



Company Name Goes Here

## ABLE ACCOUNTS AND MEDICAID PAYBACK

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The “ABLE” account is a relatively new planning tool that offers adults with eligible disabilities a tax-free savings option that does not affect their receipt of means-tested government benefits. Understanding the key features of an ABLE account is necessary for making an educated decision about when and how to use this new tool.

One important consideration is how remaining funds will be handled upon the account holder’s death. Federal law provides that, after outstanding qualified disability expenses have been paid, Medicaid *may* claim remuneration for services rendered since the account was opened. That includes both medical and waiver services, such as community-based residential programs.

This is similar to the Medicaid payback that is *required* under federal law for first party special needs trusts (SNTs) and certain pooled SNTs, both funded with resources belonging to the beneficiary.

While third party SNTs, which hold contributions from anyone *other* than the beneficiary, are not subject to a Medicaid payback, the source of ABLE funds makes no difference.

### **State Discretion**

It is theoretically possible that a particular state’s Medicaid program will elect not to seek payback recovery from ABLE account holders *who are residents of that state*. When considering which ABLE program to select, individuals should research the payback situation in the state(s) in which they receive Medicaid services. Bear in mind that if an ABLE account is set up in a state that elects not to seek payback recovery from resident account holders, a lien will likely be applied if the account holder moves to another state.

### **ABLE Account Tied to Third Party SNT**

One strategy to consider is establishing a third party SNT that is tied to and funds an ABLE account, as needed. This minimizes the possibility of a lien, while taking advantage of the flexibility that ABLE affords account holders and its housing benefit for SSI users. Unlike SNTs, ABLE accounts can be used to pay housing expenses without affecting SSI benefits.