



State of Wisconsin
2015 - 2016 LEGISLATURE

LRB-1861a

MES:wj:wj

Stays

2015 BILL

IN 4/29
WANTED 4/30

reger

1 AN ACT to create 16.643, 71.05 (6) (a) 27., 71.05 (6) (a) 28., 71.05 (6) (b) 52. and
2 71.07 (5) (a) 9. of the statutes; relating to: tax-exempt accounts for qualified
3 expenses incurred by individuals with disabilities and granting rule-making
4 authority.

Analysis by the Legislative Reference Bureau

Under current federal law, states may create a qualified Achieving a Better Life Experience (ABLE) program under which an individual may establish a tax-exempt savings account to pay for qualified expenses, such as education, housing, and transportation costs, for a beneficiary who is an individual with disabilities, as defined under federal law. The savings accounts are based on, and are similar to, Internal Revenue Code, section 529, college savings programs.

This bill authorizes the creation of ABLE accounts in this state. Under the bill, the Department of Administration (DOA) is required to ensure that accounts set up in this state meet all federal requirements, and DOA must implement and administer the program to ensure that amounts deposited into an account are used only to pay for qualified expenses, as defined under federal law.

Under the bill, an individual may establish an account at a financial institution, contribute to an account, authorize any other person to contribute to such an account, and change the beneficiary to another family member who must be an eligible individual under federal law. The maximum amount that may be contributed to an account for a particular beneficiary each year is \$14,000, and the maximum total amount of contributions that may be made to such an account for that

Tied to federal law, and it is currently

specified

an account owner is the beneficiary of the account unless the beneficiary is a minor or incapable of handling his or her financial affairs, in which case the beneficiary's parent or guardian is the account owner.

BILL

... tied to the maximum contribution limit of EdVest, Wisconsin's 529 plan. The current limit is \$339,000

beneficiary is ~~\$100,000~~. If a beneficiary ~~or account owner~~ incurs costs for qualified expenses and submits a claim to the financial institution at which the account has been established, the financial institution must pay the ~~claim~~ *expenses* if there are sufficient funds in the account.

Any gain that accumulates in the account is exempt from taxation, and amounts contributed to the account, subject to the annual and lifetime contribution limits, are tax deductible. In addition, any assets accumulated in the account may not be used to determine a beneficiary's eligibility for various state programs, such as long-term care programs and the family care partnership program.

Upon termination of an account

Because this bill relates to an exemption from state or local taxes, it may be referred to the Joint Survey Committee on Tax Exemptions for a report to be printed as an appendix to the bill.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

any amounts left in the account are subject to recovery by the state to reimburse the state for payments, medical assistance, and other public assistance that benefitted the beneficiary. The people of the state of Wisconsin, represented in senate and assembly, do enact as follows: This method of recovery is similar to a current law provision for recovery of state-paid public assistance payments.

SECTION 1. 16.643 of the statutes is created to read:

16.643 Support accounts for individuals with disabilities. (1)

DEFINITIONS. In this section:

INS 2-4

(a) "Account owner" means an individual who establishes, and owns, an account under this section.

(b) "Beneficiary" means an eligible individual for whom an account is established under this section.

(c) "Eligible individual" has the meaning given in 26 USC 529A.

(d) "Financial institution" means any bank, savings bank, savings and loan association, or credit union that is authorized to do business under state or federal laws relating to financial institutions.

(e) "Qualified expenses" has the meaning given for "qualified disability expenses" under 26 USC 529A.

(2) DUTIES OF THE DEPARTMENT. The department shall do all of the following:

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1 (a) Ensure that an account established under this section meets the
2 requirements of a qualified ABLE program under 26 USC 529A.

3 (b) Promulgate rules to implement and administer this section and ensure that
4 amounts deposited into an account and any interest, dividends, or other gain that
5 accrues on amounts deposited into the account may be used only to pay qualified
6 expenses of a beneficiary.

7 (c) Prepare and distribute reimbursement forms for claims that are submitted
8 as described in sub. (4).

9 (3) ACCOUNT OWNERS; BENEFICIARIES; CONTRIBUTIONS; TERMINATION OF ACCOUNTS.

10 (a) An account owner may do all of the following:

11 1. Establish an account under this section at a financial institution for a
12 beneficiary.

13 2. Contribute to an account or authorize any other person to contribute to the
14 account.

15 3. Change the beneficiary of an account to a family member, as defined in 26
16 USC 529A, of the previous beneficiary, if the new beneficiary is an eligible individual.

17 3. If the account owner is not the beneficiary,
18 terminate an account upon the death of a beneficiary if the account owner
is unable to change the beneficiary under subd. 2.

19 (b) An individual may not be the beneficiary of more than one account that is
20 established under this section.

21 (c) 1. The maximum total amount of annual contributions that may be made
22 by an account owner, and all persons authorized by the account owner, to an account
23 that is established under this section for a particular beneficiary is \$14,000.

the amount described in
26 USC 529A (b) (2) (B)

BILL

The same as the maximum aggregate contribution limit to an account described under D.16.641, as set by the College Program Savings Board

SECTION 1

2. The maximum total amount of all annual contributions that may be made by an account owner, and all persons authorized by the account owner, to an account that is established under this section for a particular beneficiary is ~~\$100,000~~.

3. If any person attempts to contribute to an account established under this section and that contribution would exceed one or both of the limits specified in this paragraph, the financial institution to which the contribution is sent shall return to the prospective contributor any amount of the attempted contribution that is necessary to prevent the limits from being exceeded.

4. If more than one person attempts to contribute to an account established under this section and such contributions would exceed the limits specified in this paragraph, and if the attempted contributions arrive at the financial institution on the same day, the financial institution to which the contributions are sent shall return to the prospective contributors any amount of the attempted contributions, on a prorated basis, that is necessary to prevent the limits from being exceeded.

(d) Upon the termination of an account as described in par. (a) ³⁹⁹ or, if the account owner does not terminate the account, upon the death of ^{the beneficiary who is} all beneficiaries of the account, the account shall terminate, and any amount remaining in the account shall be returned to the account owner, if he or she is still alive, or to his or her estate.

(4) PAYMENT OF CLAIMS. If a beneficiary or account owner incurs costs for qualified expenses, the account owner may submit a form, created by the department, that summarizes the costs incurred, and payment and beneficiary information, along with a copy of the bill, or a copy of the receipt if the account owner has paid for the qualified expenses, to the financial institution at which the account created under this section is established. The financial institution shall pay ^{such expenses} the bill or reimburse the account owner, if sufficient funds to do so are in the account.

INSERT

recovery under D.49.849 shall be paid to the account owner's

recoverable by the state as property of a decedent is recoverable under that statute.

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demonstration
or any other program or program operated under a waiver of federal Medicaid law that provides long-term care benefits

1 (5) ELIGIBILITY FOR LONG-TERM CARE PROGRAMS. A person who is determining
2 eligibility for an individual for a long-term care program under s. 46.27, 46.275, or
3 46.277, the family care benefit under s. 46.286, the family care partnership program,
4 ~~the~~ the long-term care program defined in s. 46.2899 (1), shall exclude from the
5 determination any income from assets accumulated in an account created under this
6 section for a beneficiary.

7 SECTION 2. 71.05 (6) (a) 27. of the statutes is created to read:

8 71.05 (6) (a) 27. Except as provided in subd. 28., any accumulated interest,
9 dividends, or other gain that accrues from an account described under s. 16.643
10 during the taxable year in which a withdrawal occurs from such an account if any
11 amount of the money or other assets in the account is withdrawn by, or at the
12 direction of, an account owner for any reason other than the payment of qualified
13 expenses, as defined in s. 16.643 (1) (e), for the account beneficiary.

14 SECTION 3. 71.05 (6) (a) 28. of the statutes is created to read:

15 71.05 (6) (a) 28. Upon the termination of an account under s. 16.643 (3) (d), any
16 amount in the account that is returned to an account owner, or an account owner's
17 estate.

18 SECTION 4. 71.05 (6) (b) 52. of the statutes is created to read:

19 71.05 (6) (b) 52. Subject to the limits under s. 16.643 (3) (c) 1. and 2., any amount
20 that is deposited by an account owner or any other authorized person into an account
21 described under s. 16.643, and any interest, dividends, or other gain that accrues in
22 the account if the interest, dividends, or other gain is redeposited into the account.

23 SECTION 5. 71.07 (5) (a) 9. of the statutes is created to read:

24 71.07 (5) (a) 9. The amount claimed as a deduction for unreimbursed medical
25 expenses under section 213 (a) of the Internal Revenue Code to the extent that the

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1 funds used to pay for the unreimbursed expenses for which the deduction was
2 claimed were withdrawn from an account described under s. 16.643.

3 **SECTION 6. Initial applicability.**

4 (1) This act first applies to taxable years beginning on January 1 of the year
5 in which this subsection takes effect, except that if this subsection takes effect after
6 July 31, this act first applies to taxable years beginning on January 1 of the year
7 following the year in which this subsection takes effect.

8 (END)

**2015-2016 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-1861/2ins
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INS 2-4

(a) "Account owner" means an individual who establishes, and owns, an account under this section and who is one of the following:

1. The beneficiary of the account.
2. If the beneficiary is a minor or otherwise incapable of handling his or her financial affairs, the parent or guardian of the beneficiary.

**2015-2016 DRAFTING INSERT
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1 (d) Upon the death of the beneficiary who is the account owner the account shall
2 terminate, and upon the termination of an account as described in par. (a) 3., any
3 amount remaining in the account shall be recoverable by the state under s. 49.849
4 as property of a decedent is recoverable under that statute. Any amount that
5 remains in the account following such recovery under s. 49.849 shall be paid to the
6 account owner's estate.



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p. 5, l. 18

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Under the bill, an account owner is the beneficiary of the account unless the beneficiary is a minor or incapable of handling his or her financial affairs, in which case the beneficiary's parent or guardian is the account owner. Generally, an account owner may establish an account at a financial institution and may change the beneficiary to another family member who must be an eligible individual under federal law. The maximum amount that may be contributed to an account for a particular beneficiary each year is tied to federal law, and is currently \$14,000, and

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the maximum total amount of contributions that may be made to such an account for that beneficiary is tied to the maximum contribution limit of Edvest, Wisconsin's 529 plan. The current limit is \$330,000. If a beneficiary incurs costs for qualified expenses, the financial institution must pay the expenses if there are sufficient funds in the account.

Any gain that accumulates in the account is exempt from taxation, and amounts contributed to the account, subject to the annual and lifetime contribution limits, are tax deductible. In addition, any assets accumulated in the account may not be used to determine a beneficiary's eligibility for various state programs, such as long-term care programs and the family care partnership program. Upon termination of an account, any amounts left in the account are subject to recovery by the state to reimburse the state for payments the state made for medical assistance and other public assistance programs that benefitted the beneficiary. This method of recovery is similar to a current law provision for recovery of state-paid public assistance payments.

Because this bill relates to an exemption from state or local taxes, it may be referred to the Joint Survey Committee on Tax Exemptions for a report to be printed as an appendix to the bill.

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3 **DEFINITIONS.** In this section:

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5 account under this section and who is one of the following:

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7 2. If the beneficiary is a minor or otherwise incapable of handling his or her
8 financial affairs, the parent or guardian of the beneficiary.

9 (b) "Beneficiary" means an eligible individual for whom an account is
10 established under this section.

11 (c) "Eligible individual" has the meaning given in 26 USC 529A.

BILL

1 (d) "Financial institution" means any bank, savings bank, savings and loan
2 association, or credit union that is authorized to do business under state or federal
3 laws relating to financial institutions.

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5 expenses" under 26 USC 529A.

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10 **(3) ACCOUNT OWNERS; BENEFICIARIES; CONTRIBUTIONS; TERMINATION OF ACCOUNTS.**

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13 2. Change the beneficiary of an account to a family member, as defined in 26
14 USC 529A, of the previous beneficiary, if the new beneficiary is an eligible individual.

15 3. If the account owner is not the beneficiary, terminate an account upon the
16 death of a beneficiary if the account owner is unable to change the beneficiary under
17 subd. 2.

18 (b) An individual may not be the beneficiary of more than one account
19 established under this section.

20 (c) 1. The maximum total amount of annual contributions that may be made
21 to an account established under this section for a particular beneficiary is the
22 amount described in 26 USC 529A (b) (2) (B).

23 2. The maximum total amount of all annual contributions that may be made
24 to an account established under this section for a particular beneficiary is the same

BILL**SECTION 1**

1 as the maximum aggregate contribution limit to an account described under s.
2 16.641, as set by the college program savings board.

3 3. If any person attempts to contribute to an account established under this
4 section and that contribution would exceed one or both of the limits specified in this
5 paragraph, the financial institution to which the contribution is sent shall return to
6 the prospective contributor any amount of the attempted contribution that is
7 necessary to prevent the limits from being exceeded.

8 4. If more than one person attempts to contribute to an account established
9 under this section and such contributions would exceed the limits specified in this
10 paragraph, and if the attempted contributions arrive at the financial institution on
11 the same day, the financial institution to which the contributions are sent shall
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20 (4) PAYMENT OF CLAIMS. If a beneficiary incurs costs for qualified expenses, the
21 financial institution shall pay such expenses if sufficient funds to do so are in the
22 account.

23 (5) ELIGIBILITY FOR LONG-TERM CARE PROGRAMS. A person who is determining
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25 46.277, the family care benefit under s. 46.286, the family care partnership program,

BILL

1 the long-term care program defined in s. 46.2899 (1), or any other demonstration
2 program or program operated under a waiver of federal medicaid law that provides
3 long-term care benefits shall exclude from the determination any income from
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5 **SECTION 2.** 71.05 (6) (a) 27. of the statutes is created to read:

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12 **SECTION 3.** 71.05 (6) (a) 28. of the statutes is created to read:

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15 estate.

16 **SECTION 4.** 71.05 (6) (b) 52. of the statutes is created to read:

17 71.05 (6) (b) 52. Subject to the limits under s. 16.643 (3) (c) 1. and 2., any amount
18 that is deposited by an account owner or any other ~~authorized~~ person into an account
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20 the account if the interest, dividends, or other gain is redeposited into the account.

21 **SECTION 5.** 71.07 (5) (a) 9. of the statutes is created to read:

22 71.07 (5) (a) 9. The amount claimed as a deduction for unreimbursed medical
23 expenses under section 213 (a) of the Internal Revenue Code to the extent that the
24 funds used to pay for the unreimbursed expenses for which the deduction was
25 claimed were withdrawn from an account described under s. 16.643.

Shovers, Marc

To: Joniaux, Benjamin
Subject: RE: Rep. Macco Meeting about ABLE

Hi Ben:

I just left you a voice mail message. I'm not sure changing the current language in sub. (3) (d) to "death of beneficiary" would be consistent with your intent. If the beneficiary is not the account owner and the beneficiary dies, the account owner may transfer the account to a family member who is an eligible individual under federal law. If we change the bill as you've suggested, to "death of beneficiary", that sort of transfer would be precluded and I don't think that's what you want.

So I think I'll send the draft through to be a /4 with only the changes to the clawback language. If I've misinterpreted your intent, we can certainly redraft the bill quickly on Monday. Thanks.

Marc

From: Joniaux, Benjamin
Sent: Friday, May 01, 2015 3:55 PM
To: Shovers, Marc
Subject: RE: Rep. Macco Meeting about ABLE

Thanks Marc,

I checked with our contact. The first paragraph is perfect, and he agrees with your intent in the second. Could we change to "death of beneficiary"? The only worry is that if someone terminates their account, for whatever reason, before their death that those funds are not subjected to the clawback provision as written by the federal statute.

After that, we are totally good to go on the bill.

From: Shovers, Marc
Sent: Friday, May 01, 2015 2:57 PM
To: Joniaux, Benjamin
Subject: RE: Rep. Macco Meeting about ABLE

Hi Ben:

I talked to my colleague who drafts in public assistance and she believes something should be added to the bill, even though the bill requires accounts to be consistent with federal law. I think I'll add a sentence to s. 16.643 (3) (d) that says something like "Recovery authorized under this paragraph may relate only to public assistance received by a beneficiary on and after the date on which an account is established under this section." Does that meet your intent?

As to your other questions about the way the bill refers to 1) a beneficiary who is the account owner, and 2) the termination of an account described under par. (a) 3., instead of merely referring to the "death of the account owner", I think we need to retain the current language because the account

owner is not always the beneficiary (i.e. if the beneficiary is a minor or incompetent, there'd be a separate account owner), we can't just refer to the "death of the account owner."

So would you like me to create a /4 today with this new language in sub. (3) (d), or would you like to take more time over the weekend to have other people review the bill before it's redrafted on Monday?

Thanks,

Marc

From: Joniaux, Benjamin
Sent: Friday, May 01, 2015 2:02 PM
To: Shovers, Marc
Subject: RE: Rep. Macco Meeting about ABLE

Marc,

There was one thing after looking at the bill a little closely was Section 1 part 3 4d, The federal clause says that the clawback applies only for Medicaid services that were garnered from the time of opening the account, so I wanted to ensure that this is the same.

This is the federal bill language:

Subject to any outstanding payments due for qualified disability expenses, upon the death of the designated beneficiary, all amounts remaining in the qualified ABLE account not in excess of the amount equal to the total medical assistance paid for the designated beneficiary after the establishment of the account, net of any premiums paid from the account or paid by or on behalf of the beneficiary to a Medicaid Buy-In program under any State Medicaid plan established under title XIX of the Social Security Act, shall be distributed to such State upon filing of a claim for payment by such State. For purposes of this paragraph, the State shall be a creditor of an ABLE account and not a beneficiary. Subsection (c)(3) shall not apply to a distribution under the preceding sentence.

Also, rather than termination of the account in , Section 1, part 3, 4d, (page 4, line 14) can it be upon the death of the account owner? If these are issues that were already addressed, or issues that can be addressed in another area, let me know.

Ben

From: Shovers, Marc
Sent: Friday, May 01, 2015 11:34 AM
To: Joniaux, Benjamin
Subject: RE: Rep. Macco Meeting about ABLE

Absolutely. It will be out today with that one change.

Thanks,

Marc

From: Joniaux, Benjamin
Sent: Friday, May 01, 2015 11:23 AM
To: Shovers, Marc
Subject: RE: Rep. Macco Meeting about ABLE

That'd be great. Would you be able to get the draft to us by today?

From: Shovers, Marc
Sent: Thursday, April 30, 2015 4:21 PM
To: Joniaux, Benjamin
Subject: RE: Rep. Macco Meeting about ABLE

Hi Ben:

I don't know if you've had a chance to review -1861/2, but I noticed an error in quick glance through the bill. The word "authorized" on page 5, line 18, should be removed. Do you agree? If so, I'll do a redraft. But I thought I'd wait until I hear from you as to whether you may have any other changes. Thanks.

Marc

From: Joniaux, Benjamin
Sent: Wednesday, April 29, 2015 11:04 AM
To: Shovers, Marc
Subject: RE: Rep. Macco Meeting about ABLE

Will do Marc.

From: Shovers, Marc
Sent: Wednesday, April 29, 2015 10:50 AM
To: Joniaux, Benjamin
Subject: RE: Rep. Macco Meeting about ABLE

Hi Ben:

I'm starting on the redraft this morning. Could you please send the jacket back to the LRB? Thanks.

Marc

From: Joniaux, Benjamin
Sent: Monday, April 27, 2015 9:41 AM
To: Shovers, Marc
Subject: RE: Rep. Macco Meeting about ABLE

Marc,

We are having a meeting with a national advocacy group for the ABLE bill that went over some track changes in our bill. Would you be available at 1:00 today in our office (22W) to be on the phone call?

Thanks,

Ben

From: Shovers, Marc
Sent: Monday, February 23, 2015 1:08 PM
To: Joniaux, Benjamin
Subject: RE: Rep. Macco Meeting about ABLE

Hi Ben:

I do have time on both days, but I'm not sure what the "ABLE" bill is that you're talking about. Could you please tell me the request involves? Thanks.

Marc

Marc Shovers
Senior Legislative Attorney
Legislative Reference Bureau
608-266-0129
marc.shovers@legis.wisconsin.gov

From: Joniaux, Benjamin
Sent: Monday, February 23, 2015 1:03 PM
To: Shovers, Marc
Subject: Rep. Macco Meeting about ABLE

Marc,

Do you have any time available on Wednesday or Thursday to discuss that ABLE bill drafting with Rep. Macco and myself?

Let me know,

Ben

Ben Joniaux
Legislative Aide
Office of Representative John Macco
22 West, State Capitol
Phone: 608-266-0485



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2015 - 2016 LEGISLATURE

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16 death of a beneficiary if the account owner is unable to change the beneficiary under
17 subd. 2.

18 (b) An individual may not be the beneficiary of more than one account
19 established under this section.

20 (c) 1. The maximum total amount of annual contributions that may be made
21 to an account established under this section for a particular beneficiary is the
22 amount described in 26 USC 529A (b) (2) (B).

23 2. The maximum total amount of all annual contributions that may be made
24 to an account established under this section for a particular beneficiary is the same

BILL

SECTION 1

1 as the maximum aggregate contribution limit to an account described under s.
2 16.641, as set by the college program savings board.

3 3. If any person attempts to contribute to an account established under this
4 section and that contribution would exceed one or both of the limits specified in this
5 paragraph, the financial institution to which the contribution is sent shall return to
6 the prospective contributor any amount of the attempted contribution that is
7 necessary to prevent the limits from being exceeded.

8 4. If more than one person attempts to contribute to an account established
9 under this section and such contributions would exceed the limits specified in this
10 paragraph, and if the attempted contributions arrive at the financial institution on
11 the same day, the financial institution to which the contributions are sent shall
12 return to the prospective contributors any amount of the attempted contributions,
13 on a prorated basis, that is necessary to prevent the limits from being exceeded.

14 (d) Upon the death of the beneficiary who is the account owner the account shall
15 terminate, and upon the termination of an account as described in par. (a) 3., any
16 amount remaining in the account shall be recoverable by the state under s. 49.849
17 as property of a decedent is recoverable under that statute. Any amount that

Handwritten scribble

18 remains in the account following such recovery under s. 49.849 shall be paid to the
19 account owner's estate.

authorized recovery under this paragraph may relate only to public assistance received by a beneficiary on and after the date an account is established under this section.

20 (4) PAYMENT OF CLAIMS. If a beneficiary incurs costs for qualified expenses, the
21 financial institution shall pay such expenses if sufficient funds to do so are in the
22 account.

on which

23 (5) ELIGIBILITY FOR LONG-TERM CARE PROGRAMS. A person who is determining
24 eligibility for an individual for a long-term care program under s. 46.27, 46.275, or
25 46.277, the family care benefit under s. 46.286, the family care partnership program,

BILL

1 the long-term care program defined in s. 46.2899 (1), or any other demonstration
2 program or program operated under a waiver of federal medicaid law that provides
3 long-term care benefits shall exclude from the determination any income from
4 assets accumulated in an account created under this section for a beneficiary.

5 **SECTION 2.** 71.05 (6) (a) 27. of the statutes is created to read:

6 71.05 (6) (a) 27. Except as provided in subd. 28., any accumulated interest,
7 dividends, or other gain that accrues from an account described under s. 16.643
8 during the taxable year in which a withdrawal occurs from such an account if any
9 amount of the money or other assets in the account is withdrawn by, or at the
10 direction of, an account owner for any reason other than the payment of qualified
11 expenses, as defined in s. 16.643 (1) (e), for the account beneficiary.

12 **SECTION 3.** 71.05 (6) (a) 28. of the statutes is created to read:

13 71.05 (6) (a) 28. Upon the termination of an account under s. 16.643 (3) (d), any
14 amount in the account that is returned to an account owner, or an account owner's
15 estate.

16 **SECTION 4.** 71.05 (6) (b) 52. of the statutes is created to read:

17 71.05 (6) (b) 52. Subject to the limits under s. 16.643 (3) (c) 1. and 2., any amount
18 that is deposited by an account owner or any other person into an account described
19 under s. 16.643, and any interest, dividends, or other gain that accrues in the account
20 if the interest, dividends, or other gain is redeposited into the account.

21 **SECTION 5.** 71.07 (5) (a) 9. of the statutes is created to read:

22 71.07 (5) (a) 9. The amount claimed as a deduction for unreimbursed medical
23 expenses under section 213 (a) of the Internal Revenue Code to the extent that the
24 funds used to pay for the unreimbursed expenses for which the deduction was
25 claimed were withdrawn from an account described under s. 16.643.

BILL

SECTION 6

1 **SECTION 6. Initial applicability.**

2 (1) This act first applies to taxable years beginning on January 1 of the year
3 in which this subsection takes effect, except that if this subsection takes effect after
4 July 31, this act first applies to taxable years beginning on January 1 of the year
5 following the year in which this subsection takes effect.

6 (END)

Shovers, Marc

From: Joniaux, Benjamin
Sent: Tuesday, May 05, 2015 2:33 PM
To: Shovers, Marc
Subject: RE: ABLE bill

Marc,

What you have done is great. WE'll go with that, and we do not need Chris.

Thank you for all of your hard work.

Ben

From: Shovers, Marc
Sent: Tuesday, May 05, 2015 1:26 PM
To: Joniaux, Benjamin
Subject: RE: ABLE bill

Hi Ben:

I talked to my colleague who drafts in the Medicaid and Public Assistance areas and she doesn't think that anything needs to be added to the bill as there's already a cap under federal law (which of course applies to WI), and our state statutes also have a cap based on federal law. See s. 49.849 (2) (a).

Essentially, that statute is a cap which limits the allowable amount of Medicaid recovery to the amount that was actually paid to the beneficiary. So when looking at the federal and state law caps, and the other language that is already in the bill, it doesn't seem like the cap Christopher proposes would do anything beyond what is current law and what is in the bill.

Here's the state law cap:

49.849(2)(a)

(a) (intro.) Subject to par. (b), the department may collect from the property of a decedent by affidavit under sub. (3) (b) or by lien under sub. (4) (a) an amount equal to the medical assistance that is recoverable under s. 49.496 (3) (a), the long-term community support services under s. 46.27 that is recoverable under s. 46.27 (7g) (c) 1., or the aid under s. 49.68, 49.683, or 49.685 that is recoverable under s. 49.682 (2) (a), and that was paid on behalf of the decedent or the decedent's spouse, if all of the following conditions are satisfied:

49.849(2)(a)1.

1. The decedent died after September 30, 1991.

49.849(2)(a)2.

2. The decedent is not survived by a spouse, a child who is under age 21 or a child who is disabled, as defined in s. 49.468 (1) (a) 1.

Would you like me to ask Christopher to look at this again? Or perhaps he could explain why, in light of current federal and state law, he believes that additional cap language is needed to accomplish his goal.

Thanks, Ben.

Marc

From: Joniaux, Benjamin
Sent: Tuesday, May 05, 2015 12:42 PM
To: Shovers, Marc
Subject: RE: ABLE bill

He said that he was good after the conversation yesterday, so we are good if you redraft.

From: Shovers, Marc
Sent: Tuesday, May 05, 2015 12:39 PM
To: Joniaux, Benjamin
Subject: RE: ABLE bill

Hi Ben.

Yes, you'll need to return the jacket. Would you like me to go ahead and redraft it now, or are we waiting to hear back from Christopher again to make sure I understood him correctly? Thanks.

Marc

From: Joniaux, Benjamin
Sent: Tuesday, May 05, 2015 12:37 PM
To: Shovers, Marc
Subject: RE: ABLE bill

Marc,

Do I need to return the jacket for /4?

From: Shovers, Marc
Sent: Monday, May 04, 2015 12:31 PM
To: Macco, John; Joniaux, Benjamin
Cc: Christopher Rodriguez
Subject: RE: ABLE bill

Hello everyone:

I talked to Chris and I think he believes the termination language in sub. (3) (d) is fine in the /4 version, in that it would allow transfer of the net proceeds of an account, after the death of a beneficiary who is not the account owner, to an eligible family member. My reading of the federal law does not seem to indicate that such a transfer would be disallowed following a beneficiary's death, as long as reimbursement is made before any amounts are transferred.

The federal, law 26 USC 529A, just seems to indicate that after a beneficiary's death, a state may institute clawback provisions allowing the recovery of an amount not to exceed the amount medical assistance paid to benefit the beneficiary after the account is established. I believe Chris would only like to add a cap on the total amount that the state may recover. The cap would be based on federal law. It would essentially be the total amount of Medicaide paid for the benefit of the beneficiary, net of any premiums paid from the account or paid to a Medicaid Buy-In program, on and after the ABLE account is established.

My understanding is that the only thing I need to do, then, is to add this kind of a cap on the clawback that is allowed in the bill. Is this correct?

I'll wait to hear from everyone before I turn this into a /5.

Thanks for your help.

Marc

From: Macco, John
Sent: Monday, May 04, 2015 12:03 PM
To: Joniaux, Benjamin
Cc: Shovers, Marc; Christopher Rodriguez
Subject: Re: ABLE bill

Chris is correct. No action can be taken on any account after the owner or beneficiary dies. Upon death any acct is frozen. Or by definition the acct then terminates. Any action allowed by the acct, whether able or Ira or trust, can be taken but only prior to death. Therefore the termination language in no way interferes with an able owner to change ownership or beneficiary as long as it's made before death. Good catch, thanks for making this a solid bill. JJM.

On May 4, 2015, at 11:40, Joniaux, Benjamin <Benjamin.Joniaux@legis.wisconsin.gov> wrote:

John,

I wanted to put you in contact with Christopher J. Rodriguez, who is a Senior Public Policy Advisor at the National Disability Institute. He has taken interest in the ABLE bill and has some questions regarding the termination/death of a beneficiary in our current bill, and has some suggestions on how we might get the bill more in line with the federal bill. His number is 202-350-0128.

I have also put Marc on this bill from the Legislative Reference bill. Marc, from what I understand, you believe that we should keep the language surrounding termination because of how the account can be transferred if the account owner and beneficiary are not the same.

I am very excited to move on this bill this week so that we can get it passed in the near future.

Ben Joniuax

Legislative Aide

Office of Representative John Macco

22 West, State Capitol

Phone: 608-266-0485

Shovers, Marc

From: Macco, John
Sent: Monday, May 04, 2015 1:22 PM
To: Shovers, Marc
Cc: Joniaux, Benjamin; Christopher Rodriguez
Subject: Re: ABLE bill

I think what you are trying to allow is both the claw back as well as the transfer. If you think that's possible I'm fine with it. The state ought to have the ability to recoup and to be sure it should recoup only to the extent of its liabilities. How a beneficiary is changed post mortem would be news to me unless dictated as a successor beneficiary pre death, and you are allowing the claw back as an intercept pre-transfer it seems, which if so, is fine. we are on the same page. Thanks Marc.

On May 4, 2015, at 12:31, Shovers, Marc <Marc.Shovers@legis.wisconsin.gov> wrote:

Hello everyone:

I talked to Chris and I think he believes the termination language in sub. (3) (d) is fine in the /4 version, in that it would allow transfer of the net proceeds of an account, after the death of a beneficiary who is not the account owner, to an eligible family member. My reading of the federal law does not seem to indicate that such a transfer would be disallowed following a beneficiary's death, as long as reimbursement is made before any amounts are transferred.

The federal, law 26 USC 529A, just seems to indicate that after a beneficiary's death, a state may institute clawback provisions allowing the recovery of an amount not to exceed the amount medical assistance paid to benefit the beneficiary after the account is established. I believe Chris would only like to add a cap on the total amount that the state may recover. The cap would be based on federal law. It would essentially be the total amount of Medicaide paid for the benefit of the beneficiary, net of any premiums paid from the account or paid to a Medicaid Buy-In program, on and after the ABLE account is established.

My understanding is that the only thing I need to do, then, is to add this kind of a cap on the clawback that is allowed in the bill. Is this correct?

I'll wait to hear from everyone before I turn this into a /5.

Thanks for your help.

Marc

From: Macco, John
Sent: Monday, May 04, 2015 12:03 PM

To: Joniaux, Benjamin
Cc: Shovers, Marc; Christopher Rodriguez
Subject: Re: ABLE bill

Chris is correct. No action can be taken on any account after the owner or beneficiary dies. Upon death any acct is frozen. Or by definition the acct then terminates. Any action allowed by the acct, whether able or Ira or trust, can be taken but only prior to death. Therefore the termination language in no way interferes with an able owner to change ownership or beneficiary as long as it's made before death. Good catch, thanks for making this a solid bill. JJM.

On May 4, 2015, at 11:40, Joniaux, Benjamin <Benjamin.Joniaux@legis.wisconsin.gov> wrote:

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I have also put Marc on this bill from the Legislative Reference bill. Marc, from what I understand, you believe that we should keep the language surrounding termination because of how the account can be transferred if the account owner and beneficiary are not the same.

I am very excited to move on this bill this week so that we can get it passed in the near future.

Ben Joniuax
Legislative Aide
Office of Representative John Macco
22 West, State Capitol
Phone: 608-266-0485

Shovers, Marc

From: Christopher Rodriguez <crodriguez@ndi-inc.org>
Sent: Monday, May 04, 2015 12:17 PM
To: Shovers, Marc
Subject: ABLE Language

Thanks for the help.

...not to exceed the amount equal to the total medical assistance paid for the designated beneficiary after the establishment of the account , net of any premiums paid from the account or paid by or on behalf of the beneficiary to a Medicaid Buy-In program under any State Medicaid plan established under title XIX of the Social Security Act, shall be distributed to such State upon filing of a claim for payment by such State.

Let me know if you have any questions.

Chris

Christopher J. Rodriguez \ Senior Public Policy Advisor
National Disability Institute
1667 K Street, NW - Suite 640
Washington, DC 20006
202.350.0128
202.296.2047 (fax)
www.realeconomicimpact.org

National Disability Institute: Celebrating 10 Years of Real Economic Impact for People with Disabilities

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MEMORANDUM

May 5, 2015

TO: Marc Shovers
Legislative Reference Bureau

FROM: Mike Wagner
Department of Revenue

SUBJECT: Technical Memorandum on LRB 1861/2: Relating to Tax-Exempt Accounts for Qualified Expenses Incurred by Individuals with Disabilities and Granting Rule-Making Authority

Copy to Rep'
Macco
05-05-2015
↓
Tech. Memo is
for old "12"
version

(Draft is
now
a "1/4")

The Department has the following concerns related to the bill:

Section 16.643:

1. IRS Notice 2015-18 provides advance notification of anticipated guidance that the owner of an ABLÉ account is the designated beneficiary of the account. Additionally, a person other than the designated beneficiary with signature authority over the account may neither have nor acquire any beneficial interest in the account. Under this guidance, a parent or guardian cannot be the owner of an account as proposed in s. 16.643(a).
2. Section 529A(b)(1)(C) of the IRC provides a qualified ABLÉ program is a program that allows for the establishment of an ABLÉ account only for a designated beneficiary who is a resident of the state that establishes and maintains the program or a resident of a contracting state. To comply with this provision, a residency requirement should be incorporated into the provisions of s. 16.643.
3. Section 529A(c)(3)(B) of the IRC concerns a distribution to a "beneficiary" of an account upon the death of the "designated beneficiary" of the account. As s. 16.643(3)(a)3. and (d) only use the term "beneficiary" (defined as an eligible individual for whom an account is established), it is unclear what happens when the beneficiary dies. Also, as the owner of an account is the designated beneficiary (see item #1 above) the phrases should be revised: "if the account owner is not the beneficiary," and, "upon the death of the beneficiary who is the account owner". Finally, it is not clear who has first right to the balance in the account (another designated beneficiary to whom the account is transferred, the state, a beneficiary of the account other than the designated beneficiary, or the designated beneficiary's estate) when the beneficiary dies.

Chapter 71

1. Section 529A(c)(1) of the Internal Revenue Code (IRC) provides the earnings from an ABLÉ account are included in the income of the distributee in the taxable year a distribution occurs. Exceptions are provided for:
 - Distributions for qualified disability expenses of the designated beneficiary;
 - Rollovers from one account to another;
 - A change in the designated beneficiary of an account; and

- The return of a contribution by the due date (including extensions) of the return for the taxable year in which the contribution is made.

Assuming section 529A of the IRC is adopted for Wisconsin purposes in the Governor's Budget Bill as proposed by DOR, the addition to income prescribed by s. 71.05(6)(a)27 should not be necessary.

2. The addition to income provided in s. 71.05(6)(a)27 only includes the earnings portion of nonqualified withdrawals from an account, which should not be necessary as described above. However, the IRC does not allow for a federal deduction for contributions while this bill allows a state deduction for contributions. As such Wisconsin should require an addition to income for the deductible contribution amount when a nonqualified withdrawal occurs.
3. The provisions of s. 71.05(6)(a)28 need clarification. See item #3 under "Section 16.643."
4. The current draft raises concerns with the subtraction under s. 71.05(6)(b)52:
 - It is not clear when a contribution must be made in order to be eligible for a subtraction.
 - The subtraction could be interpreted to apply to a deposit that is a rollover contribution or a transfer because of a change in beneficiary.
 - Under the IRC, accrued earnings on an account are not subject to tax; allowing a subtraction for accrued earnings provides a double benefit.
 - Part-year and nonresidents of Wisconsin are allowed the full amount of the subtraction.
 - The subtraction is allowed when income not taxable to Wisconsin is used to make a contribution.

In response to the concerns above, DOR recommends that s. 71.05(6)(b)52 read as follows:

71.05(6)(b) 52. An amount paid into a support account for an individual with a disability, as described in s. 16.643, in the taxable year in which the contribution is made, calculated as follows:

- a. Subject to the limits under s. 16.643 (3) (c) 1. and 2., an amount paid by an account owner or any other authorized person into an account described under s. 16.643. This subdivision does not apply to any amount attributable to a rollover or transfer from an account described under s. 16.643 to another such account or from another state's qualified ABLE program, as described in 26 USC 529A (b), to an account described under s. 16.643.
- b. For an individual who is a nonresident or part-year resident of this state, multiply the amount calculated under subd. 52. a. by a fraction the numerator of which is the individual's wages, salary, tips, unearned income and net earnings from a trade or business that are taxable by this state and the denominator of which is the individual's total wages, salary, tips, unearned income and net earnings from a trade or business. In this subd. 52. b., for married persons filing separately "wages, salary, tips, unearned income and net earnings from a trade or business" means the separate wages, salary, tips, unearned income and net earnings from a trade or business of each spouse, and for married persons filing jointly "wages, salary, tips, unearned income and net earnings from a trade or business" means the total wages, salary, tips, unearned income and net earnings from a trade or business of both spouses.
- c. Reduce the amount calculated under subd. 52. a. or b. to the individual's aggregate wages, salary, tips, unearned income and net earnings from a trade or business that are taxable by this state.

5. Because qualified disability expenses include education expenses, an individual could receive a deduction for contributing to an account and a second deduction for tuition under s. 71.05(6)(b)28 when an amount is withdrawn from the account and used to pay tuition expenses. To prevent a double deduction, s. 71.05(6)(b)28h should be amended to include an amount withdrawn from an account described in s. 16.643 as a source of payment for which a tuition deduction may not be claimed.

If you have any questions regarding this technical memorandum, please contact Brad Caruth at (608) 261-8984 or bradley.caruth@revenue.wi.gov.

Fiscal Estimate - 2015 Session

Original
 Updated
 Corrected
 Supplemental

LRB Number 15-1861/2	Introduction Number
-----------------------------	---------------------

Description
 Tax-exempt accounts for qualified expenses incurred by individuals with disabilities and granting rule-making authority

Fiscal Effect

State:

<input type="checkbox"/> No State Fiscal Effect	<input type="checkbox"/> Indeterminate	<input type="checkbox"/> Increase Existing Revenues	<input checked="" type="checkbox"/> Increase Costs - May be possible to absorb within agency's budget
<input type="checkbox"/> Increase Existing Appropriations	<input checked="" type="checkbox"/> Decrease Existing Appropriations	<input type="checkbox"/> Decrease Existing Revenues	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
<input type="checkbox"/> Create New Appropriations			<input type="checkbox"/> Decrease Costs

Local:

<input type="checkbox"/> No Local Government Costs	<input type="checkbox"/> Indeterminate	5. Types of Local Government Units Affected	
1. <input type="checkbox"/> Increase Costs	3. <input type="checkbox"/> Increase Revenue	<input type="checkbox"/> Towns	<input type="checkbox"/> Village
<input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	<input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	<input type="checkbox"/> Counties	<input type="checkbox"/> Others
2. <input type="checkbox"/> Decrease Costs	4. <input type="checkbox"/> Decrease Revenue	<input type="checkbox"/> School Districts	<input type="checkbox"/> WTCS Districts
<input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	<input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory		

Fund Sources Affected	Affected Ch. 20 Appropriations
<input checked="" type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEGS	

Agency/Prepared By DOR/ Bradley Caruth (608) 261-8984	Authorized Signature Michael Wagner (608) 266-6785	Date 5/5/2015
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05-05-2015
copy to Rep. Macco

→ FE is for old "1/2" version

→ draft is now a "1/4"

Fiscal Estimate Narratives

DOR 5/5/2015

LRB Number	15-1861/2	Introduction Number	Estimate Type	Original
Description Tax-exempt accounts for qualified expenses incurred by individuals with disabilities and granting rule-making authority				

Assumptions Used in Arriving at Fiscal Estimate

Current federal law allows states to create Achieving a Better Life Experience (ABLE) accounts under which individuals may make contributions to tax-exempt savings accounts to pay for qualified expenses of designated beneficiaries with disabilities. The maximum amount that may be contributed to an account for a particular beneficiary each year is \$14,000, and the maximum total amount of contributions that may be made to such an account for that beneficiary is \$330,000.

Any gain that accumulates in an account is exempt from taxation, and amounts contributed to an account are tax deductible. In addition, any assets accumulated in the account may not be used to determine a beneficiary's eligibility for various state programs, such as long-term care programs and the family care partnership program.

Based on a federal estimate of the revenue loss attributable to the federal tax exemption for gains that accumulate in the accounts, the adjusted Wisconsin revenue loss for those gains is approximately \$20,000 in fiscal year 2016, \$50,000 in fiscal year 2017, and increasing annually to approximately \$1.2 million by fiscal year 2023.

This bill also allows for a state income tax deduction for contributions to the accounts. Assuming an annual rate of return of 5% on contributions, the interest exemption is consistent with annual contributions rising from \$6.4 million in fiscal year 2016 to \$13.3 million in fiscal year 2017 and \$95.7 million by fiscal year 2023. As a result, the fiscal effect of the deduction increases from \$310,000 in fiscal year 2016 to \$650,000 in fiscal year 2017 and \$4.7 million by fiscal year 2023.

Combining the estimated effects of the exemption on gains and the deduction for contributions, the bill reduces revenue by approximately \$330,000 in fiscal year 2016, \$700,000 in fiscal year 2017, and \$5.9 million by fiscal year 2023.

Long-Range Fiscal Implications

Fiscal Estimate Worksheet - 2015 Session

Detailed Estimate of Annual Fiscal Effect

Original
 Updated
 Corrected
 Supplemental

LRB Number 15-1861/2		Introduction Number	
Description Tax-exempt accounts for qualified expenses incurred by individuals with disabilities and granting rule-making authority			
I. One-time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):			
II. Annualized Costs:		Annualized Fiscal Impact on funds from:	
		Increased Costs	Decreased Costs
A. State Costs by Category			
State Operations - Salaries and Fringes	\$		\$
(FTE Position Changes)			
State Operations - Other Costs			
Local Assistance			
Aids to Individuals or Organizations			
TOTAL State Costs by Category	\$		\$
B. State Costs by Source of Funds			
GPR			
FED			
PRO/PRS			
SEG/SEG-S			
III. State Revenues - Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)			
	Increased Rev		Decreased Rev
GPR Taxes	\$		\$
GPR Earned			
FED			
PRO/PRS			
SEG/SEG-S			
TOTAL State Revenues	\$		\$
NET ANNUALIZED FISCAL IMPACT			
	<u>State</u>		<u>Local</u>
NET CHANGE IN COSTS	\$		\$
NET CHANGE IN REVENUE	\$See Text		\$
Agency/Prepared By		Authorized Signature	Date
DOR/ Bradley Caruth (608) 261-8984		Michael Wagner (608) 266-6785	5/5/2015

Barman, Mike

From: Barman, Mike
Sent: Tuesday, May 19, 2015 8:02 AM
To: Shovers, Marc; Joniaux, Benjamin
Subject: RE: Fiscal Estimate

No Response From Macco's office

A fiscal estimate was requested for the "/1" version and then again for the "/2" version. DOA assigned "/2" to DOA and DOR ... we received a FE back from DOR and a copy was sent to Rep. Macco on 05/05/2015.

The draft is now a "/4". We do not send out for fiscal estimates on un-introduced drafts unless specifically requested to do so by the "requestor's" office. Does Rep. Macco's office want us to submit the un-introduced "/4" version to DOA for agency assignment?

Thanks,

Mike Barman (Lead Program Assistant)
State of Wisconsin - Legislative Reference Bureau - Legal Section - Front Office
1 East Main Street, Suite 200, Madison, WI 53703
(608) 266-3561 / mike.barman@legis.wisconsin.gov

05-20-15
MES said
to go ahead
and submit
"/4" to DOA
for FE
assignment.

Note: The LRB will automatically submit the current version to DOA for FE assignment if/when the draft is formally introduced.

From: Shovers, Marc
Sent: Monday, May 18, 2015 6:06 PM
To: Barman, Mike
Subject: FW: Fiscal Estimate

Do you know what happened to the FE for Rep. Macco's bill, LRB -1861/4? Thanks.

Marc

From: Joniaux, Benjamin
Sent: Monday, May 18, 2015 4:44 PM
To: Shovers, Marc
Subject: Fiscal Estimate

Marc,

I checked on the FES website and I cannot find our draft as one even in the process. Is there something I missed?

Thanks,

Ben Joniuax
Legislative Aide
Office of Representative John Macco
22 West, State Capitol
Phone: 608-266-0485