

# 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 do not. North Dakota, as of October 1, 2022, 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 descriptions of duties and responsibilities. **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 October 1, 2022, nineteen states open to out-of-state residents 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 October 1, 2022, seventeen states have this procedure. \*Note: It is important to research a state’s plan as some plans may still require documentation as proof of legal authority.

#### 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.

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

ND PROTECTION & ADVOCACY PROJECT  
400 E. BROADWAY, SUITE 409  
BISMARCK, ND 58501  
1-800-472-2670 OR (701) 328-2950  
[www.ndpanda.org](http://www.ndpanda.org) [panda\\_intake@nd.gov](mailto:panda_intake@nd.gov)



## ABLE Plans Open to North Dakota Residents (as of October 1, 2022)

\*Plans vary from state to state, please refer to state Plan Disclosure documents to compare terms.

State	Program/Plan Administrator	Is the IRS Hierarchy adopted?	Proof of Financial Authority required? (documentation of legal authority)
<a href="#">Alabama</a>	Sumday	Yes	No - Online certification of authority, subject to perjury.
<a href="#">Alaska</a>	Ascensus	Yes	No - Online certification of authority, subject to perjury.
<a href="#">California</a>	TIAA-CREF	Yes	No - Online certification of authority, subject to perjury.
<a href="#">Colorado</a>	Ascensus	No	Yes
<a href="#">Connecticut</a>	Ascensus	No	Yes
<a href="#">Delaware</a>	Ascensus	Yes	No - Online certification of authority, subject to perjury.
<a href="#">District of Columbia</a>	Ascensus	Yes	No - Online certification of authority, subject to perjury.
<a href="#">Hawaii</a>	Sumday	Yes	No - Online certification of authority, subject to perjury.
<a href="#">Illinois</a>	Ascensus	No	Yes
<a href="#">Indiana</a>	Ascensus	Yes	No - Online certification of authority, subject to perjury.
<a href="#">Iowa</a>	Ascensus	Yes	No - Online certification of authority, subject to perjury.
<a href="#">Kansas</a>	Ascensus	Yes	Yes - Proof is required.
<a href="#">Maryland</a>	Sumday	No	Proof may be required.
<a href="#">Massachusetts</a>	Fidelity	Yes	Online certification will be available by September 2022. See Plan documents.
<a href="#">Michigan</a>	TSA Consult Group	Yes	No - Online certification of authority, subject to perjury.
<a href="#">Minnesota</a>	Ascensus	Yes *MN statute currently only allows guardians to establish an account, not administer an account	No - Online certification of authority, subject to perjury. If you select guardian you will need to also have a Power of Attorney to manage the account.
<a href="#">Mississippi</a>	Ascensus	Yes	No - Online certification of authority, subject to perjury.
<a href="#">Montana</a>	Ascensus	No	Yes
<a href="#">Nebraska</a>	Ascensus	No	Proof may be required.
<a href="#">Nevada</a>	Ascensus	Yes	No - Online certification of authority, subject to perjury.
<a href="#">New Jersey</a>	Ascensus	Yes	No - Online certification of authority, subject to perjury.
<a href="#">North Carolina</a>	Ascensus	No	Yes
<a href="#">Ohio</a>	Sumday	Yes	No – online certification of authority, subject to perjury.
<a href="#">Oregon</a>	Sumday	Yes	No - online certification of authority, subject to perjury.
<a href="#">Pennsylvania</a>	Ascensus	No	Yes
<a href="#">Rhode Island</a>	Ascensus	Yes	No - Online certification of authority, subject to perjury.
<a href="#">Virginia</a>	PNC Bank	Yes	No – online certification of authority, subject to perjury.