

1 HOUSE BILL 448

2 **52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015**

3 INTRODUCED BY

4 Sheryl Williams Stapleton

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10 AN ACT

11 RELATING TO DISABILITY BENEFITS; CREATING THE ACHIEVING A
12 BETTER LIFE EXPERIENCE ACT TO SECURE FEDERAL TAX-ADVANTAGED
13 FUNDING FOR DISABILITY-RELATED EXPENSES OF DESIGNATED
14 BENEFICIARIES TO SUPPLEMENT BENEFITS PROVIDED THROUGH OTHER
15 SOURCES; PROVIDING HOW BENEFITS ARE TAXED.

16
17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

18 SECTION 1. [NEW MATERIAL] SHORT TITLE.--This act may be
19 cited as the "Achieving a Better Life Experience Act".

20 SECTION 2. [NEW MATERIAL] PURPOSE.--The purpose of the
21 Achieving a Better Life Experience Act is to establish an
22 achieving a better life experience program in New Mexico that
23 provides for federally tax-advantaged savings accounts through
24 Section 529A of the Internal Revenue Code of 1986, as amended,
25 to:

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1 A. encourage and assist eligible persons and their
2 families in saving private funds for the purpose of supporting
3 persons with disabilities to maintain health, independence and
4 quality of life; and

5 B. provide secure funding for disability-related
6 expenses on behalf of designated beneficiaries with
7 disabilities that will supplement, but not supplant, benefits
8 provided through private insurance, the medicaid program under
9 Title 19 of the federal Social Security Act, the supplemental
10 security income program under Title 16 of that federal act, the
11 designated beneficiary's employment and other sources.

12 **SECTION 3. [NEW MATERIAL] DEFINITIONS.--**As used in the
13 Achieving a Better Life Experience Act:

14 A. "account" means an individual tax-free savings
15 account held in trust for a designated beneficiary established
16 as part of the eligible program;

17 B. "account owner" means the person who enters into
18 an account agreement with the office;

19 C. "blind" means a person has central visual acuity
20 of twenty/two hundred or less in the better eye with the use of
21 a correcting lens; provided that an eye that is accompanied by
22 a limitation in the fields of vision such that the widest
23 diameter of the visual field subtends an angle no greater than
24 twenty degrees shall be considered as having a central visual
25 acuity of twenty/two hundred or less; and provided further that

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1 a person is also considered to be blind if the person is blind
2 as defined under a state plan approved pursuant to Title 10 or
3 Title 16 of the federal Social Security Act in effect for
4 October 1972 and received aid under such plan, on the basis of
5 blindness, for December 1973, so long as the person has been
6 continuously blind;

7 D. "contracting state" means a state that has not
8 set up an eligible program and contracts with New Mexico to
9 manage accounts for its residents;

10 E. "designated beneficiary" means an eligible
11 person at the time the account is established or the eligible
12 person who replaces a designated beneficiary, who is the
13 beneficiary of the account and whose qualified disabled
14 expenses may be paid from the account;

15 F. "disability certification" means a
16 certification to the satisfaction of the United States
17 secretary of the treasury by an eligible person or the eligible
18 person's parent or guardian that certifies that the eligible
19 person has a medically determinable physical or mental
20 impairment that results in marked and severe functional
21 limitations and that can be expected to result in death or that
22 has lasted or can be expected to last for a continuous period
23 of not less than twelve months, or is blind and that such
24 blindness or disability occurred before the date on which the
25 eligible person attained age twenty-six, and which

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1 certification is accompanied by a copy of the diagnosis
2 relating to the eligible person's relevant impairment that is
3 signed by a physician;

4 G. "eligible person" means a person who:

5 (1) is entitled to federal social security
6 benefits based on blindness or disability under 42 U.S.C.
7 Section 401 or 42 U.S.C. Section 1381 and whose blindness or
8 disability occurred before the age of twenty-six; or

9 (2) has filed a disability certification with
10 the secretary of the United States treasury for such taxable
11 year;

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

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

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

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

21 I. "management contract" means the contract
22 executed by the office and a financial organization selected to
23 act as a depository and manager of the qualified program;

24 J. "office" means the investment office;

25 K. "qualified program" means an achieving a better

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1 life experience program established and maintained by the state
2 or an agency or instrumentality of the state; and

3 L. "qualified disability expense" means an expense
4 related to an eligible person's blindness or disability that is
5 made for the benefit of the eligible person as designated
6 beneficiary.

7 SECTION 4. [NEW MATERIAL] ACHIEVING A BETTER LIFE
8 EXPERIENCE PROGRAM--CREATED--OFFICE POWERS AND DUTIES.--

9 A. The "achieving a better life experience
10 program" is created in the office. The qualified program shall
11 be administered by the office. The office may enter into
12 account agreements to provide accounts for the benefit of
13 designated beneficiaries. The qualified program shall provide
14 that:

15 (1) family members and other persons may make
16 contributions for a taxable year for the benefit of a
17 designated beneficiary to an account that is established to
18 help the designated beneficiary to supplement, not supplant,
19 the costs of qualified disability expenses without losing other
20 sources of income;

21 (2) a designated beneficiary is limited to one
22 account; and

23 (3) an account shall be only for a designated
24 beneficiary who is a resident of New Mexico or a resident of a
25 contracting state.

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1 B. The qualified program shall be exempt from
2 taxation under Section 529A of the Internal Revenue Code of
3 1986, as amended.

4 C. Contributions to an account shall be accepted
5 only in cash and as long as a contribution does not result in
6 aggregate contributions to an account from all contributors for
7 the taxable year exceeding fourteen thousand dollars (\$14,000)
8 for the calendar year in which the taxable year begins.

9 D. The office shall develop and administer the
10 qualified program in accordance with the federal Stephen Beck,
11 Jr., ABLE Act of 2014 and the Achieving a Better Life
12 Experience Act and in a manner that allows account owners and
13 designated beneficiaries to obtain and maintain federal income
14 tax benefits or treatment provided by the Internal Revenue Code
15 of 1986, as amended, and exemptions under federal securities
16 laws.

17 E. The office may enter a management contract with
18 one or more financial organizations. The office and the
19 financial organization shall account for each contribution by
20 an account owner. The office may charge administrative and
21 other qualified program fees for services rendered pursuant to
22 the Achieving a Better Life Experience Act.

23 F. The office may contract with other states that
24 do not have qualified programs to provide qualified program
25 services to residents of the contracting states.

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1 SECTION 5. [NEW MATERIAL] QUALIFIED DISABILITY

2 EXPENSES.--Qualified disability expenses include the following:

- 3 A. education;
- 4 B. housing;
- 5 C. transportation;
- 6 D. employment training and support;
- 7 E. assistive technology and personal support
- 8 services;
- 9 F. health, prevention and wellness;
- 10 G. financial management and administrative
- 11 services;
- 12 H. legal fees;
- 13 I. expenses for oversight and monitoring;
- 14 J. funeral and burial expenses; and
- 15 K. other expenses approved by the United States
- 16 secretary of the treasury.

17 SECTION 6. [NEW MATERIAL] OFFICE RULES.--The office shall

18 prescribe such rules as the office determines necessary or

19 appropriate to carry out the purposes of the Achieving a Better

20 Life Experience Act, including rules to:

- 21 A. enforce the single account per eligible person
- 22 limit;
- 23 B. provide for the information required to be
- 24 presented to open an account;
- 25 C. generally define qualified disability expenses;

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1 D. prevent fraud and abuse with respect to amounts
2 claimed as qualified disability expenses; and

3 E. allow for transfers from one account to another
4 account.

5 SECTION 7. [NEW MATERIAL] NOTICE OF ACCOUNT.--The office
6 shall submit a notice to the United States secretary of the
7 treasury upon the establishment of an account. The notice shall
8 contain the name and state of residence of the designated
9 beneficiary and such other information as the secretary may
10 require.

11 SECTION 8. [NEW MATERIAL] FUNDS CREATED--TRUST FUND AND
12 ADMINISTRATION FUND.--

13 A. The "ABLE program trust fund" is created as a
14 nonreverting fund in the state treasury. The trust fund shall
15 be administered by the office to carry out the purposes of the
16 Achieving a Better Life Experience Act. The trust fund shall
17 consist of separate trust accounts held in the name of account
18 owners. Income from investment of the trust fund shall be
19 credited to the separate accounts. The fund shall be invested
20 by the office or a financial organization with which the office
21 has a management agreement.

22 B. The "ABLE program administration fund" is
23 created as a nonreverting fund in the state treasury. The fund
24 consists of all administrative and other fees received by the
25 office pursuant to agreements with account owners and

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1 management contracts and any other money credited to the fund,
2 including earnings from investment of the fund. Money in the
3 fund may be used to pay costs of establishing, marketing and
4 otherwise administering the qualified program. Money in the
5 fund shall be invested by the office. Disbursements from the
6 fund shall be by warrant of the secretary of finance and
7 administration on vouchers signed by the state investment
8 officer or the officer's designated representative.

9 SECTION 9. [NEW MATERIAL] REPORTS--AGGREGATED
10 INFORMATION.--

11 A. The office shall make monthly reports to
12 designated beneficiaries with respect to contributions,
13 distributions, the return of excess contributions and such
14 other matters involving the state of a designated beneficiary's
15 account.

16 B. The office shall report annually to the
17 governor, the legislature, account owners and designated
18 beneficiaries on:

19 (1) the qualified program's fiscal
20 transactions during the preceding fiscal year;

21 (2) the market value of the program as of the
22 end of the preceding fiscal year;

23 (3) the asset allocations of the qualified
24 program expressed in percentages of stocks, fixed income
25 securities, cash or other financial assets; and

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1 (4) the rate of return on the investment of
2 the qualified program assets during the preceding fiscal year.

3 C. For research purposes, the office shall make
4 available reports containing aggregate information, by
5 diagnosis and other relevant characteristics and on
6 contributions and distributions from the qualified program. An
7 item shall not be made available to the public if such item can
8 be associated with, or otherwise identify, directly or
9 indirectly, a particular person.

10 SECTION 10. [NEW MATERIAL] ELECTRONIC DISTRIBUTION
11 STATEMENTS.--The office shall submit electronically on a
12 monthly basis to the commissioner of social security, in the
13 manner specified by the commissioner, statements on relevant
14 distributions and account balances from all accounts.

15 SECTION 11. [NEW MATERIAL] STATE AS CREDITOR OF
16 ACCOUNTS.--Subject to any outstanding payments due for
17 qualified disability expenses, upon the death of the designated
18 beneficiary, all amounts remaining in the designated
19 beneficiary's account not in excess of the amount equal to the
20 total medical assistance paid for the designated beneficiary
21 after the establishment of the account, net of any premiums
22 paid from the account or paid by or on behalf of the designated
23 beneficiary to a medicaid buy-in program under the state
24 medicaid plan established under Title 19 of the Social Security
25 Act, shall be distributed to the state upon filing of a claim

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1 for payment by the state. For purposes of this section, the
2 state shall be a creditor of an account and not a beneficiary.

3 SECTION 12. [NEW MATERIAL] TREATMENT OF ACCOUNTS UNDER
4 FEDERAL MEANS-TESTED PROGRAMS.--

5 A. Notwithstanding any other provision of federal
6 law that requires consideration of one or more financial
7 circumstances of a person when determining eligibility to
8 receive benefits or determining the amount of assistance, such
9 provisions shall not apply to a designated beneficiary except
10 that, in the case of the supplemental security income program
11 under Title 16 of the Social Security Act:

12 (1) a distribution for housing expenses shall
13 not be so disregarded; and

14 (2) in the case of the program, any amount in
15 an account, including earnings on investment of the account,
16 shall be considered a resource of the designated beneficiary to
17 the extent that such amount exceeds one hundred thousand
18 dollars (\$100,000).

19 B. The benefits of a designated beneficiary under
20 the supplemental security income program under Title 16 of the
21 Social Security Act shall not be terminated, but shall be
22 suspended, by reason of excess resources of the person
23 attributable to an amount in the account, within the meaning of
24 Section 529A of the Internal Revenue Code of 1986, as amended,
25 of the person not disregarded pursuant to Subsection A of this

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1 section.

2 C. A person who would be receiving payment of
3 supplemental security income benefits but for the application
4 of Paragraph (1) of Subsection A of this section shall be
5 treated for purposes of Title 19 of the Social Security Act as
6 if the person continued to be receiving payment of such
7 benefits.

8 SECTION 13. APPLICABILITY.--The provisions of this act
9 apply to taxable years beginning on or after January 1, 2015.