

ND PROTECTION & ADVOCACY PROJECT

Achieving a Better Life Experience (ABLE) Plans



ABLE savings accounts are for qualifying individuals with disabilities and their families. Here are account opening tips.

OPENING AN ABLE ACCOUNT

Each state has its own ABLE laws

Each state has its own laws and regulations regarding ABLE accounts. Some states allow out-of-state residents to open accounts and some don't. North Dakota, as of November 2021, is one of four states without its own ABLE Plan. The [National Resource Center](#) has a tool where you can research individual state plans and compare up to three state plans at the same time.

Many states have ABLE Plan or Program administrators

Plan or Program administrators often handle day-to-day program operations. Some states have entered into alliances or agreements with other states. See [National ABLE Alliance](#) for more information.

Who are ABLE accounts for?

Accounts may only be established for an "eligible individual". Eligible individuals are those who:

- receive benefits under title II or XVI of the Social Security Act based on blindness or disability or whose entitlement to such benefits under title XVI has been suspended solely due to excess income or resources, provided that such blindness or disability occurred before the date on which the individual attained age 26 (and, for this purpose, an individual is deemed to attain age 26 on his or her 26th birthday); or
- are the subject of a disability certification filed with the Secretary of the Treasury/delegate for that taxable year.

How does an eligible individual open an account?

The eligible individual can:

- establish the account by themselves,
- select someone else to establish the account,
- or if the eligible individual (minor or adult) is unable to establish his or her own ABLE account, it may be established on behalf of the eligible individual by the individual's power of attorney, or if none, by the individual's parent or legal guardian. **Parents who are also guardians can check state Plan Disclosure documents to determine whether to open the account as a parent or as a guardian.**

Who may establish an ABLE account

New IRS guidance allows states to adopt a hierarchy of individuals with authority to establish ABLE accounts for eligible individuals who are unable to do so for themselves. As of December 2021, four states – OH, VA, MA, CA* – have adopted that hierarchy. The hierarchy of preference is, in this order:

- Power of attorney
- If none, conservator or legal guardian
- Spouse
- Parent
- Sibling
- Grandparent
- Representative payee appointed by the SSA

Documentation of authority to open account

New IRS guidance allows for qualified ABLE programs to accept a certification, made under penalty of perjury, from the person seeking to establish the ABLE account as a basis for that person's authority to establish the account, and that there is no person with a higher priority within the hierarchy. As of December 1, 2021, Ohio, Virginia, & California have this procedure.

Guardianship vs. Conservatorship

Look to the applicable state law definitions of guardianship and conservatorship, as well as descriptions of duties and responsibilities.

Why the differences?

States have until November 2022 to bring their ABLE Plans into compliance with the federal hierarchy of authority for Plan establishment. Additionally, state plans may elect to allow for certification of that authority under penalty of perjury



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If you need this handout in an alternative format, please contact the Protection & Advocacy Project.

ABLE Plans Open to North Dakota Residents (as of 12.1.2021)

Abbreviations

ALR – Authorized Legal Representative

EI – Eligible Individual

PSA – Person with Signature Authority

AI – Authorized Individual

POA – Power of Attorney

LG – Legal Guardian

Terminology varies from state to state, see state plan disclosure documents for definitions.

State	Program/Plan Administrator	Who can open account on behalf of an Eligible Individual?	Proof of Financial Authority required?
Alabama	Sumday	ALR – POA, parent, LG, conservator	Proof does not appear to be required
Alaska	Ascensus	AI – POA, if none, parent, or LG	Yes (proof of financial authority)
California	TIAA-CREF	ALR – hierarchy (in order): POA, conservator, guardian, (spouse), parent, (sibling, grandparent, SSA rep payee)	*Full hierarchy will be implemented after August 1, 2022. See Plan documents. Online certification of authority, subject to perjury.
Colorado	Ascensus	AI – parent or LG	Yes (birth cert. to show parentage, guardianship papers showing financial authority)
Connecticut	Ascensus	AI – parent or LG	Yes (birth cert. to show parentage, guardianship papers showing financial authority)
Delaware	Ascensus	AI – parent or LG	Yes (birth cert. to show parentage, guardianship papers showing financial authority)
District of Columbia	Ascensus	AI – parent or LG	Yes (birth cert. to show parentage, guardianship papers which show financial authority)
Hawaii	Sumday	ALR – parent or guardian	Proof does not appear to be required
Illinois	Ascensus	AI – parent or LG	Yes (birth cert. to show parentage, guardianship papers showing financial authority)
Indiana	Ascensus	AI – parent or LG	Yes (birth cert. to show parentage, guardianship papers showing financial authority)
Iowa	Ascensus	AI – parent or LG	Yes (birth cert. to show parentage, guardianship papers showing financial authority)
Kansas	Ascensus	AI – parent or LG	Yes (birth cert. to show parentage, guardianship papers showing financial authority)
Maryland	Sumday	ALR – power of attorney	Proof may be required, not stated in docs
Massachusetts	Fidelity	PSA – hierarchy (in order): POA, conservator, guardian, spouse, parent, sibling, grandparent, SSA rep payee	Online certification will be available by September 2022. See Plan documents.
Michigan	TSA Consult Group	Designated Representative – parent or LG (minor or person who lacks capacity)	Proof does not appear to be required
Minnesota	Ascensus	ALR – parent of LG *MN statute currently limits LG's to account establishment only and restricts account administration	Yes – guardian needs to show authority of at least property
Mississippi	Ascensus	AI – parent or LG	Yes (birth cert. to show parentage, guardianship papers)
Montana	Ascensus	AI – parent or LG	Yes (birth cert. to show parentage, guardianship papers showing financial authority)
Nebraska	Ascensus	AI – parent or LG	Proof does not appear to be required
Nevada	Ascensus	AI – parent or LG	Yes (birth cert. to show parentage, guardianship papers showing financial authority)
New Jersey	Ascensus	AI – parent or LG	Yes (birth cert. to show parentage, guardianship papers showing financial authority)
North Carolina	Ascensus	AI – parent or LG	Yes (birth cert. to show parentage, guardianship papers showing financial authority)
Ohio	Sumday	ALR – hierarchy (in order): POA, conservator, guardian, spouse, parent, sibling, grandparent, SSA rep payee	No – provide online certification of authority, subject to perjury
Oregon	Sumday	ALR – POA, parent, or LG	Proof does not appear to be required
Pennsylvania	Ascensus	AI – parent or LG, power of attorney	Yes (birth cert. to show parentage, guardianship papers showing financial authority)
Rhode Island	Ascensus	AI – parent or LG	Yes (birth cert. to show parentage, guardianship papers showing financial authority)
Virginia	PNC Bank	Authorized Representative – hierarchy (in order): POA, conservator, guardian, spouse, parent, sibling, or grandparent	No – provide online certification of authority, subject to perjury