

Nebraska State Legislature

SENATOR KATE BOLZ

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COMMITTEES

Appropriations

June 30, 2015

CC:PA:LPD:PR (REG-102837-15)
Room 5203, Internal Revenue Service
P.O. Box 7604, Ben Franklin Station
Washington, DC 20044

Comment: RE: REG-102837-15

To Whom it May Concern:

Please accept the following comments regarding the proposed rules for the Achieving a Better Life Experience (ABLE) Act. I am the sponsor of the legislation in Nebraska that authorized the state of Nebraska to establish ABLE accounts. In drafting Nebraska's ABLE Act, I worked closely with the Autism Alliance, Disability Rights Nebraska, the Down Syndrome Alliance and other stakeholders as well as the Nebraska State Treasurer. The legislation passed with no dissenting votes in its final reading vote before the Nebraska Unicameral Legislature. While I am pleased with many of the proposed rules, there are others that may seriously hinder the practicality and usefulness of the accounts for the intended users - individuals with significant disabilities - as well as create practical challenges for the program managers and the state as an overseer of the program in Nebraska.

I am pleased to see the proposed rules relating to qualified disability expenses found on page 35614-35615 of the Federal Register to include a broad definition for "qualified expense" to include items that are not a medical necessity or which solely benefit an individual with a disability. Such a provision will permit individuals to spend their money on important technology, services, and goods that will allow for an improved quality of life and greater independence. I would encourage the rules as written relating to qualified expenses to be retained.

I do have concerns, however, with how the proposed rules require reporting of such qualified expenses to be handled. Page 35609 of the Federal Register notes, at the end of the section on “Reporting Requirements” that states are required to submit monthly statements on relevant distributions on all ABLÉ accounts. Such reporting requirements may be unduly burdensome on state programs, requiring significant additional staff time to comply. Additionally, and perhaps more importantly, the requirements will require individuals who have been approved for ABLÉ accounts to justify all expenditures on a near constant basis to the state program. It is my understanding that other tax structures such as this, including the traditional 529 education savings plan do not require a constant justification process. It would be more appropriate for ABLÉ accounts to operate like 529 education accounts where individual expenses are made and the account owner keeps records of all withdrawals and expenses in case of an audit. Such a system would have significantly reduced the burden on individuals with disabilities and states operating the systems compared with the proposed rules.

In regards to who may establish ABLÉ accounts, the proposed regulations on page 35613 of the Federal Register state that if an eligible individual is unable and there is no power of attorney, an account may be established by a parent or guardian. While I believe that parents and/or guardians are appropriate actors to establish accounts, narrowing the list of such permitted persons will not permit other important people in the life of a person with a disability to establish an account on their behalf, be that person another family member such as a grandparent or sibling, or non-family members. I would encourage a broader definition of whom may establish an account on behalf of an individual with a disability.

Finally, I am concerned that the proposed rule on page 35605 which requires “that an eligible individual must present the disability certification, accompanied by the diagnosis, to the qualified ABLÉ program to demonstrate eligibility to establish an ABLÉ account.” My reading of the statutory language of the federal legislation enabling ABLÉ accounts is that it is intended for the Secretary of the Treasury, not the individual programs or states, to certify eligibility. Such language can be found on Section. 529A (e)(1) and includes the provision “a disability certification with respect to such individual is filed with the Secretary for such taxable year.” It is my understanding that the National Association of State Treasurers advocated for this language to be included in the statute so as to require the burden of providing eligibility would belong, rightfully, at the federal level. The proposed rules would place the burden on the states, contrary to the intent of the legislation, in a way that may not provide uniform application across the nation and at great administrative expense to the state programs. Such a burden may disproportionately affect the ability of the smaller states to administer such programs at a reasonable cost to the owners of the account, and may see a concentration of ABLÉ accounts in larger states, with smaller states contracting to them. It is my opinion that it would be preferable

for the burden of eligibility to be with the federal government, where Congress intended when it passed the ABLE act.

Thank you for your consideration of my comments.

A handwritten signature in black ink, appearing to read "K. Bolz". The signature is fluid and cursive, with the first letter of each name being capitalized and prominent.

Kate J. Bolz
State Senator, District 29
Nebraska Legislature