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HOUSE BILL 61

52ND LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2016

INTRODUCED BY

Sheryl Williams Stapleton

FOR THE REVENUE STABILIZATION AND TAX POLICY COMMITTEE

AN ACT

RELATING TO ACCOUNTS FOR THE SUPPORT OF PERSONS WITH
DISABILITIES; CREATING THE ACCOUNTS FOR PERSONS WITH
DISABILITIES ACT; ENACTING ENABLING LEGISLATION REQUIRED BY THE
FEDERAL ACHIEVING A BETTER LIFE EXPERIENCE ACT OF 2014;
REQUIRING THE OFFICE OF THE STATE TREASURER TO ESTABLISH AND
MAINTAIN A QUALIFIED PROGRAM FOR SUCH ACCOUNTS; DECLARING AN
EMERGENCY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. [NEW MATERIAL] SHORT TITLE.--Sections 1
through 7 of this act may be cited as the "Accounts for Persons
with Disabilities Act".

SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the
Accounts for Persons with Disabilities Act:

A. "account" means an individual tax-free savings

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1 account for a designated beneficiary that is established
2 pursuant to Section 529A of the Internal Revenue Code of 1986,
3 as amended;

4 B. "account owner" means a person who establishes
5 and owns an account under the Accounts for Persons with
6 Disabilities Act and who is one of the following:

7 (1) the designated beneficiary of the account;

8 (2) the parent, guardian or conservator of a
9 minor designated beneficiary; or

10 (3) the conservator of a designated
11 beneficiary otherwise incapable of handling such beneficiary's
12 financial affairs;

13 C. "designated beneficiary" means a person for whom
14 an account is established under the Accounts for Persons with
15 Disabilities Act;

16 D. "disability certification" means a certification
17 deemed sufficient by the United States secretary of the
18 treasury to establish a certain level of physical or mental
19 impairment that meets the requirements of Section 529A of the
20 Internal Revenue Code of 1986, as amended;

21 E. "eligible person" means, for a taxable year, a
22 person who is either:

23 (1) entitled during that taxable year to
24 benefits based on blindness or disability under Title 2 or
25 Title 16 of the federal Social Security Act; provided that such

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1 blindness or disability occurred before the date on which the
2 individual attained age twenty-six; or

3 (2) the subject of a disability certification
4 filed with the United States secretary of the treasury;

5 F. "family member" means a sibling, whether by
6 blood or adoption, including a brother, sister, stepbrother,
7 stepsister, half-brother or half-sister;

8 G. "fiduciary" means a person authorized to do
9 business in New Mexico and acting as a fiduciary to manage and
10 invest an account; provided that such person is bonded and is
11 not the parent, guardian or conservator of the designated
12 beneficiary of the account;

13 H. "financial organization" means an organization
14 that is authorized to do business in New Mexico and is:

15 (1) licensed or chartered by the office of
16 superintendent of insurance;

17 (2) licensed or chartered by the financial
18 institutions division of the regulation and licensing
19 department; or

20 (3) subject to the jurisdiction of the federal
21 securities and exchange commission;

22 I. "office" means the office of the state
23 treasurer;

24 J. "qualified disability expenses" means any
25 expenses, related to the designated beneficiary's blindness or

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1 disability, that include the following:

- 2 (1) education;
- 3 (2) housing;
- 4 (3) transportation;
- 5 (4) employment training and support;
- 6 (5) assistive technology and personal support
- 7 services;
- 8 (6) health, prevention and wellness;
- 9 (7) financial management and administrative
- 10 services;
- 11 (8) legal fees;
- 12 (9) expenses for oversight and monitoring;
- 13 (10) funeral and burial expenses; and
- 14 (11) other expenses approved by the United
- 15 States secretary of the treasury; and

16 K. "qualified program" means a program established
17 and maintained by the state or an agency or instrumentality of
18 the state pursuant to 26 U.S.C. Section 529A.

19 **SECTION 3. [NEW MATERIAL] DUTIES AND AUTHORITY OF THE**
20 **OFFICE.--**

- 21 A. The office shall:
 - 22 (1) ensure that an account meets the
 - 23 requirements of a qualified program; and
 - 24 (2) promulgate rules to implement and
 - 25 administer the qualified program and other requirements of the

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1 Accounts for Persons with Disabilities Act.

2 B. The office may contract with third parties to:

3 (1) verify the disability certification of
4 each designated beneficiary under the state's qualified program
5 and certify whether expenses paid from such account are
6 qualified disability expenses; and

7 (2) provide such information related to
8 accounts as the state is required to report to the federal
9 social security administration.

10 SECTION 4. [NEW MATERIAL] ACCOUNTS.--

11 A. An account owner may:

12 (1) establish an account with a financial
13 organization or fiduciary;

14 (2) close the account and establish an account
15 with another financial organization or fiduciary, no more than
16 twice in any tax year; and

17 (3) change the owner of an account to a family
18 member of a designated beneficiary; provided that the family
19 member is an eligible person.

20 B. More than one person may contribute to an
21 account.

22 C. A person shall not be the designated beneficiary
23 of more than one account.

24 D. A designated beneficiary for whom an account is
25 established pursuant to the Accounts for Persons with

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1 Disabilities Act shall be a resident of New Mexico.

2 SECTION 5. [NEW MATERIAL] DUTIES OF FINANCIAL
3 ORGANIZATION OR FIDUCIARY.--

4 A. If a designated beneficiary incurs a qualified
5 disability expense, the financial organization or fiduciary
6 shall pay such expense, or reimburse such expense; provided
7 that the account balance is sufficient to do so.

8 B. If any person attempts to contribute to an
9 account and such contribution would exceed the limits on annual
10 or maximum aggregate contributions to the account pursuant to
11 26 U.S.C. Section 529A, the financial organization or fiduciary
12 shall return the amount that exceeds such limits to the
13 contributor.

14 SECTION 6. [NEW MATERIAL] STATE AS CREDITOR OF ACCOUNT.--

15 Subject to any outstanding payments due for qualified
16 disability expenses, upon the death of the designated
17 beneficiary, an amount equal to the total medical assistance
18 paid for the designated beneficiary after the establishment of
19 the account shall be distributed to the state from funds
20 remaining in the account upon filing of a claim for payment by
21 the state. For purposes of this section, the state shall be a
22 creditor of an account and not a beneficiary.

23 SECTION 7. [NEW MATERIAL] TREATMENT OF ACCOUNTS UNDER
24 FEDERAL MEANS-TESTED PROGRAMS.--

25 A. Notwithstanding any other provision of federal

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1 law that requires consideration of one or more financial
2 circumstances of a person when determining eligibility to
3 receive benefits or determining the amount of assistance, such
4 provisions shall not apply to a designated beneficiary except
5 that, in the case of the supplemental security income program
6 under Title 16 of the federal Social Security Act:

7 (1) a distribution for housing expenses shall
8 be allowed; and

9 (2) any amount in an account established
10 pursuant to the Accounts for Persons with Disabilities Act,
11 including earnings on investment of the account, in excess of
12 one hundred thousand dollars (\$100,000) shall be considered an
13 excess resource of the designated beneficiary.

14 B. The benefits of a designated beneficiary under
15 the supplemental security income program under Title 16 of the
16 federal Social Security Act shall not be terminated, but shall
17 be suspended, by reason of excess resources of the designated
18 beneficiary attributable to an amount in the account, within
19 the meaning of Section 529A of the Internal Revenue Code of
20 1986, as amended.

21 SECTION 8. A new section of Chapter 6, Article 8 NMSA
22 1978 is enacted to read:

23 "[NEW MATERIAL] ACCOUNTS FOR SUPPORT OF PERSONS WITH
24 DISABILITIES.--The state treasurer shall establish and maintain
25 the program established pursuant to 26 U.S.C. Section 529A and

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1 the Accounts for Persons with Disabilities Act."

2 SECTION 9. APPLICABILITY.--The provisions of this act
3 apply to taxable years beginning on or after January 1, 2016.

4 SECTION 10. EMERGENCY.--It is necessary for the public
5 peace, health and safety that this act take effect immediately.

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