

MINUTES
SENATE HEALTH & WELFARE COMMITTEE

DATE: Tuesday, February 21, 2017

TIME: 3:00 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Heider, Vice Chairman Souza, Senators Martin, Lee, Harris, Anthon, Agenbroad, Foreman, and Jordan

ABSENT/ EXCUSED: None

NOTE: The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

CONVENED: **Chairman Heider** called the meeting of the Senate Health and Welfare Committee (Committee) to order at 3:10 p.m.

H 41 **Relating to Individuals with Disabilities. Senator Burgoyne** introduced himself and Representative Troy to the Committee to present **H 41**. The federal ABLE Act was signed into law in December 2014, and this legislation has been in process since that time. It is consensus legislation and has the support of the Governor.

Senator Burgoyne explained ABLE stands for "Achieving Better Life Experience." The ABLE Act permits those with developmental disabilities and others with disabilities that began prior to age 26 to open savings accounts in strictly-regulated state programs without jeopardizing their eligibility for Supplemental Security Income (SSI), Medicaid, and other federal assistance programs. The ABLE Act is in the same part of federal code as the college savings program and there are similarities in how they are administered. In 2015 Congress amended the law to allow residents of one state to open an ABLE account in another state.

Senator Burgoyne informed the Committee other states spent as much as \$1 million to establish their ABLE account programs, and those programs are maintained through assessment of service charges against account holders. If Idaho was to adopt its own ABLE account program, the start-up costs and maintenance service charges would likely be very high due to Idaho's small population. **H 41** would allow Idaho residents to open ABLE accounts in other states, and the bill also provides a technical assistance component to help Idaho residents understand how to use the accounts.

Senator Burgoyne commented prior to the enactment of the ABLE Act, federal law provided that anyone with more than \$2,000 in assets was ineligible for federal aid. The ABLE Act allows contributions of up to \$14,000 per year to a maximum of \$100,000 to be held in special accounts. Most people with developmental disabilities will never reach that maximum balance. An ABLE account is similar to a Special Needs Trust (SNT), which is a mechanism for people to set aside money for needed items not covered by Medicaid or other assistance. SNTs can be expensive, however, and ABLE accounts can be an adequate substitute for some people.

Senator Burgoyne stated the Idaho Council on Developmental Disabilities, Idaho's College Savings Program, DisAbility Rights Idaho, the University of Idaho Center on Disabilities and Human Development, Idaho Parents Unlimited, the Idaho State Independent Living Council, the Living Independence Network Corporation, the Department, and the Governor's Office all support this bill.

Senator Burgoyne commented this legislation would allow Idaho residents to open ABLÉ accounts in other states and specifically provides that Idaho will not establish an ABLÉ account program. The bill includes a financial literacy training component, as well as technical assistance relating to the ABLÉ Act. A parent, guardian, or conservator with an interest in a disabled person's welfare might receive this technical assistance. The authorization is subject to an appropriation and the technical assistance function will not happen unless the needed \$45,000 per year is approved by the Legislature in a separate appropriations bill.

Senator Burgoyne explained the federal government disregards ABLÉ accounts for purposes of eligibility, and it is unknown whether there are any purely state or local assistance programs that would not be covered by the federal exemption. However, the bill provides that ABLÉ accounts maintained by Idaho residents in other states will be disregarded from need-based State or local grants. The purpose of the ABLÉ Act is to allow disabled individuals to achieve a degree of dignity and independence and not be held down because they can't save money. He often sees people who are unable to obtain dental care because Medicaid doesn't cover it. Failing to have dental care can turn into a medical problem covered by Medicaid, and a few of that kind of case would exceed the cost of the ABLÉ program.

Senator Burgoyne said it is extremely difficult for vulnerable adults to maintain freedom and independence. There are financial and other benefits to ABLÉ accounts. Medicaid recipients could set money aside for education or training, or to repair wheelchairs, purchase adaptive devices, and so forth. When a Medicaid participant dies, Medicaid is entitled to recover benefits from the ABLÉ accounts, and that is a potential benefit to the State. Some Medicaid expense might be avoided if people have money to pay for things not covered by Medicaid.

Senator Burgoyne stated here is no information available through non-profits or the private sector for ABLÉ account participants to receive training about the accounts. A few states have ABLÉ account programs and websites specific to their own programs. There is a federal website portal and it will be important for that website to have the correct information for Idaho residents. The modest amount requested for the half-time position will allow participants to be informed and assist with training in financial literacy. The ABLÉ account program would be administered through the State Independent Living Council (SILC) with an existing position.

Vice Chairman Souza inquired whether someone could open an ABLÉ account in more than one state. **Senator Burgoyne** believes the answer is yes. **Vice Chairman Souza** asked if a person could have both an ABLÉ Account and a special needs trust. **Senator Burgoyne** answered he is not entirely certain. **Heather Conder**, a local attorney, introduced herself to the Committee to answer yes.

Representative Caroline Nilsson Troy was recognized to continue the presentation. **Representative Troy** commented the bill is only 46 lines but it took several years to develop the legislation. Time was a benefit due to the federal rule change allowing non-residents to open ABLÉ accounts in other states. Idaho has a financial interest in allowing ABLÉ accounts and ensuring their proper use. It is expensive to set up an ABLÉ program because the Social Security Administration (SSA) requires daily updates on expenses coming out of ABLÉ accounts to make sure participants are spending appropriately and staying under the savings cap.

Representative Troy stated Idaho Medicaid does not cover all needs of adults with disabilities. The program is much like a health savings account (HSA), and money can only be spent on specific health needs, such as vision and dental care, wheelchairs, and so forth. Medicaid may be able to recover some taxpayer investment. Upon the death of an account holder, the State has a claim against the unused portion of the ABLE account to help reimburse Medicaid expenditures. The technical assistance piece of the bill will help citizens make the best use of the program to use funds in the most sensible way. No new positions will be created with this bill, and it utilizes existing government in a responsible and innovative manner.

Chairman Heider asked if a participant could use an HSA instead of an ABLE account. **Representative Troy** answered it is not allowed, and current law caps savings at \$2,000. **Chairman Heider** asked why Idaho does not set up its own ABLE account program. **Representative Troy** answered it would require a large pool of participants and it would be expensive for Idaho to set up its own program. By working through states that have already established ABLE accounts, it would be more efficient with a larger participant pool.

Senator Harris asked who monitors the accounts. **Representative Troy** replied the accounts are monitored daily by the SSA.

TESTIMONY:

Jack Hanson introduced himself to the Committee to speak in support of **H 41**. (See Attachment 1.) **Mr. Hanson** said the technical assistance portion of the bill will help him understand money and how saving money works. He can start saving for a house of his own, things like eye glasses and eye glass repair not covered by Medicaid, or a car for him and his girlfriend. If he saves more than \$2,000, he loses his Medicaid benefits, Supplemental Nutrition Assistance Program benefits, and SSI.

Mr. Hanson commented the 2014 federal ABLE Act allows people with disabilities to save more than \$2,000 without losing his benefits. He will never be able to save \$100,000, but he might be able to save up to \$15-20,000 because he is a hard worker and is looking for a job. **H 41** will give him peace of mind knowing any savings in an ABLE account will not count against him for any state or federally funded benefits now or in the future.

Chairman Heider asked if Mr. Hanson has up to \$2,000 in spendable income to put into an ABLE account every month. **Mr. Hanson** replied he does not have a job and the answer is no. He has been working with Senator Martin on this issue since February 2016. Senator Martin is one of his closest friends and he considers Senator Martin to be a mentor.

TESTIMONY:

Toni Brinegar introduced herself to the Committee to speak in support of **H 41**. Shortly after her son's birth, he slipped into a coma. After 24 hours, she was told her son had a brain hemorrhage and would need immediate brain surgery. The baby had surgery, arrested on the table, and was brought back. Her son will turn 18 this year. This experience was her introduction into the world of disability. An image of her son's brain looks like someone took an eraser and erased big pieces of his brain. Despite that, her son experiences joy on a daily basis and is a gift.

Ms. Brinegar explained transportation became an issue as her son grew and she was no longer able to lift him into their vehicle. She and her husband chose to modify their mini-van and purchase a Bruneau turning seat for him to access the van. That piece of equipment cost \$5,000 and it was used. The equipment now needs to be replaced and the cost is \$9,500. This is an example of an expense for which she and her husband have to set aside money for her son because they aren't going to be around forever to provide for him.

Ms. Brinegar commented one of the components of **H 41** that would be helpful to her family is the technical assistance piece. Now, she must take a day off from work or stay up very late to do research on her options. Having someone in Idaho who could help would make her life better.

Chairman Heider asked if Ms. Brinegar has money to put into an ABLÉ account for her son. **Ms. Brinegar** answered her grandmother invested some money for her son, and the account has almost reached \$2,000. She is looking to move those funds from the current account to an ABLÉ account.

TESTIMONY:

Mel Leviton introduced herself as Executive Director of the SILC. (See Attachment 2.) The SILC's mission is to promote independent living philosophy for all Idahoans with disabilities. **Ms. Leviton** supports **H 41** as furthering the SILC's mission. The SILC serves people from across all disability types regardless of the age the disability occurred.

Ms. Leviton said currently Idahoans are limited to getting technical assistance and complex information regarding ABLÉ accounts from a Washington, DC based call center and website, called the ABLÉ National Assistance Center (Center). To begin the process, a person must complete an online form and wait to be contacted by someone at the Center. While the Center provides much valuable information, including a list of states that accept out-of-state participation, it also requires a certain degree of financial literacy and language proficiency.

Ms. Leviton explained a person can have only one ABLÉ account. There are currently 14 states that allow out-of-state participation, the two closest being Washington and Oregon. Some participating states also have websites that are equally complicated and provide only state-specific information. While the resources might be viable for some, they are of little value for someone who has difficult reading, limited understanding of financial matters, or no internet access. There will be no information on how Idaho benefits would be impacted by having an ABLÉ account.

Ms. Leviton commented HSAs are employer-based, so if there is no employer, there can be no HSA. Through ABLÉ technical assistance, peoples with disabilities, families, and community partners will receive assistance, training, and information from well-qualified, in-state SILC staff. The SILC will provide a dedicated web page, phone, and in-person training with the most current information. Financial literacy is limited within the disability community. When someone has subsisted on very little money, as little as \$735 per month in the case of an SSI recipient, the person does not have experience in money management. Someone on SSI could earn up to \$85 per month without losing any benefits. At \$86 per month, \$1 in benefits is lost for every \$2 earned, up to \$1550 per month, at which time all SSI benefits would be lost. The numbers change annually. Sometimes there are expenses that can be deducted to make the determination, and it is a complicated issue.

Ms. Leviton stated the SILC will provide financial literacy workshops across the State, including in rural areas, to help people with disabilities and their families gain financial management skills needed to build a brighter future. SILC staff will also provide face-to-face instruction in accessible spaces on how ABLÉ will affect benefits, how certain benefits will still be retained, and how to set up ABLÉ accounts in participating states. Instruction can be provided in many formats such as large print and Braille. SILC staff will make four to five week-long regional trips to include small cities as well as remote communities to provide workshops. Follow-up will be done by telephone and electronic support as requested.

Ms. Leviton mentioned the SILC is grateful to the Governor for recommending funding for this legislation in his FY 2018 budget. Personal savings and an understanding of financial matters greatly improves quality of life.

TESTIMONY: **Heather Conder** introduced herself to the Committee as a Boise attorney who works with families of children and adults with disabilities to speak in support of **H 41**. **Ms. Conder** said she prepares a number of SNTs and feels the ABLE Act is very important.

Ms. Conder stated she recognizes there are questions about the need for ABLE accounts if SNTs are available. An ABLE account allows families to conserve assets, in contrast to the way an SNT is administered and taxed. There are two types of SNTs, first party and third-party. **Ms. Conder** explained a first-party SNT allows an individual to put away his own assets, excluding social security benefits which cannot be put into the SNT. A third-party SNT allows someone else to put money aside for an individual. The first-party SNT is established with a person's own money, often from a personal injury settlement or an inheritance, and it must contain required language providing for Medicaid payback to satisfy a Department of Health and Welfare lien. A third-party SNT established with anyone else's money does not include provisions for Medicaid payback because the funds were never characterized as belonging to the beneficiary. The SSA monitors ABLE accounts, while an SNT does not have specific reporting provisions.

Vice Chairman Souza clarified her earlier question related to understanding the parameters that would limit someone from having multiple sources of savings and thanked **Ms. Conder** for answering the question.

TESTIMONY: **Christine Pisani** introduced herself to the Committee on behalf of the Idaho Council on Development Disabilities (Council) to speak in support of **H 41**. (See Attachment 3.) The Council is authorized by federal and State law to monitor systems and policies and to advocate for improved and enhanced services to enable Idahoans with developmental disabilities to live meaningful lives. The Council is comprised of 23 volunteers appointed by the Governor.

Ms. Pisani explained the Council has advocated for ABLE accounts since 2013. The ABLE Act allows people with disabilities to save without jeopardizing their benefits. One of her constituents helped persuade Senator Risch to support the ABLE Act legislation through her story about being forced to drive an accessible van with a door that had to be closed with a bungee cord. That constituent would like to save for a better accessible van through an ABLE account.

Ms. Pisani commented ABLE accounts will allow for short- and long-term savings opportunities and the ability for friends and families to contribute to ABLE accounts on behalf of individuals with disabilities, providing the same type of flexible savings tools available to other Americans. Adults with disabilities struggle to make ends meet and lack information and knowledge about financial opportunities and the consequences of financial decisions. In 2013, more than 12 million Social Security Disability Insurance (SSDI) and SSI beneficiaries received monthly benefits, which is often their only source of income. Medicaid eligibility is dependent on eligibility for SSI. The asset limit of \$2,000 creates a disincentive to work and save for financial needs and perpetuates a cycle of poverty.

Ms. Pisani informed the Committee that working-age adults with disabilities and families with children with disabilities have additional costs related to health care, assistive technology, education, housing, transportation, personal support services, and employment. Savings from ABLE accounts may be used to fund qualified essential expenses such as medical and dental care, prevention and wellness, education, financial management, administrative services, funeral and burial expenses, employment training, housing, and transportation. The Council recognizes educating about financial literacy has the potential to assist with understanding how credit works and how quickly debt can accrue. People might better understand how to protect financial information, decreasing the risk of financial exploitation, a serious issue with the disability population.

Ms. Pisani said she has been doing this work in Idaho for 20 years, and to her knowledge there is no non-profit that could provide the type of financial literacy education necessary for the wide variety of people with disabilities. There is a complex set of information that must be well understood, including SSA rules, Medicaid eligibility, SSI, qualifying disability-related expenses, SNTs versus ABLÉ accounts, and the ABLÉ Act itself. Best practice indicates face-to-face statewide education will accommodate the unique learning needs of the disability community and address challenges such as remote locations or lack of internet access.

Ms. Pisani stated the Council fully supports **H 41**. This legislation is a great step in the right direction to further the independence of people with disabilities and provide peace of mind for their families.

Senator Foreman commented the key issue driving this legislation is the SSA's \$2,000 asset limit and asked why that was implemented. **Ms. Pisani** said she does not understand the logic but it is a federal requirement.

Senator Jordan asked when the \$2,000 asset limit was established. **Ms. Pisani** answered she does not know but perhaps Jim Baugh will be able to answer that question.

TESTIMONY:

Jim Baugh introduced himself to the Committee as the Executive Director of DisAbility Rights Idaho (DRI), a private non-profit organization that provides legal and advocacy services for people with disabilities. **Mr. Baugh** commented this legislation might sound strange because of the way the safety net was designed in the 1970s. The notion was to give people access to safety net services, but only if they are poor enough or disabled enough. The moment a line was crossed, the person was no longer entitled to any benefits. To leave the safety net is like jumping off a cliff, because all benefits go away if a person earns one more dollar than the limit. This has the effect of trapping people in poverty. Over the last 10 years, disability advocates have worked to make leaving the safety net more like an off-ramp than a cliff so there is a way to earn some money but not lose all benefits and perhaps get to a point where benefits are no longer needed.

Ten years ago, the Legislature passed the Medicaid for Workers with Disabilities program that allows people to maintain Medicaid benefits as they earn more money until they get to a point where no longer require the benefit. This approach has not been done with savings, and the ABLÉ Act is the first step. The U.S. Congress created a program to be administered by the Internal Revenue Service and SSA where every penny will be monitored. Idaho can be proud of **H 41** because it doesn't cost much to set up, but very few people receiving SSI will be able to save \$2,000 to \$5,000 because they can barely pay for food and rent. There are very few ABLÉ accounts to be set up, and that means there is not a big body of money to be invested. The returns from investment will be insufficient to fund administration of the program. The smaller the state, the less benefit due to the scale. **H 41** will allow other states to assume the obligation of paying the administrative costs while allowing Idahoans to take advantage of the program.

Mr. Baugh asked who will use ABLÉ accounts if so few people can save any money. He has a brother with Down's Syndrome, and it is unlikely his brother can save more than \$2,000. However, when his mother's estate was settled, his brother inherited \$9,000. **Mr. Baugh** put the inheritance into an SNT for his brother. Had his brother not had Mr. Baugh to set up the SNT, his brother would have lost all his benefits until the money was spent down. **Mr. Baugh** thinks the program could be set up better, but it can work for some Idahoans. This bill is the best chance to make it work.

TESTIMONY: **Dana Gover** introduced herself to the Committee to speak in support of **H 41**. (See Attachment 4.) She became disabled at age 18. **Ms. Gover** said she was brought up on a ranch and was raised to believe it is important to save money.

Ms. Gover explained when she became disabled, there was no program for personal care services in Idaho. When the Legislature approved personal care services, she was on Medicaid and worked and went to college. She was told she would not be able to save more than \$2,000. She is now on Medicaid for Workers, and she can save up to \$10,000. She has expenses for work and is paying her parents back for a van that her parents had to buy because she could not save enough money to buy it for herself. If she lost her benefits, she would lose her personal assistance services. Providers come to her home to help her get up and get dressed so she can go to work. Medicaid does not cover these expenses.

Ms. Gover mentioned about two years ago, her great aunt left her \$10,000 so she set up an SNT. The attorney took \$5,000 and she used the rest to have a roll-in shower installed. With an ABLÉ account, she would be able to save money to purchase a home for herself. She does have money she would love to put into an account or to repair her wheelchair or van.

TESTIMONY: **Charlene Quade** provided written testimony in support of **H 41** (see Attachment 5.) **Senator Burgoyne** was recognized to conclude his presentation of **H 41**. He urged support of the bill.

MOTION: **Senator Harris** moved to send **H 41** to the floor with a **do pass** recommendation. **Vice Chairman Souza** seconded the motion.

DISCUSSION: **Senator Foreman** said he has concerns because the bill gives tax breaks to some but not to others, and it is a redistribution of wealth. The bill also grows State government spending, and transfers functions from the private sector to the public sector. There are agencies better suited to handling education and set-up of the accounts.

Senator Lee commented she was contacted by a number of constituents who were surprised Idaho did not allow for ABLÉ accounts. Families in her community are very dedicated to their loved ones and are working extra jobs and finding whatever non-profit help they can. The families are concerned about their adult children and are trying to plan for a time when the family can no longer be the support. This is just a small piece to help families take care of each other rather than the government doing it.

There being no more discussion, **Chairman Heider** called for the vote. The motion carried by **voice vote**. **Senator Foreman** requested he be recorded as voting nay.

PRESENTATION: **Child Welfare System Report**. **Chairman Heider** recognized Lance McCleve from the Office of Performance Evaluations and asked how long he would need to present the report. **Senator Lee** suggested the presentation be rescheduled to allow adequate time. **Mr. McCleve** said the presentation would be better if he had longer than 15 or 20 minutes. **Chairman Heider** asked the Secretary to reschedule the presentation for a day the following week.

ADJOURNED: There being no further business at this time, **Chairman Heider** adjourned the meeting at 4:20 p.m.

Senator Heider
Chair

Jeanne Jackson-Heim
Secretary