



State of Rhode Island
Office of the General Treasurer

James A. Diossa
General Treasurer

26 May 2026

The Honorable Louis DiPalma
Chair, Senate Committee on Finance

The Honorable Members of the Senate Committee on Finance

RE: *2026-S 2091, An Act Relating to State Affairs and Government – Office of Health and Human Services*

Chair DiPalma:

I write in support of 2026-S 2091 with a proposed amendment to ensure this legislation would not be preempted by federal law. Similar in intent to legislation introduced by Chair LaMountain at Treasury's request (2026-S 2987), this legislation would repeal a discretionary payback provision that has remained *unused* since 2016 but has materially stunted enrollment in Rhode Island's Achieving a Better Life Experience ("ABLE") Program. This legislation would ensure that hard-earned funds saved by disabled Rhode Islanders through an ABLE account would remain with their heirs following their death, rather than be subject to a dormant state clawback provision. **Rhode Island would join at least *nineteen* states¹ that have already prohibited this practice, providing disabled residents and their families the assurance that the money they save will remain theirs.**

First enacted in 2015, the ABLE Act was intended to ease financial burdens faced by individuals with disabilities² by providing access to tax-free savings accounts available for qualified disability

¹ Including [Alabama](#), Arkansas (Ark. Code Ann. § 20-3-109), California (Cal. Welf. & Inst. Code § 4885(b)), Delaware (Del. Code tit. 16, § 9607A), Florida (Fla. Stat. Ann. § 1009.986), Illinois (Ill. Comp. Stat. 505/16.6 (o)), Iowa (Iowa Code § 249A.53), Kansas (Kan. Stat. § 75-655), Kentucky, Louisiana (La. Stat. § 17:3088.1), Maine (Me. Rev. Stat. tit. 5, § 156), Maryland (Md. Code, Educ. § 18-19C-10), Mississippi (Miss. Code § 43-28-23), Nebraska (Neb. Rev. Stat. § 77-1403), North Carolina (N.C. Gen. Stat. § 147-86.73), Oregon (Or. Rev. Stat. § 178.380), Pennsylvania (Pa. Stat. § 4666.503), Tennessee (Tenn. Code § 71-4-813), and Virginia (Va. Code § 23.1-707).

² An individual is considered "disabled" under the ABLE Act if the individual is entitled to benefits based on blindness or disability under the Social Security Act or have a disability certification filed with the federal Secretary of Treasury and the disability manifested itself before age 46. *See* R.I. Gen. Laws § 42-7.2-20.2 (7) (adopting the definition under 26 U.S.C. § 529A).

expenses.³ R.I. Gen. Laws § 42-7.2-20.1. A qualified beneficiary may deposit funds, receive third-party contributions, and accumulate savings without affecting eligibility for means-tested public assistance programs. *See* R.I. Gen. Laws § 42-7.2-20.7. Living with a disability – or caring for someone who does – can be quite expensive. Healthcare, housing, education, and assistive technologies represent significant and ongoing costs that individuals and families must bear, often with limited financial resources.

Under current Rhode Island law, the state is a “creditor of [an ABLÉ] account in the event of the death of the designated beneficiary.” R.I. Gen. Laws § 42-7.2-20.8. This provision authorizes the state to seek reimbursement from an ABLÉ account for Medicaid expenditures made on the beneficiary’s behalf during their lifetime – commonly referred to as a Medicaid “clawback” or “payback” provision. Were the state to exercise this discretionary authority, the decedent’s heirs would only receive remaining account assets after funeral expenses, and state and federal reimbursement claims have been satisfied

In the decade since the General Assembly established the ABLÉ program, the state has *never* exercised this authority and has derived no financial benefit from retaining the ability to seek repayment. Even still, it should not be this state’s policy to reap financial gain from those with disabilities simply because we are able.

The mere existence of the clawback provision has had a measurable chilling effect on enrollment. Apprehensive that the state *could* seek repayment, families have increasingly turned to alternative savings vehicles – most notably special needs trusts. These alternatives may be considered an asset under certain means-tested benefit programs, require an attorney to create, and are considerably less liquid than an ABLÉ account. **But special needs trusts do not have an analogous payback requirement, meaning that when eligible individuals forgo ABLÉ accounts in favor of these alternatives, the state loses any theoretical recovery interest it might otherwise have had.**

This legislation will not eliminate a material funding source and will not create a loophole that would be subject to abuse. Rhode Island currently has about 780 active ABLÉ accounts, with an average balance of under \$11,000 – these are modest savings accounts, not vehicles for significant “asset accumulation” as is oft suggested. Federal law further limits ABLÉ contributions to \$19,000 per year and imposes a 10% penalty on non-qualified withdrawals (such as those by a family member following the death of the account beneficiary). Individuals should simply be able to accrue modest savings to prepare for uncertainty without fear of state action. Repealing the clawback provision would cost the state nothing that it has ever collected, while meaningfully expanding access to a program that serves some of our state’s most vulnerable residents.

Notwithstanding the merits of the proposed legislation, Treasury would respectfully request this bill be amended should the Senate act. Specifically, the current proposal would prohibit both state *and* federal clawback. The state cannot prohibit a federally directed clawback, subjecting this provision to federal preemption.

³ Qualified disability expenses can include education, housing, transportation, employment training and support, assistive technology, health, prevention and wellness, financial management and administrative services, legal fees, expenses for ABLÉ account oversight and monitoring, funeral and burial, and basic living expenses. *See* R.I. Gen. Laws § 42-7.2-20.1 (3).

If you have any further questions, please do not hesitate to reach out to me directly or to my Director of Policy and Intergovernmental Affairs, Robert Craven, Jr., at Robert.CravenJr@treasury.ri.gov.

Respectfully,

A handwritten signature in black ink, appearing to be 'JD' with a large loop and a tail.

James A. Diossa
General Treasurer

cc: The Honorable Matthew LaMountain