

MT ABLE Committee Meeting

Minutes

Date: May 14, 2025

Call to Order: Chair, Theresa Baldry

Roll Call: Theresa Baldry, Kathleen Magone, Lloyd Sparks, Michael Woods

Public Comment: None

Old Business:

Action item: Review and Approve Agenda

Kathleen moved to approve the agenda, Theresa seconded the motion, Agenda Approved

Action item: Review and Approval of Previous Meeting Notes (March_25)

Kathleen moved to approve the agenda, Theresa seconded the motion, Minutes Approved

Update on need for new committee members:

Active members* - see Note Kathleen previous meeting minutes

News on appointments? - DPHHS appointee

Recruitment efforts as to vacancies

Lloyd advised he submitted his application approximately two months ago; he advised he is waiting to hear back at this time. Michael Woods advised he has resubmitted his application and is also waiting to hear back.

Theresa advised she will follow up with Cathy and John to see if they resigned their positions.

Lloyd advised that he met with Jennifer Hermanson and the open position was presented to her. He is meeting with her again next week and will follow up. He also advised he would reach out to Ability Montana, NCILS, and Summit independent living centers.

Theresa advised she will reach out to the LIFTT Independent Living Center.

Michael advised he would reach out via email to the Youth Transitions group home.

Committee members advised they will reach out to independent living centers to see if they have anyone available who would like to fill the open position on the committee.

Sharing ABLE activities attended: webinars, trainings viewed or provided
Kathleen and Lloyd attended the virtual National ABLE training in April.

Discussion ABLE program alternatives other than MT ABLE used by Montanans:
Follow up from DPHHS - Moved forward from previous meetings since June 2024
Kathleen advised she would like to see someone follow up on this, as different states have ABLE accounts that Montanans may have accounts with. She advised that at one time there was no Montana ABLE account option, so many people went through the National ABLE entity based out of Ohio, or one of the other initial state options.

Theresa clarified we are looking to see how many total ABLE accounts exist for Montanans; how many of those are with Montana ABLE; and how many Montanans have accounts with other states.

Michael advised he will meet with Cathy to obtain the necessary information.

Kathleen mentioned the possibility of doing some PSAs or other marketing to let Montanans who have ABLE accounts with other states know about Montana ABLE

Discussion of existing contract - when renewed and length of agreement:
Follow up from DPHHS - Moved forward from January 2025 meeting
Michael provided in the chat of our last meeting two documents that he found an original contract and a second amendment. Kathleen reviewed these contracts and suggested Michael contact a lawyer for DPHHS to see if we can obtain the first amendment and also the contract between the state and program or fiscal manager. It would be helpful for the lawyer for DPHHS to advise the Oversight Committee on the status of the contracts involved.

Michael advised there is some discussion going on that is not yet available for public awareness. He will seek more information/clarification from Cathy Murphy.

Theresa advised that we are looking for information that specifically states when the contract was renewed and the length of that agreement.

Discussion of Medicaid clawback and current practice of DPHHS
Report back from DPHHS - Moved forward from March 2025 meeting see questions
Kathleen explained that a clawback refers to what happens with an individual's ABLE account funds immediately after someone passes away. Theresa advised that, previously, if the able account was under \$100k, the State was not pursuing

Medicaid Clawback, but there was a change in practice and it is now being pursued regardless of the balance in the account.

PUBLIC COMMENT - Marsha Goetting: "How can an ABLE account that has a beneficiary designation be closed down? By contract it belongs to the beneficiary."

Theresa requested an explanation as to why it was changed and what they are doing when the account is under \$100k. Michael will follow up.

Michael advised the clawback change may be tied to Medicaid estate recovery policy, and that it generally applies to individuals 55 and older that have been utilizing long-term care services or nursing home services. He stated that there is a CFR that establishes that requirement. He will reach out to a DPHHS lawyer to help the committee with questions on a continuing basis.

Theresa clarified she is specifically looking for information as to why the change was made to pursue recovery of ABLE account funds when an individual passes away, and where are they putting that money? She advised she is going to try to find the legislation that relates to this for Michael. She also advised that Cathy Murphy may be a resource for more information on this.

Theresa further explained legislation that was tied to the college savings programs had put that if that account was under \$100,000, the state would not pursue any recovery of funds. She stated there was a change in practice that they started to do that in January. She wants to know why that changed.

PUBLIC COMMENT - Marsha Goetting: "There was some legislation passed that says up to \$100,000 does not go through probate. But that's a different thing. And I wonder if somebody misread that one."

Theresa also wanted to bring an awareness that there are states who have chosen not to pursue Medicaid clawback and have put that in writing. She would like Montana to consider that position as well but advised that we cannot consider moving forward with that if we don't understand why the choice was made to pursue recovery.

Report as to current Montana ABLE accounts - DPHHS designee

Nothing to report at this time. Michael advised he will meet with Cathy Murphy about this and provide an update at the next meeting.

New Business:

Discussion requests for assistance with or concerns about Montana ABLE accounts:
New items?

Theresa advised one individual supported by an agency in the Billings area who has been struggling with receiving a debit card and using it for their account. She advised the process is complicated and difficult to understand. The individual has had to pause their request at this time but will reach out to Theresa when wanting to move forward.

Theresa spoke with the Montana ABLE Account Question line, and they explained it takes using the 1 of 2 available allocations that an individual has per year in order to put money in their account, so account holders will need to guess or estimate what they may need to use in a year or six months. Theresa also advised that each time the debit card is used, it generates a significant amount of paperwork, including mailings and emails for each purchase, which could become overwhelming for account users.

PUBLIC COMMENT - Marsha Goetting: "What is the difference between the Fifth Third Bank Corps and its affiliates and Ascensus. Who are these people running the accounts?"

Theresa advised Fifth Third Bank is the entity that manages all of the money, including the investment component and checking component. Account holders also need to download their app which could be difficult for some people to use, or they have an online option as well. Kathleen explained that Ascensus is sort of like a middleman. And Michael advised that he believes Ascensus is the program manager DPHHS contracts with.

Theresa reiterated that it is important for the committee to understand how difficult this checking account option appears to be for those wishing to establish and use the account.

Updates on Status of HB 671 - Kathleen

Kathleen advised she and Theresa testified before the committees at the House and Senate regarding the addition of a definition that refers to the Internal Revenue Code that was missing from the initial adoption of Montana's ABLE statutes. HB 671 was signed by the governor on May 1st, and a chapter number has been assigned. Starting on Jan 1, 2026, someone with a disability diagnosed before the age of 46, as opposed to prior to age 26, can open an ABLE account. This greatly expands the pool of people who can access ABLE accounts because of its reference to and alignment with the federal law.

Action Item: Election of Chair and Vice Chair to serve June 2025-June 2026
53-25-105. Program oversight committee – membership – powers and duties.

(1) The department shall establish a program oversight committee under the authority of the department.

(4) The committee shall select a presiding officer and a vice presiding officer from among the committee's membership.

The election has been postponed until we have more active members in attendance to discuss what our options are.

Kathleen advised she will follow up with Lt. Governor Juras to see where her office is in the processing of committee member applications.

Review and Comment on MCA 53-25-109 through 111

53-25-109: Theresa noted that number eight (8) states, "Application fees provided for in subsection (1)(c) must be deposited in the state special revenue fund to the credit of the department for the administration of the Achieving a Better Life Experience program." She is curious to know what the balance is in that account and how those funds are being used. Michael advised he would start by reaching out to Cathy Murphy, who previously worked on this committee.

PUBLIC COMMENT - Marsha Goetting: "When I was trying to find out how many people in Montana had medical care savings accounts, the department that I went to was the Department of Revenue. Of course they couldn't tell me, but they told me less than 2% of Montanans. So, I bet the Department of Revenue would have the percentage of people that have ABLE accounts because it is reported on the tax forms."

53-25-110: Theresa stated because of our recent experience with the checking account option for ABLE accounts, she is curious if the IRS is viewing every transaction as a withdrawal, and if they are being notified every time the card is being used.

PUBLIC COMMENT - Marsha Goetting: "These could be viewed very similar to Montana medical care savings accounts and all the state requires is that you keep the records. But you sign on your tax form your balance when you start and the withdrawals. People are surprised they don't have to turn in all this paperwork. But I tell them, you're signing on the dotted line that you have the records. So, I want you to keep them for at least three years in case of an audit. And why can't the state say the same thing be done with ABLE accounts? I mean, the state is in charge of it now, right? Not the feds. And so why can't the state say, 'Keep the records but don't go to all the trouble that you've been going to.'"

Theresa let Michael know this is the code he was referring to in regard to any remaining distributions upon the death of the beneficiary.

Theresa also explained that within the 150-page document you receive upon opening an ABLE account it shows where there was the intent that final expenses and any outstanding items that would be considered qualified disability related expenses were to be taken care of first before the state pursued the money in that account.

Kathleen advised that the Medicaid portion of the state is going to say, "Here's the statute, we're supposed to grab it. If you don't like it, sue us." And who's going to have the money, time and energy to go after the state?

Theresa expressed she thinks that can be addressed in two ways - one being Montana could look at whether they want to be a state that establishes that they don't want to pursue Medicaid clawback, and what would that take to be done? or two, on a federal level, how do we eliminate Medicaid clawback? Because, as Theresa explained, these accounts are not just contributed to by the individual. Family members also have the ability to contribute to these accounts. She also advised that, under a national level, they really looked at these accounts as being something that could be used almost to meet the needs of retirement savings, and if that's what they wanted individuals working toward, Medicaid clawback almost works in the opposite effect of that.

53-25-111: Theresa stated she found this one difficult to read, presented confusing information.

PUBLIC COMMENT - Marsha Goetting: "Another one for DPHHS. Have they established procedures for the family of the former designated beneficiary?"

Kathleen suggested that when Michael gives all of the questions to a DPHHS attorney, that he invite the attorney to attend our meeting and provide some clarification on the language for this one. Lloyd suggested Michael reach out to DPHHS attorney Chad Parker.

Theresa advised we will look at this one and 53-25-112 at our next meeting.

Next Meeting Date and Agenda Items: Standing bimonthly meetings on the 2nd Wednesday @ 10am, July 9th, 2025.

*Lt. Governor Juras explained to Kathleen that even though a committee member's term may have technically expired, the member remains on the committee until resignation.