

# memo

To:  
From: Mandy Dendy  
Date: November 3, 2021  
Re: ABLE Accounts (Achieving a Better Life Experience)

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**Issues:** Whether a guardianship or conservatorship is needed or required to establish an ABLE account

North Dakota Century Code guardianship language using the word expiration and language appearing on form guardianship papers listing a date upon which the guardianship/docs “expire” and whether this language creates barriers in establishing accounts in other states

Which states can North Dakotans with guardianships establish ABLE accounts?

## Findings

Each state sets its own program requirements published through a Plan or Program Disclosure available on the respective state’s website. There is a national state treasurer’s association group as the state treasurers are often the plan administrators who then contract with a plan or program administrator, such as Ascensus.

Federal law defines who is an “eligible individual” for purposes of ABLE accounts. It does not define who else may establish the accounts. That guidance is provided by the IRS in the form of regulations. The most recent regulations were issued in November 2020.

Those regulations address establishment of an ABLE account and signature authority. At page 74037 of the Federal Register / Vol. 85, No. 224 / Thursday, November 19, 2020 / Rules and Regulations, §1.529A2(c)(1)(i)(C), it states that if an eligible individual (whether a minor or adult) is unable to establish his or her own ABLE account, an ABLE account may be established on their behalf by the eligible individual’s agent under a power of attorney, or if none, by a conservator or legal guardian, spouse, parent, sibling, grandparent of the eligible individual, or a representative payee appointed for the eligible individual by the SSA, in that order. This is referred to as the hierarchy.

*(c) Establishment of an ABLE account and signature authority—(1) Establishment of the ABLE account—(i) In general. A qualified ABLE program must provide that an ABLE account may be established only for an eligible individual.*

*(A) The ABLE account may be established by the eligible individual;*

*(B) The ABLE account may be established by a person selected by the eligible individual; or*

*(C) If an eligible individual (whether a minor or adult) is unable to establish his or her own ABLE account, an ABLE account may be established on behalf of the eligible individual by the eligible individual’s agent under a power of attorney or, if none, by a conservator or legal guardian, spouse, parent, sibling, grandparent of the eligible individual, or a representative payee appointed for the eligible individual by the Social Security Administration (SSA), in that order.*

*(ii) Authority. A qualified ABLE program may accept a certification, made under penalties of perjury, from the person seeking to establish an ABLE account as to the basis for the person’s authority to establish the ABLE account, and that there is no other person with a higher priority, under paragraphs (c)(1)(i)(A), (B), and (C) of this section, to establish the ABLE account.*

Additionally, at (ii), the regulations allow for a qualified ABLÉ program to accept a certification, made under penalty of perjury, from the person seeking to establish the ABLÉ account, their authority to establish the account and that there is no other person with a higher priority in the hierarchy.

As of today, two states – Ohio and Virginia – have adopted the hierarchy in their plans. These states appear to only require online certification that the person applying for the account on behalf of an eligible individual has that appropriate authority.

The regulations do not differentiate between the parent of a minor and the parent of an adult. In fact, the guidance specifically states that there is no difference and so further comment on that is not necessary. Parentage status does not change once a child achieves legal majority.

**Research**

The attorney for the Protection and Advocacy Project in Bismarck conducted a 50-state analysis using the ABLÉ National Resource Center State Comparison tool and reviewed each state’s Plan Disclosure Documents, searching for who may open and administer accounts.

[ABLÉ National Resource Center State Comparison Tool](#) (has info re: program/plan administrator, whether the state accepts out-of-state residents, links to plan disclosure documents, and applicable laws)

Abbreviations in chart

ALR – Authorized Legal Representative

AI – Authorized Individual

EI – Eligible Individual

POA – Power of Attorney

PSA – Person with Signature Authority

LG – Legal Guardian

<b>States who allow out of State Residents to open ABLÉ accounts</b> (as of 11.3.2021)			
<b>State</b>	<b>Program/Plan Administrator</b>	<b>Who can open account on behalf of Eligible Individual?</b>	<b>Proof of Financial Authority required?</b>
<a href="#">Alabama</a>	Sumday?	ALR – POA, parent, LG, conservator	
<a href="#">Alaska</a>	Ascensus	AI – POA, if none parent or LG	
<a href="#">California</a>	TIAA-CREF	ALR – parent or LG	
<a href="#">Colorado</a>	Ascensus	AI – parent or LG	Yes (birth cert to show parentage, guardianship papers)
<a href="#">Connecticut</a>	Ascensus	AI – parent or LG	Yes (birth cert to show parentage, guardianship papers)

<a href="#">Delaware</a>	Ascensus	AI – parent or LG	Yes (birth cert to show parentage, guardianship papers)
<a href="#">District of Columbia</a>	Ascensus	AI – parent or LG	Yes (birth cert to show parentage, guardianship papers)
<a href="#">Hawaii</a>	Sumday	ALR – parent, guardian	
<a href="#">Illinois</a>	Ascensus	AI – parent or LG	Yes (birth cert to show parentage, guardianship papers)
<a href="#">Indiana</a>	Ascensus	AI – parent or LG	Yes (birth cert to show parentage, guardianship papers)
<a href="#">Iowa</a>	Ascensus	AI – parent or LG	Yes (birth cert to show parentage, guardianship papers)
<a href="#">Kansas</a>	Ascensus	AI – parent or LG	Yes (birth cert to show parentage, guardianship papers)
<a href="#">Maryland</a>	Sumday	ALR – parent of LG	Yes – guardian needs to show authority of at least property
<a href="#">Massachusetts</a>	Fidelity	PSA – parent or LG	
<a href="#">Michigan</a>	TSA Consult Group	Designated Representative – parent or LG (minor or person who lacks capacity)	
<a href="#">Mississippi</a>	Ascensus	AI – parent or LG	Yes (birth cert to show parentage, guardianship papers)
<a href="#">Montana</a>	Ascensus	AI – parent or LG	Yes (birth cert to show parentage, guardianship papers)
<a href="#">Nebraska</a>	Ascensus	AI – parent or LG	
<a href="#">Nevada</a>	Ascensus	AI – parent or LG	Yes (birth cert to show parentage, guardianship papers)
<a href="#">New Jersey</a>	Ascensus	AI – parent or LG	Yes (birth cert to show parentage, guardianship papers)
<a href="#">North Carolina</a>	Ascensus	AI – parent or LG	Yes (birth cert to show parentage, guardianship papers)
<a href="#">Ohio</a>	Sumday	ALR – hierarchy (in order): POA, conservator, guardian,	No – provide online “certification”

		spouse, parent, sibling, grandparent, SSA rep payee	
<a href="#">Oregon</a>	Sumday	ALR – POA, parent, or LG	
<a href="#">Pennsylvania</a>	Ascensus	AI – parent or LG	Yes (birth cert to show parentage, guardianship papers)
<a href="#">Rhode Island</a>	Ascensus	AI – parent or LG	Yes (birth cert to show parentage, guardianship papers)
<a href="#">Virginia</a>	PNC Bank	Authorized Representative – hierarchy (in order): POA, conservator, guardian, spouse, parent, sibling, or grandparent	No – provide online “certification”

### Applicable Statutes/Regulations

[26 USC 529A](#): Qualified ABLE programs. Stephen Beck, Jr., Achieving a Better Life Experience Act of 2014 [November 19, 2020, Guidance Under Section 529A IRS ABLE](#) (final regulations start at page 25) which states must adopt by November 21, 2022. These contain language regarding the hierarchy of priority for Authorized Individuals/Legal Representatives. Two States so far have adopted this – Virginia and Ohio.

### Additional Resource

National Association of State Treasurers (NAST) Achieving a Better Life Experience (ABLE) [website](#)

### [State ABLE Plan Contacts](#)

### Conclusion

A parent with legal guardianship of their child, minor or adult, is considered an authorized individual (or other like term) by all of the following listed ABLE account programs in this pdf and parents with guardianship should **apply for account establishment as parents and NOT as guardians**. Documentation showing parentage may need to be provided in states who have not adopted the new hierarchy from November 2020 IRS Guidance.

For situations where a guardian who is not the parent of an eligible individual who is seeking to open an ABLE account, it appears documentation must be provided or certified, that the legal guardian has authority over financial matters and providing documentation of that through guardianship papers should be sufficient. The states, currently Ohio and Virginia, who have adopted new hierarchy, do not require proof of documentation, but rather online certification which should facilitate the easiest account establishment for all parties seeking to open ABLE accounts. The hierarchy will need to be adopted by state plans by Nov. 21, 2022. Guardians should currently avoid establishing accounts in Minnesota.