

House Bill 41

Good morning, Mr. Chairman, members of the committee.

My name is Charlene K. Quade, I live at 4802 East Arrow Junction Drive, Boise, Idaho. I am the parent of an adult daughter with Intellectual Disability, aged 31, and I serve as her Co-Guardian and Co-Conservator under Idaho law.

I am an Attorney with C. K. Quade Law, PLLC, at 600 East Riverpark Lane, Suite 215, Boise, Idaho. I hold a Bachelors of Science Social Work with an emphasis on School Social Work. Prior to law school, I worked as a Qualified Intellectual Disabilities Professional, designing, implementing, and licensing programs for persons with Intellectual Disabilities and Dual Diagnosis in Minnesota. In 2000 I entered law school where I excelled in Wills, Trusts, Probate, Wealth Preservation, and Tax Law, and in the fall of 2001 the Hamline University School of Law's Journal Public Law & Policy published my student journal article A Crystal Clear IDEA: The Court Confounds the Clarity of Rowley and Contorts Congressional Intent.

Originally licensed in MN, I am also licensed in Idaho and Washington. The focus of my legal practice centers on providing legal services for persons with disability, veterans, and elders. I am only one of two Attorneys in the State of Idaho admitted to the Special Needs Alliance-- a national, non-profit organization committed to helping individuals with disabilities, their families and the professionals who serve them—working regularly with public benefits, guardianships/conservatorships, planning for disabilities and special education issues.

I serve as the Trustee of a Third Party Special Needs Trust, the Court Appointed Guardian Ad Litem for beneficiaries of Trusts, including Special Needs Trusts. Our Firm serves hundreds of individuals, parents, and guardians throughout the state of Idaho with respect to Special Needs Planning for the life and long term care of individuals with disability.

Others provided you with the over arching concept of the ABLE Act, its personal benefits, and how it would impact their lives or the lives of their loved ones or those they serve.

I will direct my comments and handout to the following: (i) definition of a First Party and Third Party Special Needs Trust; (ii) the contrasts between the ABLE Act, First Party, and Third Party Special Needs Trusts; and (iii) the Public Policy the supports the enactment of House Bill 41.

I will proceed in reverse order and take any questions at the conclusion—

Why Public Policy supports the enactment of House Bill 41.

First: It allows third party persons to contribute assets similar to a 529 account in Idaho, AND allows for a Medicaid Pay Back on the assets remaining in the account on death, similar to Estate Recovery for Elders on Medicaid.

Second: It allows for the Beneficiary to save funds for high value purchases, which in turn result in a value associated with cost savings—in transportation, services, education, and supports and resources for the individual, and, when the funds purchase a high value vehicle—say a Handicapped Accessible Van or a Home, those assets are subject to Estate Recovery or Medicaid Payback upon the death of the beneficiary.

Third: It avoids the often abused and exploitive practice used by families of little means, to leave all assets intended to benefit the beneficiary—to a sibling or other family member with the expectation but not legally enforceable wish that they use the funds for the benefit of the person with disability.

Fourth: It allows for the family and the Beneficiary to conserve assets in the establishment and maintenance of the ABLE Account in contrast to the costs associate in the establishment, administration, and taxation of a SNT.

Prior to answering any questions, I offer an abbreviated definition of a First Party, Third Party SNT, and direct you to the instructive attachment highlighting the Differences Between the ABLE Accounts and a Third Party SNT.

First Party SNT, established with the Beneficiary's own monies—often from a personal injury settlement or an inheritance—must contain requisite language providing for Medicaid Pay Back—similar to Estate Recovery for elders allowed to live in the community and upon death the assets satisfy any lien by the Department of Health and Welfare.

Third Party SNT, established with the monies of anyone BUT the Beneficiary's own monies—does not include provisions for Medicaid Pay Back—because the funds were never characterized to belong to the beneficiary.

In sum:

Public Policy supports the passing, funding, and enforcement of House Bill 41.

It is a win win-- cost sum benefit for both the Citizens—third parties and persons with disability and the State of Idaho.

Handout attached:

DIFFERENCES BETWEEN ABLE AND A 3RD-PARTY SPECIAL NEEDS TRUST ("SNT"):
compiled and prepared by Attorney Sean Beck, and the Legal Team of C. K. Quade Law, PLLC,
600 East Riverpark Lane, Suite 215, Boise, ID, 83716.

DIFFERENCES BETWEEN ABLE AND A 3RD-PARTY SPECIAL NEEDS TRUST (“SNT”):

- ABLE requires disability with an onset prior to the age 26;
 - SNT lacks an age restriction.
- ABLE has Medicaid payback provision;
 - SNT allows settlor to choose successor beneficiaries.
- ABLE restricts amounts saved at both state and federal level. Federal rules (affecting federal benefits, like SSI) allow saving up to \$14,000 per year, and a total of \$100,000.
 - SNT has no amount limits or restrictions
- ABLE is cheaper to set up, doesn't require attorney involvement or Trust document (although a pooled SNT may be closer in price). ABLE will have reasonable, ongoing maintenance fees.
 - SNTs prices vary widely, but are undoubtedly more expensive; especially if a professional trustee is involved.
- ABLE doesn't require a trustee, potentially providing more choice and control for a beneficiary and family. This may also allow more potential exploitation, however.
 - SNT trustees may offer similar control and support through electronic purchasing methods (such as debit cards).
- ABLE must be established by the individual beneficiary, parent, guardian, or agent under power of attorney (cannot be established by non-guardian grandparent).
 - SNT can be established by any party (other than beneficiary -for 3rd party SNT).
- ABLE amends the tax code to encourage contributions to an ABLE savings account that allow investments to grow tax free.
 - SNT has no special tax recognition.
- ABLE beneficiaries may take cash distributions directly; provided they use them for qualified disability expenses.
 - SNT should not be given direct cash disbursements.
- ABLE account use is limited to “qualified disability expenses,” which differ somewhat from a Special Needs Trust distribution. While allowing broader discretion for some basic housing and living expenses, it is more restrictive in entertainment, extracurricular, vacation, and hobby-related expenses. The POMS and Federal Register lists: Education; *Housing*; Transportation; Employment training and support; Assistive technology and related services; Health; Prevention and wellness; Financial management and administrative services; Legal fees; Expenses for ABLE account oversight and monitoring; Funeral and burial; and, *Basic living expenses*. However, POMS also warns that housing-related expenses will be treated as in-kind support and maintenance.
 - SNT less restrictive for standard uses to increase enjoyment and quality of life.
- ABLE has more strict reporting requirements, the responsibility of both the program and account holder. For example: 529A(d)(4) requires states to submit electronically to the Commissioner of Social Security, on a monthly basis and in the manner specified by the Commissioner of Social Security, statements on relevant distributions and account balances from all ABLE accounts.
 - SNT has no specific reporting provisions; though, if Medicaid and SSA can require an accounting be given.
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- Prepared by Attorney Sean Beck, and the Legal Team of C. K. Quade Law, PLLC, 600 East Riverpark Lane, Suite 215, Boise, ID, 83716.

<https://www.irs.gov/government-entities/federal-state-local-governments/tax-benefit-for-disability-irc-section-529a>

<https://secure.ssa.gov/poms.nsf/lnx/0501130740>

<https://www.federalregister.gov/documents/2015/06/22/2015-15280/guidance-under-section-529a-qualified-able-programs#h-19>



Mel Leviton, Executive Director, Idaho State Independent Living Council
House Bill 41, Senate H&W Committee, February 21, 2017

Good morning, Mr. Chairman, members of the committee. My name is Mel Leviton. I'm the Executive Director of the Idaho State Independent Living Council (SILC). The SILC's mission is to promote the Independent Living philosophy for all Idahoans with disabilities: choice, self-determination and access for all. House Bill 41 furthers this mission. The SILC serves people from across all disability types, regardless of their age when the disability occurred.

Others (will provide) have provided you with the details of ABLE accounts and how they are beneficial. I'll direct my comments to the SILC's piece of the legislation.

Currently, Idahoans are limited to getting technical assistance and complex information regarding opening an ABLE account from a Washington DC based call center and website: the ABLE National Assistance Center. To begin the process, a person must complete an on-line form and wait for additional contact from someone at the center. While the Resource Center provides a lot of 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. Participating states also have websites. Those are equally complicated and provide only state specific program information. While these resources may be viable for some, they're of little value to someone who has difficulty reading, limited understanding of financial matters, or no internet access. Additionally, these out-of-state resources will have no information about how Idahoans local benefits might be impacted by having an ABLE account.

Through the ABLE technical assistance provided by the SILC, PWDs, families, and community partners will receive assistance, training and information from well qualified, in-state SILC staff. Assistance will be provided on a dedicated webpage, by phone and through in-person training with the most up-to-date information about ABLE programs available to Idahoans.

We know, through collaborative work with our partner agencies such as the Council on Developmental Disabilities, that financial literacy is limited within the disability community. When an individual or family has subsisted on very little money - \$735 a month in the case of an SSI recipient - they don't have experience in money management beyond paying the bills in front of them until the money is gone. Specialized savings, investment and general money management requires experience and education.

The SILC will provide financial literacy workshops across our state, including in our most rural areas, that will help PWD and their families, gain the financial management skills needed to build a brighter future. SILC staff will also provide face to face instruction regarding how ABLE may affect benefits, how certain benefits can still be retained beyond previous resource limits of \$2000, and how to set up ABLE accounts in participating states.



Mel Leviton, Executive Director, Idaho State Independent Living Council
House Bill 41, Senate H&W Committee, February 21, 2017

We know that to accommodate the unique needs of our community, information and assistance is best provided through face-to-face workshops in accessible spaces that allow for sign language interpreters, support to understand complex ideas and materials provided in large print, Braille and other alternate formats. SILC staff will make 4-5, week-long regional trips to include small cities as well as some of our most remote communities to provide workshops. Follow-up to financial literacy and ABLE workshops will include telephone and electronic support as requested.

We are grateful to the Governor for seeing the value of this project and recommending funding the SILCs piece of this legislation in his FY18 budget appropriation.

Personal savings and an understanding of financial matters, greatly improves quality of life. ABLE Accounts and improved financial literacy will do just that.

I stand for questions.

Further response related to the budget, should questions arise:

Current SILC staffing and resources will contribute ABLE and financial literacy activities, including material development and training.

Additionally, within the ABLE project budget is salary + benefits (.5FTP) and operating expenses including: extensive statewide travel to provide ABLE workshops and financial literacy training in our frontier regions, as well as the development and maintenance of an ABLE webpage within the SILCs website, IT support and printing costs.

- \$45,000 increase to fund ABLE .5FTP and technical assistance activities: Personnel – \$23,900, salary and \$11,850 benefits; \$9,250, operating – employee development, general services (IT phone, data, printing, increased website development) and extensive statewide travel.
- \$45,000 increase to fund Emergency Preparedness .5FTP and technical assistance activities: Personnel - \$23,900, salary and \$11,850 benefits; \$9,250, operating – employee development, general services (IT phone, data, printing, increased website development) and extensive statewide travel.

The combination of projects makes good fiscal sense with extensive travel linked to make the most of SILC resources. Technical assistance for both programs will be provided by 1FTP, allowing the SILC to recruit and retain a well-qualified employee.

Alan Jack Hansen, Jr.
District 15
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Good morning Chairman Heider and Members of the Committee. My name is Alan Jack Hansen Jr. and I live in District 15. Senator Martin is one of my closest friends. Thank you for having this hearing today. I am here to ask for your support on House Bill 41, the ABLE technical assistance position and protection of benefits legislation. Thank you to Representative Troy and Senator Burgoyne for their sponsorship.

The technical assistance position in this legislation will help me understand money and how saving money works. It will help to pick out the right ABLE savings account for me. It will also make way for other people with disabilities to save for the supports and needs that they have.

With an ABLE savings account I can start saving for a house of my own. It will also help me save for things that Medicaid will not cover like eye glasses and eye glass repair. I can also save for a car for me and my girlfriend.

I cannot save more than \$2000 because of a Social Security rule. If I save more than \$2000 I lose my needed Medicaid benefits, my SNAP, and my Social Security. With ABLE

legislation that passed in Congress in 2014, this allows people with disabilities for the first time to save more than \$2000 without losing my benefits with a \$14,000 annual savings and a total limit of \$100,000. I will never be able to save up to \$100,000, but I might be able to save up to \$15 or \$20,000 because I am hard worker and I am looking for a job.

This legislation also gives me peace of mind knowing that any savings I have in an ABLE account will not count against me for any state or federally funded benefits now or in the future.

Thank you for listening today. I am happy to answer any questions you may have at this time.



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February 21, 2017

Senator Lee Heider, Chairman
Senate Health and Welfare Committee
Statehouse
Boise, ID 83720

RE: HB 41 ABLÉ Technical Assistance Position and Protection of Benefits

Chairman Heider and Committee Members:

The Council on Developmental Disabilities is authorized by federal and state law to monitor systems and policies and to advocate for improved and enhanced services that enable Idahoans with developmental disabilities to live meaningful lives, included in their communities. The Council is comprised of 23 volunteers appointed by the Governor.

The Council has been involved in advocating for ABLÉ savings accounts since 2013 with members of Congress. The landmark legislation passed in 2013 opened the door for people with disabilities to save for the very first time without jeopardizing their benefits due to the social security administration rule of having no more than \$2000 in assets.

ABLE accounts offer people with disabilities both short and long term financial saving opportunities. It also provides the ability for friends and family to contribute resources to ABLÉ accounts on behalf of individuals with disabilities. The ABLÉ Act provides individuals with disabilities the same types of flexible savings tools that all other Americans have through college savings accounts, health savings accounts, and individual retirement accounts.

Why the ABLÉ Act is Important

Reports indicate that adults with disabilities continue to struggle to make ends meet and lack information and knowledge about financial opportunities and the consequences of certain financial decisions (National Disability Institute, 2014, 2015). 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 for coverage of long-term services and supports for individuals with disabilities is also dependent on eligibility for SSI. For many people who receive Social Security and Medicaid benefits, the asset limit of \$2,000 creates a disincentive to work and save for short and long term financial needs, and perpetuates a cycle of poverty.

Working-age adults with disabilities and families who have children with disabilities experience additional costs related to healthcare, assistive technology, education, housing, transportation, personal support services, and employment. Savings from ABLÉ accounts may be used to fund qualified disability expenses which include a variety of essential expenses such as medical and dental care, prevention and wellness, education,

financial management, administrative services, community-based supports, funeral and burial expenses, employment training, assistive technology, housing and transportation.

The Council recognizes through our work in Idaho with people with disabilities and the experience of other states, that educating people with disabilities about financial literacy will go beyond just setting up an ABLE account. Financial literacy has the potential of assisting people with disabilities to understand how credit works and how quickly debt can be accrued from the use of credit. There is also the potential of people beginning to understand how to better protect financial information, decreasing the risk of financial exploitation.

A word about non-profits in Idaho doing this work. I have been doing this work for 20 years in Idaho, and to my knowledge there is not a non-profit who could provide the type of financial literacy education proposed to meet the unique learning abilities of the wide variety of people with disabilities in our state. There are debt counseling organizations who may appear like a good fit for this type of work. However, there is a complex set of information to be well understood by the agency providing this education that includes social security administration rules, Medicaid eligibility, social security income, qualifying disability related expenses as they relate to the IRS, special needs trust vs. ABLE savings accounts, and the ABLE Act itself.

It has already mentioned that best practice dictates that face-to-face education be conducted statewide to accommodate the unique learning needs of the disability community, including sign language interpretation, support to understand complex ideas, plain language, information provided in Braille, accessible spaces used for training, and large print to name a few. The ability to do these things are not skills acquired overnight. Many people will likely need information and assistance from someone who is both knowledgeable regarding the ABLE Act as well as familiar with the range of challenges facing Idaho citizens, some of whom may be in remote locations lacking internet or cell phone service.

The Idaho Council on Developmental Disabilities fully supports HB 41 and believes this legislation is a great step in the right direction to furthering the independence of people with disabilities and an ability to provide families some peace of mind for their family members.

Christine Pisani
Executive Director

Dear Senators,

My name is Dana Gover I would like to respectfully ask for your support for House Bill 41. This Bill will provide technical assistance in Idaho on how to choose an ABLE Account so I can save money towards my disability related expenses. I work because of a wonderful program that was approved in Idaho by the legislature called the Medicaid for Workers program. I acquired a disability at the age of 18, due to a car accident. My neck was broken and as a result I am paralyzed and medically defined as a quadriplegic. Due to my disability, I require extensive personal care assistance services (home healthcare aid) to help me with my daily activities of living so I can live independently in the community and work.

My sister and I were brought up on a farm our parents instilled into us at a very young age that saving money was key to our future. However, after I became disabled, in the 1980's, I was told that I could not save over \$2000.00 because extra savings would make me not eligible for personal care assistance services through Medicaid. I could not understand this concept as I wanted to save money so I could purchase items not covered by my health insurance or insurance through Medicaid. For example, a wheelchair accessible home with a roll-in shower, wheelchair accessible van (costs \$48,000), specialized exercise equipment, gym membership and medical supplies not covered by insurance.

When I heard about ABLE accounts through a disability magazine, I went online to see if there is an Idaho resource person who can help me understand which ABLE plan will meet my needs. I called a local non-profit organization that helps people with disabilities and they didn't know about the different options available for ABLE accounts in other states. States that have these ABLE Accounts list different investment options that I am not familiar with and don't clearly understand. Frankly every dollar I earn is very important and I don't want to risk losing it based on my lack of knowledge about the different ABLE Accounts available in other states.

Idahoans with disabilities and families need technical assistance on how ABLE accounts work. After reading House Bill 41 it states that technical assistance and training would be available if this bill is passed. The bill also says that the State Independent Living Council (SILC) in Idaho will provide training and technical assistance to people with disabilities and non-profit organizations. This would be great SILC can help people with disabilities understand the options under ABLE accounts plus train non government organizations on what these accounts can or can't do offered by other states. This would be such a great opportunity for Idahoans with disabilities if House Bill 41 is passed. Thank you for taking the time to read my testimony and please Vote YES on House Bill 41.

Respectfully and Sincerely,

Dana Gover
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