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FAMILY FINANCIAL MANAGEMENT

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ABLE Accounts: Achieving A Better Life Experience

By Marsha A. Goetting, Ph.D., CFP®, CFCS, Professor and Family Economics Specialist, MSU Extension

The Montana Legislature passed The **Achieving a Better Life Experience (ABLE) Act** in response to Congress passing an act by the same title. An **ABLE** is a savings account allowing persons with disabilities to save money without reducing their SSI, SNAP, HUD housing or Medicaid benefits. Federal law requires each state to establish policies and procedures.

What is an ABLE account?

An Achieving a Better Life Experience account, commonly called an **ABLE account**, is a savings account allowing a person with a disability to save money without risking a decrease in state and federal benefits. The person with a disability must have blindness as defined by the Social Security Act (SSA); **or** a medically-determined physical or mental impairment with marked severe functional limitation that has lasted, or is expected to last, at least 12 continuous months or result in death. A physician must certify the disability and the disability must have occurred before the individual became age 26.

This MontGuide answers typical questions Montanans have asked about ABLE accounts. The MontGuide includes regulations issued by the Internal Revenue Service (IRS) on October 1, 2020, and Administrative Rules released by the Montana Department of Revenue issued on January 16, 2021.

Why was the ABLE legislation passed?

The Montana Legislature passed the Achieving a Better Life Experience (ABLE) Act in response to Congress passing an act by the same name. The federal act required each state to establish its own ABLE account regulations.

Prior to ABLE legislation, individuals with a disability who received means-tested government benefits, such as Supplemental Security Income (SSI), Supplemental Nutrition Assistance Program (SNAP), HUD housing, and Medicaid, had no way to save a significant amount of money to meet their disability-related needs.

Because the application for various federal or state programs such as Medicaid, requires the completion of a means or resource test, any savings beyond \$2,000 held by an individual with a

disability could result in a reduction in benefits. This meant a small inheritance, an insurance payout, or even a relative's gift of money to buy assistive technology, such as a motorized scooter or wheelchair, could potentially diminish benefits to a person with a disability. The only way to prevent a decrease in benefits was for the person with a disability to spend the money down to \$2,000 or place the money in a special needs trust.

By establishing an ABLE account, persons with a disability can have savings beyond \$2,000 to improve their financial security. Persons with disabilities can use the money in the account to cover qualified expenses.

Who is eligible for an ABLE account?

An individual is eligible to establish an ABLE account if:

- The disability was present before the age of 26; **and**
- One of the following is true:
 - The person is eligible for SSI or SSDI because of a disability; **or**
 - The person experiences blindness as determined by the Social Security Act; **or**
 - The person can produce a written diagnosis of a disability from a licensed physician if requested.

A person with a disability does not have to provide proof of eligibility when opening an ABLE account. However, because an ABLE program may later require a proof of eligibility, an account holder should save a record of the diagnosis, the benefits verification letter, and any other relevant documents.

Who can set up an ABLE account?

The person with a disability is usually the one establishing an ABLE account. Alternatively, another person can establish and control an ABLE account for a beneficiary who is a minor child or an individual who is incapable of managing the account. This person has signature or signing authority and must be **ONE** of the following:

- an individual selected by the eligible disabled person;
- a legal guardian;

- a conservator;
- an agent acting under a financial power of attorney;
- a spouse;
- a parent;
- a stepparent;
- a sibling;
- a grandparent; or
- a representative payee for the eligible disabled person appointed by the Social Security Administration.

The owner of an ABLE account is also the beneficiary, regardless of whether someone else has signature authority over it. Contributions to an ABLE can also come from a first- or third-party Special/Supplemental Needs Trust (SNT).

What is the contribution limit for an ABLE account?

The maximum annual contribution to an ABLE account for all participating individuals, including family and friends, is \$15,000 in 2021. Thereafter, the contribution limit of \$15,000 will rise when the federal annual gift exemption increases. Each eligible disabled owner may have only **ONE** ABLE account.

Account owners who are employed may contribute above the \$15,000 annual contribution limit. The account holder may contribute an amount equal to their gross income but cannot exceed \$12,760 in 2021.

Example 1: Lucas earned \$16,500 during the year. The added amount eligible for contribution to his ABLE account is the maximum \$12,760. The amount Lucas deposits above the \$15,000 annual limit can only be contributions from his employment earnings. At the end of the year Lucas has a balance of \$27,060 in his ABLE account ($\$15,000 + 12,760 = \$27,760$).

However, an ABLE beneficiary **CANNOT** contribute an added amount from earnings if the employer contributed to any one of the following plans on the employee's behalf:

- 414(i) defined contribution plan;
- 403(b) annuity contract; or
- 457(b) eligible deferred compensation plan.

Individuals may make recurring contributions to an ABLE account. These are deposits of a specific amount made automatically into an ABLE account on a regular basis. For example, parents could set a recurring contribution of \$200 each month into their child's ABLE account. A disabled person could also direct regular deposits in an ABLE account from automatically-deposited paychecks. Recurring contributions cannot exceed \$15,000 annually.

Who may make tax deductible contributions to an ABLE account?

After an ABLE account has been set up, the individual with a disability may make tax deductible contributions directly into the ABLE account. While friends may contribute to another person's ABLE account, their contributions **are not tax-deductible** for Montana income tax purposes.

Contributions up to \$3,000 are deductible only at the state level, not at the federal level. Contributions are deductible if the account is owned by the taxpayer's spouse or the taxpayer's child or stepchild is a Montana resident. The following individuals who can receive a state tax deduction for up to \$3,000 annually of the amount contributed to the ABLE account include:

- the owner of the account;
- a spouse;
- a Montana resident child or stepchild;
- a parent;
- a step-parent;
- a grandparent; and
- a sibling of the account owner.

Example 2: Montana residents Wes and Linda have a daughter, Susie, with Down syndrome. They have opened an ABLE account for Susie with a deposit of \$15,000. They are depositing money for the eventual purchase of assistive technology for Susie not covered by their health insurance policy or Medicaid. Linda and Wes are filing a joint Montana income tax form. Montana regulations allow a state income deduction of \$3,000 for each taxpayer. Because Wes and Linda have taxable income above \$18,400, they have a 6.9 percent income tax rate. Even though they deposited \$15,000 in the ABLE account, only \$3,000 each for a total of \$6,000 is allowable as an income reduction on their tax return. Wes and Linda saved \$414 in Montana income taxes ($\$6,000 \times 0.069 = \414).

The first \$100,000 in an ABLE account is exempt from the SSI resource limit eligibility test with a limit of \$2,000. If the account balance goes over \$100,000, the SSI of the beneficiary becomes suspended, but not terminated. After the account drops below \$100,000, the SSI restores to the beneficiary. This suspension, however, has no effect on the ABLE account owner's eligibility for medical assistance through the Medicaid program.

While total deposits in the ABLE account may be less than \$100,000, investment growth over time could potentially cause the account to exceed the threshold. Careful monitoring of the balance is the responsibility of the account owner or the person who has signature authority. The limit in an ABLE account in Montana \$396,000.

If a 529 college savings plan exists for an eligible disabled person, could those funds transfer to an ABLÉ account?

Yes. If the beneficiary is the same individual on the ABLÉ account and the 529 College Savings plan, funds can transfer to an ABLÉ account without incurring any income tax or penalty. A transfer of funds from the 529 plan to the ABLÉ account is a roll-over, not a new contribution. The funds rolled over to an ABLÉ account from a 529 College Savings can exceed the annual contribution limit of \$15,000 for any given tax year.

Where may an individual open an ABLÉ account?

The federal ABLÉ Act allows each state to establish its own regulations for offering ABLÉ accounts and administering its plan. States also determine the investment options available in the plan. Montanans may open an ABLÉ account in other states accepting outside residents into their programs. A list of states with ABLÉ accounts is available from the ABLÉ National Resource Center <https://www.ablenrc.org/select-a-state-program>.

The Resource Center provides a chart that allows the user to compare features of state ABLÉ plans <https://www.ablenrc.org/compare-states>. The Resource Center does not endorse any ABLÉ program but provides comparison information to help potential ABLÉ owners determine which plan best fits their needs and priorities.

Where may I find information about Montana ABLÉ accounts?

Although federal law allows the establishment of ABLÉ accounts, states are authorized to set up and administer their program. Montana joined a multi-state consortium, National ABLÉ Alliance, to offer an ABLÉ member plan. The State of Montana authorizes the plan while the Montana Department of Public Health and Human Services (DPHHS) is the administrator. The Montana ABLÉ plan is here <https://savewithable.com/mt/home.html>.

Montana ABLÉ has a free service called Ugift® that allows friends and family to contribute directly into an ABLÉ plan in lieu of traditional gifting with checks. All gift contributions sent to an account owner plan via Ugift® are available to pay for disability-related expenses. ABLÉ account owners can get a Ugift® code that can be entered by family and friends to contribute at any time from UgiftABLE.com.

What factors should a Montana resident consider when deciding what plan to use for an ABLÉ account?

Listed below are potential questions the ABLÉ National Resource Center recommends an individual ask before opening an account with any ABLÉ state program.

OPENING AN ABLÉ ACCOUNT

- What proof will the ABLÉ program require of the disabled individual to show withdrawals from the account are qualified expenses?
- Is there a fee to open the ABLÉ account and, if so, what is the amount?
- Is there a minimum contribution to open an ABLÉ account?

ABLÉ ACCOUNT MAINTENANCE AND FEES

- Is there a required minimum contribution to keep the ABLÉ account active? If so, what is the amount?
- Are the fees on the ABLÉ account front-end or back-end loaded? (A front-end load is a commission or sales charge applied at the time of purchase for an investment. Back-end load means the plan assesses the fee when each investment sells.)
- What are the fees associated with management of an investment ABLÉ account fund?
- Are the fees reduced if the ABLÉ account owner does not make withdrawals for several years?
- Are there restrictions on how often the ABLÉ account owner can make withdrawals from the account?
- Are there minimum or maximum limits on withdrawals for an ABLÉ account?

INVESTMENT OPPORTUNITIES

- What investment options does the ABLÉ program offer?
- Are the options likely to meet the owner's needs for limiting risk with the growth of contributed dollars to the ABLÉ account?
- Are there options to increase income from invested dollars?
- What has been the performance history and rate of return of the investment fund?
- Does the plan provide for investment options with reduced fees if the ABLÉ account owner does not withdraw funds for more than a year? If so, what are they?
- How does an ABLÉ account owner learn about the current rate of return on funds invested?
- Does the ABLÉ program offer any benefits to help the owner save, contribute to the account, grow the account, and/or manage invested dollars? If yes, what are they?

- Is there a “debit card/purchasing card” available with the ABLE program? Are there added costs to activate or use this card?

What types of expenses are eligible for the account owner to pay from an ABLE account?

Withdrawals and distributions of earnings from an ABLE account are tax-free if the account owner uses the funds for **qualified disability-related expenses** (QDE). The term QDE includes basic living expenses. The Social Security Administration, for example, considers food as a QDE. QDE funds from an ABLE account can pay the following:

1. **Education:** tuition for preschool through postsecondary education, including higher education expenses; books; supplies; educational materials related to preschool and secondary education; tutoring; special education services.
2. **Housing:** purchase of a primary residence or an interest in a primary residence; mortgage payments; property taxes; home improvements and modifications; maintenance and repairs; rent; utility charges (heating fuel, gas, electricity, water, sewer, garbage removal); and homeowners and renter’s insurance.
3. **Transportation:** use of mass transit, the purchase or modification of vehicles, and moving expenses.
4. **Health and wellness:** premiums for health insurance; mental health counseling; medical, vision, and dental expenses; rehabilitation services; durable medical equipment; therapy; respite care; long-term services and supports; nutritional management; communication services and devices; and adaptive equipment.
5. **Financial management and administrative services:** funeral and burial expenses, monthly fee for ABLE accounts, and legal fees related to disability.
6. **Legal fees:** attorney fees for services related to the disability.
7. **Employment training and support:** classes, books, and supplies.
8. **Assistive technology:** adaptive computers, special wheelchair, and adaptive telephone.
9. **Personal support services:** personal assistance related to disability and psychosocial counseling.

Does an owner have to prove withdrawals from an ABLE account are for qualified disability expenses?

No, not at the time of withdrawal. But an account owner should keep receipts as proof of an eligible expense should the IRS or the Montana Department of Revenue audit the ABLE account. The plan reports to the IRS and to the Social Security Administration the total amount and dates of withdrawals from an ABLE account on an annual basis. Therefore, the account

owner or the person with signature authority should keep detailed records of deposits and withdrawals to compare with the amounts reported to the IRS.

What happens if an owner made a withdrawal from an ABLE account, but did not use the money for qualified disability expenses?

If an account owner made a withdrawal that was not for qualified disability expenses, the money is income to the owner at the state level in the year withdrawn. Montana has imposed a recapture tax on the account owner at the highest tax rate, 6.9 percent in 2021. The recapture tax applies to the portion of the withdrawal deducted for Montana tax purposes.

What happens to funds in an ABLE account after the death of the owner?

All ABLE accounts have a **Medicaid pay-back provision** upon the death of the owner. Federal law, however, authorizes state agencies to seek reimbursement for Medicaid services the account owner had received since establishment of the account if the amount is beyond \$100,000. In other words, **the first \$100,000 in an ABLE account is exempt from the Medicaid estate recovery**. However, all outstanding qualified disability expenses, including reasonable burial costs, have priority over Medicaid claims.

After the estate reimburses Medicaid, any assets remaining in the ABLE account up to \$100,000 pass to the estate of the account owner. The provisions in the account owner’s written will determine who receives the assets in the ABLE account. If the individual does not have a will, the remaining assets pass to heirs under Montana’s intestacy statutes, described in MSU Extension MontGuide, [Dying without a Will in Montana: Who Receives Your Property](#).

How is an ABLE account different than a Special/Supplemental Needs Trust (SNT) or a Pooled Trust?

An ABLE account provides more choices and control for the beneficiary and family/friends than either a SNT or a Pooled Trust. The cost of establishing an ABLE account is usually considerably less than either a SNT or a Pooled Trust.

For many individuals with a disability, an ABLE account will be a significant and viable option in addition to, rather than instead of, a first- or third-party SNT. An attorney whose practice specializes in Montana SNTs can address what plan is best for specific situations.

What should an employer know about ABLE accounts?

The ABLE National Resource Center provides information for employers who want to share and contribute to the financial security of employees impacted by the additional expenses associated with having a disability. The Center provides an ABLE Employer Toolkit available for download here <https://www.ablencr.org/employers/employer-toolkit/#>.

Summary

With an ABLE account, a person can save for qualified disability expenses without the loss or reduction of eligibility for assistance programs, such as SSI and Medicaid.

- The earnings on an ABLE account grow tax-free. Withdrawals are tax free, if used for qualified disability expenses.
- Montana allows for a reduction in taxable income of \$3,000 annually for contributions to an ABLE account by the person with disabilities. This also applies to a spouse; a child or stepchild (if a resident of Montana); a parent; a step-parent; a grandparent; or a sibling of the account owner.
- The annual contribution limit is the same as the federal gift tax exemption, \$15,000 in 2021.
- Under the federal law, the person with a disability who establishes an ABLE account must have medical documentation by a licensed physician reflecting the onset of a disability prior to age 26.

References

Achieving a Better Life Experience (ABLE) Accounts, Social Security Program Operations Manual System. Effective Dates: 03/13/2020 to present. <https://secure.ssa.gov/poms.nsf/lnx/0501130740>

ABLE National Resource Center. <http://ablencr.org>

Montana ABLE, National ABLE Alliance Member. <https://savewithable.com/mt/home.html>

Montana Department of Public Health and Human Services. <http://dphhs.mt.gov/dsd/developmentaldisabilities/ABLE>

Acknowledgement

Representatives of the following reviewed this MontGuide. They recommend its reading by individuals interested in learning how ABLE accounts could meet the savings needs for a person with a disability.

- Business, Estates, Trusts, Tax and Real Property Section (BETTR), State Bar of Montana
- Montana Department of Revenue
- Montana Legislative ABLE Oversight Committee
- Montana Financial Education Coalition

The author also wishes to extend appreciation to parents of children with disabilities who reviewed drafts of the MontGuide and made many worthwhile suggestions.

Disclaimer

The information in this MontGuide is for educational purposes only. MSU Extension does not endorse any ABLE plan.

