



## **Achieving a Better Life Experience (ABLE) – How to Open an ABLE Account**

*The Voice is the e-mail newsletter of The Special Needs Alliance. This installment was written by Pacheco, California, Special Needs Alliance member [Stephen W. Dale](#) of The Dale Law Firm, PC. Steve is a disability rights advocate and attorney dedicated to providing quality estate planning. He is a frequent speaker on a variety of disability related topics across the country. Steve regularly teaches courses to the public, financial professionals, and other attorneys on special needs trusts and trust administration. Additionally, he serves as the trustee for the Golden State Pooled Trust. Steve offers numerous videos and handouts to the public and his colleagues at [www.achievingindependence.com](http://www.achievingindependence.com).*

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*The first ABLE programs have been launched in [18 states, as of March 1, 2017](#), and most of them welcome applicants from other states. Since ABLE accounts can be rolled over from one state to another, families throughout the U.S. can now begin exploring their options.*

*[ABLE accounts](#), which grow tax-free, are one way to set aside funds for disability-related expenses without affecting the beneficiary's eligibility for means-tested government programs like Supplemental Security Income (SSI) and Medicaid. They are available to individuals who meet the government's definition of "disability" prior to attaining 26 years of age. At the beneficiary's death, any remaining funds (whether first-party or third-party) must first be used to reimburse the applicable state's Medicaid program for covered expenses incurred since the creation of the account.*

*There are broad similarities among the ABLE programs, but many details differ, as will undoubtedly continue to be the case as additional programs launch. Interested families should carefully research the specifics, bearing in mind that the least expensive alternative may not be the one that best meets their long-term needs. This article addresses the basics of [how to establish an ABLE account](#).*

### **Who Can Open an ABLE Account?**

*An ABLE account can be opened by an individual with a disability, a parent of such individual, a guardian/conservator of the individual, or an agent designated through the individual's power of attorney. Regardless of who is responsible for managing the account, it may be advisable to consult a special needs attorney about establishing a power of attorney to avoid interruptions in signature authority during the term of the ABLE account.*

## **How to Sign Up**

To date, all of the ABLÉ programs have an online application process, with additional help available by phone or e-mail. The Nebraska program also provides a hard copy application for mail-in. This form must be used by guardians, conservators or agents designated through a power of attorney, who must supply evidence of their legal authority. Parents of a minor beneficiary can apply online.

## **Certification**

So far, Florida is the only state limiting eligibility for its ABLÉ program to state residents. Other requirements are federally mandated, and applicants are responsible for self-certifying that they meet them. In addition to having a disability with an onset date prior to the age of 26, the beneficiary must meet one of the following conditions:

- be receiving SSI or SSDI (Social Security Disability Insurance)
- have a letter from a licensed doctor certifying that the beneficiary meets Social Security's definition of disability
- have one of the Social Security Administration's [Compassionate Allowances Conditions](#)
- be blind.

Applicants are not required to forward the physician's certification to the state program but must be prepared to supply it if requested. Applicants will, however, need to provide the diagnosing doctor's name, address and date of diagnosis.

Florida offers an online [Eligibility Wizard](#), Ohio has an "[eligibility quiz](#)" and Tennessee has an [interactive guide](#) to help families determine whether or not a person qualifies to open an ABLÉ account.

## **Other Information Needed**

The following information is also required concerning the beneficiary of an ABLÉ account:

- name
- address
- Social Security Number or taxpayer identification number
- birth date
- e-mail address.

*If the account is being opened by someone other than the individual with a disability, the account opener's personal information will also be needed.*

*For those who wish to transfer funds electronically (if this option is available), bank account and routing numbers must also be supplied.*

### **Contributions**

*Deposits to an ABLÉ account can be made by anyone, subject to federally determined limits. Beneficiaries can have no more than one ABLÉ account, and total annual contributions from all sources cannot exceed \$14,000, a number that is keyed to the federal annual gift tax exclusion under § 2503(b) of the Internal Revenue Code. If a beneficiary receives SSI and has an ABLÉ account balance which grows to exceed \$100,000, the beneficiary's SSI will be suspended until the account balance falls below \$100,000. For beneficiaries who do not receive SSI, each state is able to set the account upper limit before the beneficiary's Medicaid eligibility will be affected. Here are some examples of state-specific differences:*

- **Florida** accepts donations by check, money order, cashier's check, automatic contribution, or payroll deduction. There are no contribution minimums, and the maximum account balance is \$418,000.
- **Nebraska** accepts contributions by check, electronic funds transfer from a bank, or payroll deduction. Individuals other than the beneficiary may also use an Enable gift certificate. The state requires a \$50 minimum contribution in order to open an account (\$25 if funding is by electronic funds transfer from a bank account or payroll deduction). Subsequent contributions must be at least \$25 (waived for electronic funds transfers or payroll deductions). There must be at least \$50 in the account at all times. Contributions will no longer be accepted once the account balance reaches \$360,000.
- **Ohio** requires an initial contribution of at least \$50, and has an upper limit of \$426,000 for its accounts.
- **Tennessee** accepts contributions by check, electronic funds transfer, or recurring direct deposits from checking or savings accounts. The contribution limit is \$350,000.

### **Investment Options**

*All states offer a variety of investment choices, ranging from conservative to aggressive. For example:*

- **Florida** offers seven professionally managed options, including both predefined portfolios and individual funds from which customized portfolios can be structured.
- **Nebraska** offers four investment options, including an FDIC-insured bank savings option. An additional checking account option is also available.
- **Ohio** offers five investment options, including an FDIC-insured option.
- **Tennessee** offers the most choices, with 14 funds from which to choose.

## **Fees**

States set their own fees. For example:

- **Florida** waives maintenance fees until July 1, 2017, after which there will be a \$2.50 monthly fee if the beneficiary chooses electronic withdrawals. An extra \$10 will be charged annually for paper check disbursements. Depending upon investment choices, fees of up to 0.290% of account balances may be charged.
- **Nebraska** charges \$11.25 quarterly (\$45 annually), in addition to asset-based fees ranging from 0.50% to 0.56%, depending upon investment choices. A checking account option is also available, with additional fees.
- **Ohio** has a tiered fee structure. Residents pay \$2.50/month (\$30 annually) for account maintenance and asset-based fees of 0.19% to 0.34%, based on their investment choices. Out-of-state account holders pay \$5/month (\$60 annually) for maintenance and asset-based fees of 0.45% to 0.60%, depending on investments.
- **Tennessee** doesn't charge for account maintenance but has asset-based fees of 0% to 0.63%, depending on investments.

## **Account Management**

Each state has specific rules regarding the management of ABLE accounts. The following are examples of state-specific rules regarding withdrawals from an ABLE account:

- **Florida** will make electronic transfers to a bank account or issue paper checks to pay expenses directly to third parties. Electronic transfers and up to two checks per month are free. Additional checks are \$5.00 each.
- **Nebraska** will make electronic transfers to a bank account or issue paper checks. Prescheduled withdrawals can be arranged. Withdrawals from the checking account option can be made by check or debit card.

- **Ohio** withdrawals can be made through electronic transfer to a bank account, by paper check, or to a STABLE debit card.
- **Tennessee** presently makes all disbursements in the form of a paper check to the beneficiary.

The launch of additional state ABLE plans in the coming months is anticipated. For up-to-date information, check out the ABLE National Resource Center at <https://www.ablenrc.org/what-is-able/what-are-able-accounts/>, or a [similar resource maintained by The Arc](#). States will undoubtedly learn from each other's experiences, and the best available option for a person with special needs is likely to be a moving target. As always, it is important to consult with a competent special needs attorney to help families understand the benefits and drawbacks of the various ABLE programs, as well as other tools that should be considered to help secure the future of the beneficiary.

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