HOUSE BILL

52ND LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2016

INTRODUCED BY

DISCUSSION DRAFT

AN ACT

RELATING TO ACCOUNTS FOR THE SUPPORT OF PERSONS WITH DISABILITIES; CREATING THE ACCOUNTS FOR PERSONS WITH DISABILITIES ACT; ENACTING ENABLING LEGISLATION REQUIRED BY THE FEDERAL ACHIEVING A BETTER LIFE EXPERIENCE ACT OF 2014; REQUIRING THE OFFICE OF THE STATE TREASURER TO ESTABLISH AND MAINTAIN A QUALIFIED PROGRAM FOR SUCH ACCOUNTS; DECLARING AN EMERGENCY.

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

SECTION 1. [NEW MATERIAL] SHORT TITLE.--Sections 1 through 7 of this act may be cited as the "Accounts for Persons with Disabilities Act".

SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the Accounts for Persons with Disabilities Act:

A. "account" means an individual tax-free savings

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account for a designated beneficiary that is established pursuant to Section 529A of the Internal Revenue Code of 1986, as amended;

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

(1) the designated beneficiary of the account;

(2) the parent, guardian or conservator of a minor designated beneficiary; or

(3) the conservator of a designated beneficiary otherwise incapable of handling such beneficiary's financial affairs;

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

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

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

(1) entitled during that taxable year to benefits based on blindness or disability under Title 2 or Title 16 of the federal Social Security Act; provided that such

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blindness or disability occurred before the date on which the individual attained age twenty-six; or

(2) the subject of a disability certification filed with the United States secretary of the treasury;

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

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

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

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

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

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

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

J. "qualified disability expenses" means any expenses, related to the designated beneficiary's blindness or

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disability, that include the following:

(1) education;

(2) housing;

(3) transportation;

(4) employment training and support;

(5) assistive technology and personal support services;

(6) health, prevention and wellness;

(7) financial management and administrative services;

(8) legal fees;

(9) expenses for oversight and monitoring;

(10) funeral and burial expenses; and

(11) other expenses approved by the United States secretary of the treasury; and

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

SECTION 3. [NEW MATERIAL] DUTIES AND AUTHORITY OF THE OFFICE.--

A. The office shall:

(1) ensure that an account meets the requirements of a qualified program; and

(2) promulgate rules to implement and administer the qualified program and other requirements of the

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Accounts for Persons with Disabilities Act.

B. The office may contract with third parties to:

(1) verify the disability certification of each designated beneficiary under the state's qualified program and certify whether expenses paid from such account are qualified disability expenses; and

(2) provide such information related to accounts as the state is required to report to the federal social security administration.

SECTION 4. [NEW MATERIAL] ACCOUNTS.--

A. An account owner may:

(1) establish an account with a financial organization or fiduciary;

(2) close the account and establish an account with another financial organization or fiduciary, no more than twice in any tax year; and

(3) change the owner of an account to a family member of a designated beneficiary; provided that the family member is an eligible person.

B. More than one person may contribute to an account.

C. A person shall not be the designated beneficiary of more than one account.

D. A designated beneficiary for whom an account is established pursuant to the Accounts for Persons with

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Disabilities Act shall be a resident of New Mexico.

SECTION 5. [NEW MATERIAL] DUTIES OF FINANCIAL ORGANIZATION OR FIDUCIARY.--

A. If a designated beneficiary incurs a qualified disability expense, the financial organization or fiduciary shall pay such expense, or reimburse such expense; provided that the account balance is sufficient to do so.

B. If any person attempts to contribute to an account and such contribution would exceed the limits on annual or maximum aggregate contributions to the account pursuant to 26 U.S.C. Section 529A, the financial organization or fiduciary shall return the amount that exceeds such limits to the contributor.

SECTION 6. [NEW MATERIAL] STATE AS CREDITOR OF ACCOUNT.--Subject to any outstanding payments due for qualified disability expenses, upon the death of the designated beneficiary, an amount equal to the total medical assistance paid for the designated beneficiary after the establishment of the account shall be distributed to the state from funds remaining in the account upon filing of a claim for payment by the state. For purposes of this section, the state shall be a creditor of an account and not a beneficiary.

SECTION 7. [NEW MATERIAL] TREATMENT OF ACCOUNTS UNDER FEDERAL MEANS-TESTED PROGRAMS.--

A. Notwithstanding any other provision of federal

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law that requires consideration of one or more financial circumstances of a person when determining eligibility to receive benefits or determining the amount of assistance, such provisions shall not apply to a designated beneficiary except that, in the case of the supplemental security income program under Title 16 of the federal Social Security Act:

(1) a distribution for housing expenses shall be allowed; and

(2) any amount in an account established pursuant to the Accounts for Persons with Disabilities Act, including earnings on investment of the account, in excess of one hundred thousand dollars ($100,000) shall be considered an excess resource of the designated beneficiary.

B. The benefits of a designated beneficiary under the supplemental security income program under Title 16 of the federal Social Security Act shall not be terminated, but shall be suspended, by reason of excess resources of the designated beneficiary attributable to an amount in the account, within the meaning of Section 529A of the Internal Revenue Code of 1986, as amended.

SECTION 8. A new section of Chapter 6, Article 8 NMSA 1978 is enacted to read:

"[NEW MATERIAL] ACCOUNTS FOR SUPPORT OF PERSONS WITH DISABILITIES.--The state treasurer shall establish and maintain the program established pursuant to 26 U.S.C. Section 529A and

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the Accounts for Persons with Disabilities Act."

SECTION 9. APPLICABILITY.--The provisions of this act apply to taxable years beginning on or after January 1, 2016.

SECTION 10. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.

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