



## House Children and Seniors Committee

1/20/2022

Dear Representative Concannon and Committee,

I am writing to you in support of House Bill 2490, which includes proposed amendments to the Kansas Achieving a Better Life Experience (ABLE) statutes. It is imperative for the Kansas ABLE program to satisfy and comply with the requirements of IRC section 529A in order for Kansas ABLE participants to continue to receive the benefits allowed by IRC section 529A. In addition, this necessary amendment to the Kansas ABLE statutes will make the program more accessible and easier for Kansans to use.

### **About Arcare, Inc. (Arcare)**

Arcare was founded in 1982 and designed to provide caring, planned, professional support for individuals with disability throughout their lives. Initially, the focus was developing full-service, long-term plans for each of its clients. Over time, the non-profit has added additional programs and core services tailored to meet each person's needs and each family's desires. Arcare serves individuals with all types of disabilities and is certified by the State of Kansas to act as a legal guardian and/or conservator of individuals with disabilities.

### **History of the Achieving a Better Life Experience (ABLE) Act**

The ABLE Act amended Section 529 of the Internal Revenue Service Code of 1986 to create tax free savings accounts for individuals with disabilities. The law aimed to ease financial strains faced by individuals with disabilities, as funds could be contributed tax-free to cover qualified disability expenses and would not negatively impact the person's eligibility for public benefits like Medicaid.

The ABLE Act was introduced to the 113<sup>th</sup> Congress on February 13, 2013. Kansas Senator Jerry Moran was an original cosponsor of the bill, and Kansas Senator Pat Roberts signed on shortly after the bill's introduction in the Senate. The ABLE Act had extensive bipartisan support, and passed in the U.S. House of Representatives on December 3, 2014 and the U.S. Senate on December 16<sup>th</sup> as part of the Tax Extenders package.

### **Importance of ABLE Accounts to Consumers**

#### **Impact on Consumers**

Many of our clients benefit from the National ABLE program. The intent behind the ABLE Act was to alleviate the burden of poverty for individuals with disabilities. Even today, poverty disproportionately affects individuals with disabilities. In October 2017 the National Council on Disability released an advisory report to Congress and the President. This study showed that Americans with disabilities live in poverty at more than twice the rate of people without disabilities, and while people with disabilities make up approximately 12 percent of the U.S. working-age population, they account for more than half of those living in long-term poverty.

ABLE accounts allow Kansans with disabilities to save and invest a portion of their work income without jeopardizing the necessary services that allow them to live safely and healthy in their community. ABLE accounts empower Kansans with disabilities to seek employment without fear of losing necessary support services, and the accounts promote their independence.

### **Impact on Families**

The accounts have a huge impact on Kansas families as well. The tax advantages of ABLÉ accounts allow families to save money for their loved one to use for future qualified disability expenses, such as medical care that is not covered by their Medicaid or other insurance, housing expenses, education expenses, and transportation to name a few. These qualified disability expenses allow the individual with disability the opportunity for an enhanced quality of life beyond what is provided by means tested benefit programs. The maximum that can be deposited into an ABLÉ account by a third party (parent, grandparent, sibling, Special Needs Trust, etc.) is \$16,000 per year beginning January 2022. There is no greater peace of mind than knowing that your son, daughter, sibling, or long-time friend can save for the future without the risk of losing the benefits that keep them healthy and safe.

### **How ABLÉ Accounts Work with Special Needs Trusts**

One of the programs currently offered by Arcare is Trust Services. As a professional Trustee, our organization discusses ABLÉ accounts with families and individuals with a disability during the initial planning process for financial Trust services. We feel it is important for individuals and families to know that they have options, and that there are advantages to establishing a Special Needs Trust (SNT) that can work with an ABLÉ account to offer the beneficiary broader spending power, flexibility, enhanced independence, and direct account ownership.

Current federal regulations state that payments from an ABLÉ account for food and housing do not impact public benefits, like Section 8 or SSI, while payment for food and housing from a SNT do impact these benefits. Understanding how both of these financial tools (ABLÉ accounts and a SNT) can work together helps families and individuals with disabilities maximize the return on their savings.

A real-life example of this scenario plays out when an SSI recipient would like to use their Special Needs Trust to pay their rent. Their SNT *could* make the rent payment for them; however, the rent payment would trigger a 1/3 reduction in the individual's SSI benefit the next month. With their next month's income reduced, they may fall into a cycle of coming up short on their limited income for their housing expenses. Continually paying rent from their SNT would also have a negative impact on the lifetime of the Trust, as the funds could easily be exhausted for rent payments instead of other qualified expenses that enhance their quality of life. Instead of their SNT making the rent payment and triggering a 1/3 reduction in their SSI income, the rent payment could be paid from their ABLÉ account with no reduction to their SSI.

A very unique feature of an ABLÉ account is that an individual can have direct access to their saved funds, whereas the beneficiary of a SNT *cannot* have direct access to the funds. This means an individual with a disability are able to have some financial autonomy. If they need to purchase cell phone minutes, they can use their ABLÉ account for that expense instead of requesting the expense be paid by their Trust, and waiting for the Trust to approve the request. The impact of financial empowerment makes a huge difference in the life of any individual. That financial empowerment and independence can help individuals with disabilities do exactly what ABLÉ accounts stand for: achieve a better life experience.

### **Action is Required or Kansas Risks Losing Account Qualification**

Currently, the Kansas ABLÉ statutes only allow the beneficiary or, in very narrow circumstances, the beneficiary's guardian or conservator to open an ABLÉ account in Kansas. On November 19, 2020, the Trump Administration issued the final regulations for state ABLÉ programs. These regulations adopted by the Treasury Department and the IRS spell out the

requirements that a state ABLE program must meet in order to provide the benefits of IRC Section 529A. The regulations include a clearly defined hierarchy of who can establish an ABLE account on a beneficiary's behalf. The hierarchy is as follows: "individuals or agents with power of attorney, conservators or legal guardians, spouses, parents, siblings, grandparents, or representative payees appointed by the SSA." The final regulations also clarify "that there may be situations in which an eligible individual with legal capacity may want another person to establish, or to serve as the person with signature authority over, the ABLE account for that eligible individual. Therefore, the final regulations clarify that an eligible individual with legal capacity may delegate these responsibilities to any other person." The regulations require a program established and maintained by a state adopt the expanded hierarchy by November 21, 2022, or every current Kansas ABLE participant, and anyone who contributes to a participant's ABLE account (parent, grandparent, sibling, etc.), would be at risk of losing this tax exemption allowed under IRC Section 529A.

### **Changes Will Reduce Enrollment Barriers**

The proposed amendment to the Kansas ABLE statutes will help reduce enrollment barriers for individuals with a disability. Currently, as it exists, the narrow Kansas ABLE statutes prove difficult for individuals and their families to navigate. It also excludes a large pool of Kansans with disabilities from establishing an ABLE account. Currently in Kansas, a parent cannot assist their adult child with a disability who has legal capacity in establishing an ABLE account, nor can an individual with a disability delegate someone to assist them in opening the account. Adopting the proposed amendment will remove unnecessary barriers to accessing and enrolling in the Kansas ABLE program, and enable more Kansans with disabilities and their families to save for their future.

Very Truly Yours,



Barb Helm  
Executive Director