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HOUSE BILL 98

**56TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2024**

INTRODUCED BY

Elizabeth "Liz" Thomson

AN ACT

RELATING TO PUBLIC FINANCE; AMENDING THE ACCOUNTS FOR PERSONS WITH DISABILITIES ACT TO EXPAND ELIGIBILITY FOR AN ACCOUNT; REPEALING AND REENACTING SECTION 6-8A-6 NMSA 1978 (BEING LAWS 2016, CHAPTER 40, SECTION 6) TO CREATE AN EXEMPTION FROM MEDICAID RECOVERY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 6-8A-2 NMSA 1978 (being Laws 2016, Chapter 40, Section 2) is amended to read:

"6-8A-2. DEFINITIONS.--As used in the Accounts for Persons with Disabilities Act:

A. "account" means an individual tax-free savings account for a designated beneficiary that is established pursuant to Section 529A of the Internal Revenue Code of 1986, as amended;

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1           B. "account owner" means a person who establishes  
2 and owns an account under the Accounts for Persons with  
3 Disabilities Act and who is one of the following:

- 4                   (1) the designated beneficiary of the account;  
5                   (2) the parent, guardian or conservator of a  
6 minor designated beneficiary; or  
7                   (3) the conservator of a designated  
8 beneficiary otherwise incapable of handling such beneficiary's  
9 financial affairs;

10           C. "designated beneficiary" means a person for whom  
11 an account is established under the Accounts for Persons with  
12 Disabilities Act;

13           D. "disability certification" means a certification  
14 deemed sufficient by the United States secretary of the  
15 treasury to establish a certain level of physical or mental  
16 impairment that meets the requirements of Section 529A of the  
17 Internal Revenue Code of 1986, as amended;

18           E. "eligible person" means, for a taxable year, a  
19 person who is either:

- 20                   (1) entitled during that taxable year to  
21 benefits based on blindness or disability under Title 2 or  
22 Title 16 of the federal Social Security Act; provided that such  
23 blindness or disability occurred before the date on which the  
24 individual attained age [~~twenty-six~~] forty-six; or

- 25                   (2) the subject of a disability certification

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1 filed with the United States secretary of the treasury;

2 F. "family member" means a sibling, whether by  
3 blood or adoption, including a brother, sister, stepbrother,  
4 stepsister, half-brother or half-sister;

5 G. "fiduciary" means a person authorized to do  
6 business in New Mexico and acting as a fiduciary to manage and  
7 invest an account; provided that such person is bonded and is  
8 not the parent, guardian or conservator of the designated  
9 beneficiary of the account;

10 H. "financial organization" means an organization  
11 that is authorized to do business in New Mexico and is:

12 (1) licensed or chartered by the office of  
13 superintendent of insurance;

14 (2) licensed or chartered by the financial  
15 institutions division of the regulation and licensing  
16 department; or

17 (3) subject to the jurisdiction of the federal  
18 securities and exchange commission;

19 I. "office" means the office of the state  
20 treasurer;

21 J. "qualified disability expenses" means any  
22 expenses, related to the designated beneficiary's blindness or  
23 disability, that include the following:

24 (1) education;

25 (2) housing;

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- 1 (3) transportation;
- 2 (4) employment training and support;
- 3 (5) assistive technology and personal support
- 4 services;
- 5 (6) health, prevention and wellness;
- 6 (7) financial management and administrative
- 7 services;
- 8 (8) legal fees;
- 9 (9) expenses for oversight and monitoring;
- 10 (10) funeral and burial expenses; and
- 11 (11) other expenses approved by the United
- 12 States secretary of the treasury; and

13 K. "qualified program" means a program established  
14 and maintained by the state or an agency or instrumentality of  
15 the state pursuant to 26 U.S.C. Section 529A."

16 SECTION 2. Section 6-8A-6 NMSA 1978 (being Laws 2016,  
17 Chapter 40, Section 6) is repealed and a new Section 6-8A-6  
18 NMSA 1978 is enacted to read:

19 "6-8A-6. [NEW MATERIAL] LIMITATION ON MEDICAID PAYBACK.--  
20 Unless required by federal law, the state or an agency or  
21 instrumentality of the state shall not:

22 A. seek payment from an account or its proceeds for  
23 benefits provided to the beneficiary of the account pursuant to  
24 26 U.S.C. Section 529A; or

25 B. undertake estate recovery from an account

1 pursuant to 26 U.S.C. Section 529A."

2 SECTION 3. EFFECTIVE DATES.--

3 A. The effective date of the provisions of Section  
4 1 of this act is January 1, 2026.

5 B. The effective date of the provisions of Section  
6 2 of this act is July 1, 2024.

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