NCSL Presentation to the Pennsylvania Joint Education Committee
Education Savings Accounts
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Introduction

Mr. Chair and the Committee, thank you for inviting me to speak to you today. My name is Josh Cunningham and I oversee the school choice policy work for the National Conference of State Legislatures. I've been invited to give an overview to the committee on a particular school choice approach, commonly referred to as Education Savings Accounts – or ESAs. I am not here to discuss the merits of this approach or school choice in general. My role today is to explain how these programs work and what some of the challenges have been when implementing them in other states. NCSL has no position on school choice in any form and fully respects the Right of states to enact policies that they see fit for their constituents.

Timeline

Before I get into the specifics about ESAs I want to give the committee a brief history of private school choice policies in the United States to help illustrate where ESAs fit into the overall private choice landscape.

This timeline shows some of the major points in the history of private school choice. Including the very first voucher program in 1990, the first tax credit scholarship program in 1997, and the first ESA program in 2011. You'll see that I list the 2009 Arizona Supreme Court ruling that struck down a traditional school voucher program for students with disabilities. It was this ruling that led to the creation of Arizona's groundbreaking ESA program, which later was upheld by the same Court. Today, 27 states have enacted one of these three approaches to private school choice. Additionally, Congress created a federal voucher program for the District of Columbia.

Private Choice Map

This map shows you those 27 states. Many of these states have more than one type of private school choice.

Voucher Diagram

The next few slides illustrate the difference between these three approaches. Traditional vouchers and tax credit scholarships differ primarily in how they are funded and who awards the scholarship. Vouchers are state-funded scholarships that eligible parents can use at the private school of their choice so long as that private school meets the requirements of the program.

Tax Credit Scholarship Diagram

Tax credit scholarships are a little more complicated. I won't go into a lot of detail on these since Pennsylvania has had one of these programs for 16 years now. The important distinction is that a tax credit scholarship is funded and administered entirely in the private sector creating a greater separation from the state than a voucher program.

ESA Diagram

Education savings accounts are defined more by how parents can use the funds than on the program's funding structure. While all 5 states that have enacted ESA programs use state money to fund the program, other states have introduced legislation that would fund ESAs similar to tax credit scholarships. The general premise of an ESA is that parents receive a grant of funds that can be used to personalize their child's educational experience by allowing reimbursement for a variety of educational expenses. The options listed on this slide are just a few examples of common qualifying expenses. Ultimately, it is up to you, the legislature, to determine what type of expenses are reimbursable.

ESA Map

The five states that have enacted ESAs are Arizona, Florida, Tennessee, Mississippi and Nevada. Nevada's program provides universal eligibility but is currently unfunded. Arizona recently enacted legislation that phases in universal eligibility by 2020. The other three states limit eligibility to students with disabilities. At least 30 states have introduced legislation to create ESAs over the last few years.

ESA Statutory Provisions

So how do these work exactly? Well, first the legislature must establish the parameters of the program in statute. This includes who can receive an ESA, how much money a parent receives, what they can spend it on, and what agency or institution is responsible for administering the program.

The ESA Process 1

Once the program is enacted, then the legislature appropriates the funding to the administrator. In most cases this is a state agency like the department of education. However, Florida uses the two scholarship organizations from their tax credit scholarship program to administer their ESA program. For simplicity purposes, in this presentation I will assume it is a state agency administering the program. Parents then apply to the agency for an ESA. Once approved, the ESA funds are deposited into a special account for each parent.

The ESA Process 2

Once parents incur a qualifying expense, they then submit for reimbursement. In Arizona, parents receive a limited-use debit card for pre-approved vendors to avoid paying upfront costs. I'll discuss the pros and cons of using a debit card versus reimbursements in a moment. Once a parent requests reimbursement or uses the debit card, the state then evaluates that claim and either approves it or denies it. The state agency performs routine audits of parent claims to identify questionable purchases and detect possible fraud or misuse of funds.

Debit Card v. Reimbursement

As I mentioned, Arizona was the first state with an ESA program and they use a limited-use debit card, not unlike a flexible spending account. Parents can use the debit card to purchase from pre-approved vendors and make large purchases, like private school tuition, without having to spend anything out-of-pocket upfront. This makes the process easier and more affordable for parents. In Arizona, they are still required to submit receipts for all purchases, at least once per quarter. Parents are not restricted to using the debit card, however. They can still file for reimbursement for expenses from vendors not on the pre-approved list, but they must pay out-of-pocket and file a claim. The downside of using the debit card is that if for some reason a purchase is found to be unqualified or the parent fails to submit proper documentation, the state then must request the parent to repay the state for the expense. This can be a burden on both the parent and the administrators attempting to collect the debt.

An alternative is requiring parents to file for reimbursement for expenses already incurred. This is not as user-friendly as a debit card but allows for more pre-emptive detection of misuse or fraud. Requiring parents to first pay out-of-pocket creates equity concerns and may prevent some families from participating in program altogether. Florida uses this approach, but for large purchases such as tuition parents can request the ESA administrator to pay the vendor directly and then have that amount subtracted from their ESA.

High Administrative Costs

The last thing I want to touch on are some of the challenges that states have faced while implementing these programs. Remember that this is a relatively new policy approach and only two states have fully implemented their programs. I've spoken at length with the administrators of Arizona's ESA program and perhaps the most unexpected challenge they faced was the cost of administering the program, both in technology and time. The bulk of their time is spent investigating questionable purchases. While there has been a very low rate of misuse and fraudulent activity, questionable purchases must be investigated including contacting the parent in question, and obtaining more documentation or a better understanding of why the purchase was related to their child's education.

Getting a program launched requires an investment in designing automated systems for tracking and processing claims. States can partner with financial institutions that already have this technology. However, that brings an added cost and may raise concerns about transparency.

Data Collection

The final consideration you may want to make is around data collection. Will you require participating students to take an assessment of some sort? This could be the state assessment, or you could allow students to take an approved alternative assessment. Or, you could not require an assessment at all. This issue gets complicated if students are allowed to use the funds for home curriculum, as any sort of data collection would have to comply with federal data privacy laws.

You may want to consider whether to collect data about what parents are spending the funds on. Arizona tracks this based on the type of purchase, using the statutorily defined expenses as a framework. They do not, however, track how much individual vendors are receiving from parents. In other words, it is unknown how much a specific company is receiving from the ESA program.

It is important to remember that all the challenges I've mentioned are not an indictment of these programs in anyway. This is a relatively new policy approach and these are lessons that those who have been implementing these programs over the last few years are learning. Policy from both the legislature and state regulators can address these challenges.

Questions

I will now take any additional questions you have.