside Colorado with an equity value lower than the limit in subparagraph (1), above, and if the individual intends to return to that home, then the home is considered an exempt resource if:
 - 1) The individual is institutionalized; and
 - 2) The intent to return home is documented in writing.
- vi) If an individual or spouse of an individual owns a home with an equity value greater than the limit that is located inside Colorado, and if the individual intends to return to that home, then the home is considered to be a countable resource unless spouse or dependent relative lives in the home.
- vii) If an individual or spouse of an individual owns a home of any value located inside Colorado, and if the individual does not intend to return to that home, then the home is a countable resource unless spouse or dependent relative lives in the home.
- viii) If an individual or spouse moves out of his or her home without the intent to return, the home becomes a countable resource because it is no longer the individual's principal place of residence.
- ix) If an individual leaves his or her home to live in an institution, the home shall still be considered the principal place of residence, irrespective of the individual's intent to return as long as the individual's spouse or dependent relative continues to live there.
- x) The individual's equity in the former home becomes a countable resource effective with the first day of the month following the month it is no longer his or her principal place of residence.
- xi) The intent to return home applies to the home in which the individual or spouse of the individual was living prior to being institutionalized or to a replacement home as long as the individual's spouse or dependent relative continues to live in the home.
- xii) The intent to return home also applies if the individual is living in an assisted living facility or alternative care facility and receives HCBS while in that facility or transfers into a Long-Term Care institution to receive services.
- xiii) For an individual in a Long-Term Care institution, receiving HCBS, or enrolled in PACE, the exemption for the principal place of residence

does not apply to a residence which has been transferred to a trust or other entity, such as a partnership or corporation.

1) The exemption shall be regained if the residence is transferred back into the name of the individual.

xiv) The principal place of residence, which is subject to estate recovery, becomes a countable resource upon the execution and recording of a beneficiary deed.

The exemption can be regained if a revocation of the beneficiary deed is executed and recorded.

b. Excess property will not be included in countable resources as long as reasonable efforts to sell it have been unsuccessful. Reasonable efforts to sell means:

i.) The property is listed with a professional such as a real estate agent, broker, dealer, auction house, etc, at current market value.

ii) If owner listed, the property must be for sale at current market value, advertised and shown to the public.

iii) Any reasonable offer must be accepted.

iv) If an offer is received that is at least two-thirds of the current market value, that offer is presumed reasonable.

v) The client must continue reasonable efforts to sell and must submit verification of these efforts to the Eligibility Site on a quarterly basis. Reasonable effort is at Eligibility Site discretion.

vi) If the exemption is used to become eligible under the Spousal Protection rules, the property shall continue to be viewed according to 8.100.7.L while efforts to sell it are being made.

vii) Eligibility under this exemption is conditional. Once the property sells, the client shall be ineligible until the resources are below the prescribed limit.

c. One automobile is totally excluded regardless of its value if it is used for transportation for the individual or a member of the individual's household. An automobile includes, in addition to passenger cars, other vehicles used to provide necessary transportation.

d. Household goods are not counted as a resource to an individual (and spouse, if any) if they are:

- i) Items of personal property, found in or near the home, that are used on a regular basis; or
 - ii) Items needed by the household for maintenance, use and occupancy of the premises as a home.
 - iii) Such items include but are not limited to: furniture, appliances, electronic equipment such as personal computers and television sets, carpets, cooking and eating utensils, and dishes.
- e. Personal effects are not counted as a resource to an individual (and spouse, if any) if they are:
- i) Items of personal property ordinarily worn or carried by the individual; or
 - ii) Articles otherwise having an intimate relation to the individual.
 - iii) Such items include but are not limited to: personal jewelry including wedding and engagement rings, personal care items, prosthetic devices, and educational or recreational items such as books or musical instruments.
 - iv) Items of cultural or religious significance to the individual and items required because of an individual's impairment are also not counted as a resource.
- f. The cash surrender value of all life insurance policies owned by an individual and spouse, if any, is exempt if the total face value of all life insurance policies does not exceed \$1,500 on any person. If the total face value of all the life insurance policies exceeds \$1,500 on one person, the cash surrender value of those policies will be counted.
- g. Term life insurance having no cash surrender value, and burial insurance, the proceeds of which can be used only for burial expenses, are not countable toward the resource limit.
- h. The total value of burial spaces for the applicant/recipient, his/her spouse and any other members of his/her immediate family is exempt as a resource. If any interest is earned on the value of an agreement for the purchase of a burial space, such interest is also exempt.
- i. An applicant or recipient may own burial funds through an irrevocable trust or other irrevocable arrangement which are available for burial and are held in an irrevocable burial contract, an irrevocable burial trust, or in an irrevocable trust which is specifically identified as available for burial expenses without such funds affecting the person's eligibility for assistance.

- j. An applicant or recipient may also own up to \$1,500 in burial funds through a revocable account, trust, or other arrangement for burial expenses, without such funds affecting the person's eligibility for assistance. This exclusion only applies if the funds set aside for burial expenses are kept separate from all other resources not intended for burial of the individual or spouse's burial expenses. Interest on the burial funds is also excluded if left to accumulate in the burial fund. For a married couple, a separate \$1,500 exemption applies to each spouse.

The \$1,500 exemption is reduced by:

- i) the amount of any irrevocable burial funds such as are described in the preceding subparagraph, and
- ii) the face value of any life insurance policy whose cash surrender value is exempt.

k. [Achieving a Better Life Experience \(ABLE\) Accounts.](#)