



Policy Memo	
KDHE-DHCF POLICY NO: 2017-03-04	From: Jeanine Schieferecke
Date: March 31, 2017	KEESM Reference: 1321.1(9)(c), 1610.1, 1610.3, 1616, 2111(3), 2112(3), 5430, 5621, 6410
RE: Implementation of new policies concerning the ABLE Act, Disability Payback Trusts, Direct Express Accounts, and Fair Hearings	Program(s): All Medical Assistance Programs

The purpose of this memo is to provide implementation instructions to eligibility staff related to policy changes concerning ABLE Act Accounts, Disability Payback Trusts, Direct Express Accounts, and Fair Hearings.

Unless indicated otherwise, the policy changes contained in this memo are effective April 1, 2017.

A. ABLE Act Accounts

- 1. Background** – The Achieving a Better Life Experience (ABLE) Act was enacted per Public Law 113-295 on December 19, 2014. The law allows eligible individuals with disabilities to establish special tax advantaged savings accounts for qualified beneficiaries that are similar to qualified tuition programs (529 accounts), but are intended for disability-related expenses. The accounts allow more individual choice and control over spending on qualified disability expenses for the account owner while protecting eligibility for most federal means-tested programs, including medical assistance.

In order to qualify for these accounts, the ABLE account beneficiary must have a disability onset before age 26. Each beneficiary can only have one ABLE account. Someone other than the account beneficiary can contribute to the account, but the total contributions cannot exceed the individual gift tax exclusion for the calendar year (currently \$14,000). Distributions from the ABLE account for disability related expenses are considered qualified expenses. Distributions from the account for non-disability related purposes are considered non-qualified.

Qualified disability related expenses include 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 other expenses as approved by the Secretary of the Treasury.

ABLE accounts may be opened and maintained by a qualified ABLE program in any state. The ABLE account administrator in each state is responsible for ensuring an account meets ABLE criteria. The Kansas Treasurers Office, through an administrator, began establishing ABLE accounts in January 2017. Some individuals may have established an ABLE account in another state prior to the date Kansas began offering the accounts here.

Any assets remaining in the ABLE account upon the death of the qualified beneficiary must be used to reimburse the state for Medicaid payments made on behalf of the beneficiary. The amount of the Medicaid payback to the state is calculated based on amounts paid by Medicaid after the creation of the ABLE account.

2. Application of Policy

(a) Non-MAGI Programs – The balance of a properly established ABLE account is exempt as a resource for all resource-tested medical programs. Contributions to the account from someone other than the account beneficiary are exempt income to the beneficiary. ABLE account earnings such as interest and dividends are also exempt income. Qualified distributions from the ABLE account are exempt as income and as a resource in the month received. Non-qualified distributions are countable as a resource the month following the month of receipt if in a form that is otherwise countable, such as a checking or savings account.

For the purpose of retaining SSI eligibility through the Social Security Administration (SSA), the ABLE account cannot exceed a balance of \$100,000. Should an SSI recipient be placed in suspended status by the SSA due to an excess balance in their ABLE account, the recipient continues to be eligible for medical assistance.

(b) MAGI Programs – Qualified non-taxable contributions to the account and distributions from the account for qualified expenses are exempt as income. ABLE account earnings such as interest and dividends are also exempt income.

3. KEES Issues – Special coding will not be available to record the ABLE account in KEES. The ABLE account will be recorded as a trust, using the following: Program Type = Medical, Resource Category = Liquid, Liquid Resource Trust = Trust; Description = Unavailable. Include the phrase ‘ABLE Account’ in the Financial Institution field.

Income is recorded as unearned ‘Trust Income’ and designated Countable or Not Countable as directed above. Include the phrase ‘ABLE account’ in the Description field.

B. Disability Payback Trusts

1. Background – Section 1917(d)(4)(A) of the Social Security Act (42 U.S.C. 1396p(d)(4)(A)) provides the guidance for establishing an exempt disability payback trust. The trust must be funded with the assets of a disabled individual under age 65 and contain a provision to repay the state upon the individual’s death for the amount of medical assistance provided on their behalf. In addition, the trust may only be established by the individual’s parent, grandparent, conservator, legal guardian, or by a court. Otherwise, the trust is not an exempt resource.

The 21st Century Cures Act of 2016 was enacted on 12-13-2016 which amended Section 5007 of the Social Security Act to include the disabled individual as someone who may establish an exempt disability payback trust.

2. **Application of Policy** – Effective with the issuance of this memo, disability payback trusts established on or after 12-13-2016 by the disabled individual are exempt as a resource if all other provisions are met (i.e. own assets, age 65, payback provision). Trusts established by a disabled individual prior to 12-13-2016 are not exempt under this provision and remain subject to the normal trust counting rules.
3. **KEES Issues** – The existing protocol to determine if the trust is countable or exempt is used for these trusts. No special rules apply when recording the trust in KEES. Continue to follow existing guidelines.

C. Direct Express Accounts

1. **Background** – The Direct Express program allows federal benefits (Social Security, SSI, VA, and Civil Service Annuities) to be direct deposited into an electronic debit account in lieu of a traditional bank account. Each account owner receives a plastic debit card. Benefits are automatically deposited into the account allowing the cardholder to use the card to make purchases or to receive cash from the account. Unused funds that accumulate in the Direct Express account are countable as a resource. Even though the amount in these accounts is ordinarily low, verification of the account balance is required for all resource-tested medical assistance programs. Currently, there is no convenient process for the cardholder to obtain and provide verification of the account balance.
2. **Application of Policy** – Verification of the Direct Express account balance may be waived in certain instances. Self-attestation of the account balance shall be accepted when either of the following occurs:
 - (a) The only monies in the Direct Express account are from Social Security or are SSI benefits, or
 - (b) The value of all countable resources, including the Direct Express account, are not within \$300 of the applicable resource limit.

If neither of these conditions are met, verification of the account balance is required. If either of these conditions are met, self-attestation is accepted as verification of the account balance. In either event, the normal verification rules still apply to all other resources. In addition, verification is not required when the self-attested account balance results in resource ineligibility.

Note: If other verifications are needed to process the case, verification of the Direct Express account balance shall also be requested, even if one of the verification exemptions described above are met. If verification of the account balance is provided, that amount shall be used. If verification is not received, the self-attested amount shall be used.

As with all such bank accounts, the countable balance of the Direct Express account shall be calculated by subtracting the amount of any income deposited into the account within the month from the low balance for that month.

Example 1: The applicant reports SSA of \$1,000/month is deposited into the Direct Express account and the current balance of the account is \$200. Verification of the SSA benefit is received through the EATSS interface. No other verifications are needed. Subtracting the verified SSA income of \$1,000 from the reported account balance of \$200 leaves a negative balance. An account balance of \$0 would be used to determine resource eligibility.

Example 2: The applicant reports a monthly Civil Service pension is deposited into the Direct Express account and also reports the current balance of the account. Neither the Civil Service pension amount nor the Direct Express account balance have been verified. Verification of both the Civil Service pension and the Direct Express account balance are requested. In this example:

1. If both the pension amount and account balance are verified, the verified pension amount is subtracted from the verified account balance to determine the low balance of the account. That amount is used to determine resource eligibility.
2. If only the pension amount is verified, and not the account balance, the verified pension amount is subtracted from the self-attested account balance to determine the low balance of the account. That amount is then used to determine if the \$300 resource threshold verification exception described above has been met.
 - a. If the resource threshold has been met, the self-attested account balance amount is used to determine resource eligibility. Verification is not required.
 - b. If the resource threshold has not been met, self-attestation of the account balance cannot be used. Verification is required. Since verification was requested and not received, the application may be denied for failure to provide requested information.

Example 3: The applicant reports a VA benefit of \$1,200/month is deposited into the Direct Express account and the current balance of the account is \$600. Verification of the VA benefit was provided with the application. No other verifications are needed. The verified VA benefit amount is subtracted from the self-attested account balance to determine the low balance of the account. That amount is then used to determine if the \$300 resource threshold verification exception described above has been met.

1. If the resource threshold has been met, the self-attested account balance amount is used to determine resource eligibility. Verification is not required.
2. If the resource threshold has not been met, self-attestation of the account balance cannot be used. Verification is required.

3. KEES Issues – No changes are made in how staff record the Direct Express card in KEES – as an electronic debit card. These shall be labeled Direct Express in the Financial Institution field.

D. Fair Hearings

1. Background – There has been some confusion as to who may request a fair hearing on behalf of an applicant/recipient. Under current policy, the applicant or recipient, including individuals authorized to act on behalf of the applicant/recipient may file a fair hearing. The policy also allows “other interested person” to request a fair hearing. In addition, there has been an issue

with who could request a fair hearing on behalf of a deceased individual.

2. Application of Policy – Effective with the issuance of this memo, any person who is allowed to file an application on behalf of the applicant/recipient may request a fair hearing for the applicant/recipient. That would include the applicant/recipient, guardian, conservator, spouse, financial durable power of attorney, Social Security payee, and medical representative. This would not include a facilitator since they have been granted only limited authority to specifically assist with the application process, which does not include filing an application on behalf of the applicant/recipient. The applicant/recipient may also appoint an attorney or other individual to request a fair hearing on his/her behalf. Written authorization by the applicant/recipient is required.

For deceased individuals, only persons specifically authorized by a court of appropriate jurisdiction may request a fair hearing or represent the decedent in a fair hearing action.

E. Conclusion

For questions or concerns related to this document, please contact one of the KDHE Medical Policy Staff listed below.

Allison Miller, Family Medical Program Manager – Allison.Miller@ks.gov

Vacant, Elderly and Disabled Medical Program Manager

Jeanine Schieferecke, Senior Manager – Jeanine.Schieferecke@ks.gov