

Secretary of State
**CERTIFICATE AND ORDER FOR FILING TEMPORARY ADMINISTRATIVE RULES
and
STATEMENT OF NEED AND JUSTIFICATION**

I certify that the attached copies are true, full and correct copies of the TEMPORARY Rule(s) adopted on June 30, 2016 by the

Department of Human Services, Office of Self-Sufficiency Programs			461
Agency and Division			Chapter Number
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to become effective July 1, 2016 through December 27, 2016.*

**Temporary rules are effective for a maximum of 180 days including the effective date.*

Rule Caption: Adopting rules relating to Achieving a Better Life Experience (ABLE) accounts

In the Matter of: *The temporary adoption of OAR 461-145-0000 relating to Achieving a Better Life Experience (ABLE) accounts*

ADOPT: 461-145-0000

ORS 409.050, 411.060, 411.070, 411.404, 411.816, 412.049

Stat. Auth.

Other Auth.

ORS 409.050, 411.060, 411.070, 411.404, 411.816, 412.049

Stats. Implemented

Rule Summary

OAR 461-145-0000 about Achieving a Better Life Experience (ABLE) Act accounts is being adopted to comply with the Achieving a Better Life Experience (ABLE) Act of 2014 and SB 777 by excluding funds held in an ABLE Act account from eligibility determination for DHS assistance programs. Disbursements from such accounts are excluded as income so long as such payments are consistent with the definition of Qualified Disability Expenses (QDEs) as outlined in the ABLE Act and SB 777.

Need for the Rules

OAR 461-145-0000 needs to be adopted to comply with the Achieving a Better Life Experience (ABLE) Act of 2014 and SB 777 by excluding funds held in an ABLE Act account from eligibility determination for DHS assistance programs. The rule adoption allows disbursements from such accounts to be excluded as income so long as such payments are consistent with the definition of Qualified Disability Expenses (QDEs) as outlined in the ABLE Act and SB 777.

Documents Relied Upon

1. P.L. 113-295 located at: <http://uscode.house.gov/statviewer.htm?volume=128&page=4063>;
2. 26 U.S.C. 529A located at:
[http://uscode.house.gov/view.xhtml?req=%28title:26%20section:529A%20edition:prelim%29](http://uscode.house.gov/view.xhtml?req=%28title:26%20section:529A%20edition:prelim%29;);
3. SSA Program Operations Manual System (POMS) SI 01130.740 located at:
<https://secure.ssa.gov/apps10/poms.nsf/lnx/0501130740>;
4. SB 777 (2015), available from DHS Hearings and Rules Unit, 500 Summer Street NE E48, Salem, Oregon 97301.

Justification of Temporary Rules

The Department finds that failure to act promptly by amending OAR 461-145-0000 will result in serious prejudice to the public interest, the Department, and agency clients. The Department needs to proceed by temporary rule because funds in ABLE Act accounts in other states may be used erroneously by DHS staff in determining eligibility and calculating benefit levels for public assistance programs in Oregon. If the Department does not act quickly, agency clients may not have benefits calculated properly because money held in ABLE Act accounts will not be used to determine eligibility for public assistance benefits. Agency staff who are unaware of this law, may inaccurately calculate benefit eligibility, which could lead to Department staff having to write administrative underissuances to clients who have wrongly had their ABLE Act resources used to lower or eliminate their benefits. Enacting these rules immediately will allow Department staff to know how to properly account for ABLE Act accounts resources and prevent clients having benefits calculated in an improper manner.

THIS IS A NEW RULE

- (1) For all programs, funds held in ABLE Act accounts are excluded as resources.

- (2) For all programs, monies withdrawn from ABLE Act accounts are excluded as income 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.

Stat. Auth.: ORS 409.050, 411.060, 411.070, 411.404, 411.816, 412.049

Stats. Implemented: ORS 409.050, 411.060, 411.070, 411.404, 411.816, 412.049