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

SECTION 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;

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

1 minor designated beneficiary; or

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

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

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

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

16 (1) entitled during that taxable year to
17 benefits based on blindness or disability under Title 2 or
18 Title 16 of the federal Social Security Act; provided that
19 such blindness or disability occurred before the date on
20 which the individual attained age twenty-six; or

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

24 F. "family member" means a sibling, whether by
25 blood or adoption, including a brother, sister, stepbrother,

1 stepsister, half-brother or half-sister;

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

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

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

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

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

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

18 J. "qualified disability expenses" means any
19 expenses, related to the designated beneficiary's blindness
20 or disability, that include the following:

21 (1) education;

22 (2) housing;

23 (3) transportation;

24 (4) employment training and support;

25 (5) assistive technology and personal

1 support services;

2 (6) health, prevention and wellness;

3 (7) financial management and administrative
4 services;

5 (8) legal fees;

6 (9) expenses for oversight and monitoring;

7 (10) funeral and burial expenses; and

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

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

13 **SECTION 3. DUTIES AND AUTHORITY OF THE OFFICE.--**

14 A. The office shall:

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

17 (2) promulgate rules to implement and
18 administer the qualified program and other requirements of
19 the Accounts for Persons with Disabilities Act.

20 B. The office may contract with third parties to:

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

25 (2) provide such information related to

1 accounts as the state is required to report to the federal
2 social security administration; and

3 (3) administer and manage the accounts and
4 report account activity to the office on an annual or such
5 other basis as determined by the office.

6 SECTION 4. ACCOUNTS.--

7 A. An account owner may:

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

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

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

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

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

20 SECTION 5. DUTIES OF FINANCIAL ORGANIZATION OR
21 FIDUCIARY.--

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

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

7 **SECTION 6. STATE AS CREDITOR OF ACCOUNT.--**

8 Subject to any outstanding payments due for qualified
9 disability expenses, upon the death of the designated
10 beneficiary, an amount equal to the total medical assistance
11 paid for the designated beneficiary after the establishment
12 of the account shall be distributed to the state from funds
13 remaining in the account upon filing of a claim for payment
14 by the state. For purposes of this section, the state shall
15 be a creditor of an account and not a beneficiary.

16 **SECTION 7. TREATMENT OF ACCOUNTS UNDER FEDERAL MEANS-**
17 **TESTED PROGRAMS.--**

18 A. Notwithstanding any other provision of federal
19 law that requires consideration of one or more financial
20 circumstances of a person when determining eligibility to
21 receive benefits or determining the amount of assistance,
22 such provisions shall not apply to a designated beneficiary
23 except that, in the case of the supplemental security income
24 program under Title 16 of the federal Social Security Act:

25 (1) a distribution for housing expenses

1 shall be allowed; and

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

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

14 **SECTION 8.** A new section of Chapter 6, Article 8 NMSA
15 1978 is enacted to read:

16 "ACCOUNTS FOR SUPPORT OF PERSONS WITH DISABILITIES.--The
17 state treasurer shall establish and maintain the program
18 established pursuant to 26 U.S.C. Section 529A and the
19 Accounts for Persons with Disabilities Act."

20 **SECTION 9.** **DISCLAIMER OF LIABILITY.**--The state shall
21 not be liable for financial losses suffered by any account
22 owner, or designated beneficiary, with respect to an account
23 established pursuant to the Accounts for Persons with
24 Disabilities Act.

25 **SECTION 10.** **APPLICABILITY.**--The provisions of this act

1 apply to taxable years beginning on or after January 1, 2016.

2 SECTION 11. EMERGENCY.--It is necessary for the public
3 peace, health and safety that this act take effect
4 immediately. _____

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