



# Montana ABLÉ Accounts: Achieving a Better Life Experience

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The Achieving a Better Life Experience (ABLE) Act was enacted by the Montana Legislature in response to the United States Congress passing an act by the same name. An ABLÉ account is a savings account allowing persons with disabilities to save money without losing their SSI or Medicaid benefits.

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## What is an ABLÉ account?

An ABLÉ account is a savings account allowing a person with disabilities to save money without jeopardizing his/her Supplemental Security Income (SSI) and Medicaid benefits.

An eligible person is an individual who became disabled before his/her 26th birthday. An individual can have only one ABLÉ account. The owner of the account is the person with a disability, also known as the beneficiary of the assets in the account (cash, mutual fund, or other type of investment).

The purpose of this MontGuide is to answer typical questions about Montana ABLÉ accounts.

## Does Federal or State Law authorize ABLÉ accounts?

The Achieving a Better Life Experience (ABLE) Act was enacted by the Montana Legislature in response to the United States Congress passing an act by the same name. The purpose of the Montana act is:

"To encourage and assist individuals and families in saving private funds for the purpose of supporting individuals with disabilities to maintain health, independence and quality of life, and to provide secure funding for disability-related expenses on behalf of designated beneficiaries with disabilities that will supplement, but not supplant (replace), benefits provided by private insurance, federal and state medical and disability insurance, and beneficiary's employment and other sources."

## Why were the ABLÉ Acts passed?

Prior to the ABLÉ acts, many individuals with a disability who received means-tested government benefits, such as Supplemental Security Income (SSI) and Medicaid, had no means to put aside any significant amount of money to meet their disability-related needs.

Because the application for federal or state benefits requires the completion of a means or resource test, any savings held by an individual with a disability (beyond \$2,000) caused him/her to become ineligible for benefits. This meant a small inheritance, insurance payout, or even a gift to buy assistive technology could potentially strip a person with a disability of all of his/her benefits, unless the funds were spent or placed in a special needs trust managed by someone else.

By establishing an ABLÉ account, persons with disabilities can have savings beyond \$2,000 to provide them with increased financial stability and to cover qualified expenses not provided by state or federal benefits.

## Who is eligible for a Montana ABLÉ account?

An individual must meet four requirements to be eligible for a Montana ABLÉ Account:

1. The owner (beneficiary) must have medical documentation of the onset of a disability before the age of 26;
2. The disability will last, or has lasted, at least a year;

3. The owner/beneficiary lives in the state of Montana; and
4. One of the following must exist for the owner/beneficiary with a disability:
  - eligible for Supplemental Security Income (SSI) because of a disability;
  - experiencing blindness as determined by the Social Security Administration; or
  - can produce a signed diagnosis form (if requested) by a licensed physician reflecting the onset of a disability prior to age 26.

Proof of eligibility is not required to open an ABLE account. However, an individual should maintain a record of the diagnosis, benefits verification letter, and any other relevant document about his/her disability, should proof of eligibility be required at a later time.

### **How much money can be contributed to a Montana ABLE account?**

The maximum annual amount in 2018 that can be contributed to an ABLE account is \$15,000. Thereafter, the contribution amount will be increased when the federal annual gift exemption amount is increased.

The first \$100,000 in an ABLE account is exempt from the SSI individual resource limit eligibility test. If the account has over \$100,000, the SSI of the disabled beneficiary will be suspended, but not terminated. Once the amount drops below \$100,000, SSI is reinstated. This suspension has no effect on the owner's eligibility for medical assistance through the Medicaid program.

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

### **Where can a Montana ABLE account be established?**

The multi-state consortium makes ABLE accounts possible for Montana residents with a disability. For information about the member plan and to request a disclosure document or to open an account, call 888-609-3461 or visit <https://savewithable.com/mt/home.html>. An initial minimum contribution of \$25 is required to open a Montana ABLE account.

Montanans cannot open accounts in other states that provide ABLE accounts to non-residents and receive a tax-deduction because a contract with Montana has not been established with any other state. A list of states with ABLE accounts is available from the ABLE National Resource Center: [www.ablenrc.org/about/what-are-able-accounts](http://www.ablenrc.org/about/what-are-able-accounts).

If you would like to compare the Montana ABLE account with another state's ABLE go to [www.ablenrc.org/state\\_compare](http://www.ablenrc.org/state_compare). The ABLE National Resource Center has also created a chart comparing 14 features of the state ABLE programs. A person can click up to three states he/she wants to compare. The answers to the 14 questions appear quickly. The Resource Center does not endorse any ABLE program, but provides information to help potential ABLE account owners determine which program best fits their needs and priorities.

### **Who can set up and withdraw from a Montana ABLE account?**

A person with a disability can open the account for him/herself. Alternatively, a person with signature authority can establish and control an ABLE account for a beneficiary who is a minor child or an individual who is otherwise incapable of managing the account. The person with signature authority must be the parent, legal guardian or conservator of the disabled person, or an agent acting under a financial power of attorney.

For Supplemental Security Income (SSI) purposes, the beneficiary is considered to be the owner of an ABLE account, regardless of whether someone else has signature authority over it.

After an ABLÉ account has been set up, the individual with a disability can make contributions directly into the ABLÉ account. Each beneficiary may have only ONE account.

Recurring contributions are allowed. These are deposits of a specific amount made automatically into an ABLÉ account on a regular basis. For example, parents could set a recurring contribution of \$100 each month into their child's ABLÉ account. The disabled person could also direct regular deposits in an ABLÉ account from automatically-deposited paychecks.

### **Who can make contributions to a Montana ABLÉ account?**

Those who can make contributions to a Montana ABLÉ account and receive a tax deduction include the owner of the account, his/her spouse, parents or step-parents. While friends and relatives may contribute to a Montana ABLÉ account, the contribution is not tax-deductible. Contributions may also be made from the individual's Special or Supplemental Needs Trust. Distributions of earnings from an ABLÉ account are "tax-free," as long as the funds are used for qualified expenses. Contributions can also be made from 529 College Savings plans and employment earnings of the ABLÉ account holder.

**529 College Savings Plans.** If the beneficiary is the same individual on both accounts (or a family member of the 529 College Savings account beneficiary as defined in federal law), funds in a 529 college savings account can be transferred to a Montana ABLÉ account without incurring any tax or penalty. The funds from a 529 plan are considered a roll-over, not a new contribution.

The amount of funds rolled over from the 529 College Savings account to a Montana ABLÉ account are subject to the annual contribution limit, and thus capped at \$15,000 for any given tax year.

**ABLE to Work Act.** ABLÉ account owners who are employed may contribute above the \$15,000 annual contribution limit up to an additional \$12,060 depending on the gross income of the

account owner. For example, if the account holder earned \$6,500, the additional amount he/she can contribute to an ABLÉ account is limited to \$6,500. The amount above the \$15,000 annual limit is limited to contributions made specifically as a result of the account owner's employment earnings.

### **Are contributions to a Montana ABLÉ account deductible for income tax purposes?**

Montana allows a state income deduction of up to \$3,000 annually for a Montana contributor to a Montana ABLÉ account if he/she is the person with a disability, his/her spouse or his/her parents or step-parents. Contributions are deductible only at the state level. The \$3,000 income deduction is **NOT** allowed on a federal income tax return.

**Example 1:** Montana residents Wes and Linda have a daughter, Susie, with Down syndrome. They have opened an ABLÉ account for Susie with a deposit of \$15,000. Montana law allows a state income deduction of \$3,000 each (\$6,000 total). Wes and Linda save \$414 in Montana income taxes ( $\$6,000 \times 6.9\% = \$414$ ). Wes and Linda are providing funds for Susie to purchase assistive technology not covered by health insurance or Medicaid while saving on Montana income taxes at the same time.

### **What types of expenses can be paid from a Montana ABLÉ account?**

Qualified disability expenses not covered by insurance or Medicaid that can be paid from an ABLÉ account include, but are not limited to:

- 1. Education:** tuition for preschool thru post-secondary education, including higher education expenses; books; supplies; educational materials related to preschool and secondary education; tutor; 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; medical, vision, and dental expenses; rehabilitation services; durable medical equipment; therapy; respite care; long-term services and supports; nutritional management; communication services and devices; adaptive equipment.
- 5. Financial management and administrative services and Legal Fees:** funeral and burial expenses; monthly fee for ABLE accounts; legal fees related to disability.
- 6. Employment training and support:** classes; books, and supplies.
- 7. Assistive technology:** adaptive computers; special wheelchair; adaptive telephone.
- 8. Personal support services:** personal assistance related to disability; psychosocial counseling.

### What types of investments are allowed within a Montana ABLE account?

The investment options for the Montana ABLE account include the following: mutual funds; exchange-traded funds (those tracking an index which is a measure of the changes in a portfolio of stocks representing a portion of the overall market); checking and savings accounts; certificates of deposit; and other investments such as municipal securities.

Investment objectives, risks, charges, expenses, and other important information about the member plan for Montana ABLE accounts are available at <https://savewithable.com/mt>. Investment returns will vary depending upon the performance of the investment options chosen. Depending on market conditions, the owner of an ABLE account could lose all or a portion of his/her money.

The National ABLE Alliance also provides an FDIC-insured checking account [www.53.com/content/fifth-third/en.html](http://www.53.com/content/fifth-third/en.html). The checking account option has no monthly service charge if the owner maintains an average monthly balance of \$250 or more during a statement cycle, or if the account owner signs up for paperless statements. Otherwise, the owner is charged \$2 per month (\$24 per year). There are no overdraft or non-sufficient funds fees for a Montana ABLE account in an FDIC-insured checking account.

The owner of the Montana ABLE account is permitted to change the way his/her money is invested in an existing account two times per year. New and future contributions can be changed by the owner of the account at any time. Earnings grow tax-free and withdrawals can be taken tax-free if used for qualified expenses.

### What are the costs of establishing and maintaining a Montana ABLE account?

The annualized percentage investment costs for the Montana ABLE investment option ranges from 0.34 percent to 0.38 percent, depending on which investment option is selected from varying percentages of stocks, bonds, and cash. (See Table 1).

**TABLE 1:** Investment Options from Aggressive to Conservative

Investment Options	Stocks	Bonds	Cash
Aggressive	90%	10%	0
Moderately Aggressive	75%	25%	0
Growth	60%	40%	0
Moderate	45%	55%	0
Moderately Conservative	30%	25%	45%
Conservative	10%	30%	60%

The conservative option has the least amount of investment charges (0.34%). However, each option is also charged an account fee of \$40 assessed on a quarterly basis in the amount of \$10 against the then-current account balance. The Montana plan also charges an annual paper delivery fee of \$15 assessed at \$3.75 per calendar quarter. This fee is waived for accounts that set up electronic delivery

of statements and confirmations of contributions and withdrawals.

**Example 2:** Diane and Bill opened an ABLE account for their daughter, Julie, with a contribution of \$15,000. They selected the conservative investment option that has an annual charge of 0.34 percent (\$51). In addition, they were charged a \$40 account fee assessed on a quarterly basis. They were also charged a \$15 paper delivery fee for delivery of statement and confirmations of contributions and withdrawals assessed at \$3.75 each calendar quarter because they don't have a computer or internet service. The total cost for the ABLE account annually is \$106 ( $\$51 + \$40 + 15 = \$106$ ). Or, expressed another way, the ABLE account would need to earn 0.70% to cover the costs of their investment in Montana ABLE.

### **How are withdrawals made from a Montana ABLE account?**

Withdrawals are to be made **only** for qualified eligible expenses of the designated beneficiary (the person with a disability). The Montana member plan with Ascensus College Saving, LLC, indicates it will send a withdrawal by one of the methods selected below:

- By check to the account owner or to a third party,
- Electronically to a personal bank account on file with the member plan, or
- Using a debit card if the checking account option is selected.
- Pre-scheduled withdrawals can be set up to send money automatically to an individual or company (for example, a mortgage company or landlord).
- A systematic withdrawal is one way for the owner of the ABLE account to make automatic payments each month. The owner can make systematic withdrawals to a bank or credit union listed on the ABLE account, by mail to the owner's address, or to a third party, such as a landlord for a rental payment for an apartment.

### **Does a beneficiary have to prove withdrawals from a Montana ABLE account are for qualified disability expenses?**

No, not at the time of withdrawal. But receipts should be kept in case of an audit by the Montana Department of Revenue. The company managing a Montana ABLE account reports annually the total amount and dates of withdrawals to the Internal Revenue Service and to the Social Security Administration. Therefore, the account owner or the person with signature authority must keep detailed records of deposits and withdrawals for comparison of records with amounts reported to the IRS.

### **What if a withdrawal from a Montana ABLE account is NOT used for qualified expenses?**

If a withdrawal is not used for qualified expenses, the withdrawal is treated as income at the state level. In addition, a recapture tax at the highest marginal tax rate, 6.9% in 2018, applies in Montana to the portion of the withdrawal that was deducted for Montana tax purposes. There is not a Montana penalty for the non-eligible withdrawal. However, there is a federal penalty of 10% of the amount of federal tax resulting from the additional income, but it is not collected by Montana.

### **What happens to funds in a Montana ABLE account after the death of the owner?**

All ABLE accounts have a Medicaid pay-back provision upon the death of the beneficiary. Federal law authorizes state Medicaid agencies to seek reimbursement for the Medicaid services a beneficiary has received since the ABLE account was established. This reimbursement requirement includes ABLE account funding provided by third parties, such as family members.

However, a special needs trust funded with third party funds is not subject to reimbursement by Medicaid. All outstanding qualified disability expenses including reasonable burial costs are given priority over Medicaid claims.

Any assets remaining in the ABLE account after repayments are made to Medicaid pass to the estate of the account owner and are distributed under the provisions in the individual's written will. If no will exists, the remaining assets pass under Montana's intestacy statutes that list priority of persons eligible to inherit.

### **What factors should a Montana resident consider when deciding where to establish an ABLE account?**

If a resident with a disability decides not to enroll in the Montana ABLE Member Plan, he/she may participate in any state program accepting enrollees but he/she will not be allowed the \$3,000 deduction on his/her Montana return. Only **ONE** ABLE account is allowed per person with total contributions of \$15,000 annually in 2018. Listed below are potential questions the ABLE National Resource Center recommends an individual ask before opening an ABLE account with any ABLE provider.

#### ***Opening an ABLE Account***

- What proof will the ABLE program require to document when the account is opened and to show disbursements are qualified expenses?
- Is there a fee to open an ABLE account and, if so, what is the amount?
- Is there a minimum contribution to open an ABLE account?

#### ***ABLE Account Maintenance and Fees***

- Is there a required minimum contribution to keep the ABLE account active? If so, what is the amount?
- Are the fees 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 fee is charged when the investment is sold.)
- What are the fees associated with management of the investment ABLE fund?
- Are the fees reduced if the funds are not withdrawn for several years?

- Are there restrictions about how often withdrawals can be made from the ABLE account?
- Are there minimum or maximum limits on withdrawals?

#### ***Investment Opportunities***

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

### **How is a Montana ABLE account different than a special/supplemental needs trust or a pooled trust?**

An ABLE account provides more choices and control for the beneficiary and family/friends than either a Special/Supplemental Needs Trust or a Pooled Trust. The cost of establishing an ABLE account will likely be considerably less than either a Special/Supplemental Needs Trust or a Pooled Trust.

With an ABLE account, owners with a disability have the ability to control their funds for qualified disability expenses and, if circumstances change, still have other options available to them.

Determining which option is the most appropriate will depend upon an individual's situation.

For many individuals who are disabled, an ABLÉ account will be a significant and viable option in addition to, rather than instead of, a Special/Supplemental Needs Trust. An attorney whose practice specializes in Montana Special Needs Trusts can address what is best for specific situations.

### **What agency has oversight responsibilities for Montana ABLÉ accounts?**

Although federal law allows ABLÉ accounts, states were authorized to actually set up and administer the program. Montana joined a multi-state consortium, National ABLÉ Alliance, to offer an ABLÉ member plan.

The plan is sponsored by the State of Montana and administered by the Montana Department of Public Health and Human Services (DPHHS). Ascensus College Savings, LLC, the program manager and its affiliates, are responsible for the day-to-day operations, including investment advisory, record keeping, and administrative services.

### **If I do not have Internet services, how do I access information about a Montana ABLÉ account?**

#### **Phone:**

*For all general questions, call:*

(888) 609-3461,

Monday-Friday, 8a.m. - 5p.m. MST

*For questions specific to the checking option, call:*

(888) 516-2375.

Monday-Friday, 7a.m. - 8p.m. EST

Saturday 8:30a.m. - 5p.m. EST

#### **Regular mail:**

Montana ABLÉ

P. O. Box 219234

Kansas City, MO 64121-9781

### **Summary**

With a Montana ABLÉ account, a person with disabilities can save for qualified disability expenses without the loss of eligibility for certain assistance programs, such as SSI and Medicaid.

- The earnings on Montana ABLÉ account investments grow tax-free and withdrawals are tax-free, if used for qualified disability expenses.
- Montana allows for a reduction in income of up to \$3,000 annually for the person with disabilities, his/her spouse, or his/her parents or step parents, who contribute to an ABLÉ account.
- The annual contribution limit in 2018 for an ABLÉ account is \$15,000, adjusted periodically for inflation.
- Under the federal law, the person with a disability who establishes an ABLÉ account must have medical documentation by a licensed physician reflecting the onset of a disability prior to age 26.

### **References**

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*Congress Passes ABLÉ Act: Major Victory for Persons with Disabilities and their families*. <http://dphhs.mt.gov/Portals/85/dsd/documents/DDP/ABLEActCommittee/NDINewsBriefABLEAct.pdf>. Wednesday, December 17, 2014.

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

This MontGuide has been reviewed by representatives of the following organizations who recommend its reading by individuals interested in learning how Montana ABLE accounts could meet the savings needs for persons with a disability.

- Business, Estates, Trusts, Tax and Real Property Section (BETTR): State Bar of Montana
- Developmental Disabilities Program (DDP): Department of Public Health and Human Services
- Elderly Assistance Committee: State Bar of Montana
- Montana Department of Revenue
- Montana Legislative ABLE Oversight Committee
- Montana Society of Certified Public Accountants
- National Association of Insurance and Financial Advisors – Montana Chapter

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

## Disclaimer

The information in this MontGuide is for educational purposes only. References to specific ABLE accounts are made with the understanding no endorsement is implied and no discrimination against other ABLE accounts is intended.



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