WEST VIRGINIA CODE: §16-48-6

§16-48-6. Establishment of ABLE savings account by designated beneficiary or person or entity with signature authority.

(a) Any ABLE savings accounts established pursuant to the provisions of this article shall be opened and managed by a designated beneficiary or a person or entity with signature authority, according to the ABLE Act.

(b) Each designated beneficiary may have only one account.

(c) In the absence of a conservator, a guardian may manage an ABLE account regardless of the amount of a designated beneficiary's personal assets. The Department of Human Services may not manage an ABLE account.

(d) The Treasurer may require a designated beneficiary or a person with signature authority to submit an application to the Treasurer to establish an account. The Treasurer may establish a nonrefundable application fee. An application for such account shall be in the form prescribed by the Treasurer and contain:

(1) The name, address, and social security number of the designated beneficiary;

(2) The name, address, and social security number or federal employer identification number of the person or entity opening or managing the ABLE account on behalf of the designated beneficiary;

(3) A certification relating to no excess contributions; and

(4) Any additional information as the Treasurer may require.

(e) Any person may make contributions to an ABLE savings account after the account is opened, subject to the limitations imposed by the ABLE Act.

(f) Contributions to ABLE savings accounts may only be made in cash. The Treasurer or program manager shall reject or promptly withdraw:

(1) Contributions in excess of the limits established pursuant to subsection (e), or

(2) The total contributions if the:

(A) Value of the account is equal to or greater than the account maximum established by the Treasurer. Such account maximum must be equal to the account maximum for postsecondary education savings accounts established pursuant to §18-30-1 *et seq*. of this code; or

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(B) The designated beneficiary is not an eligible individual in the current calendar year.

(g) (1) An account owner may:

(A) Change the designated beneficiary of an account to an eligible individual who is a member of the family of the prior designated beneficiary in accordance with procedures established by the Treasurer; and

(B) Transfer all or a portion of an account to another ABLE savings account, the designated beneficiary of which is a member of the family as defined in the ABLE Act.

(2) No account owner may use an interest in an account as security for a loan. Any pledge of an interest in an account is of no force and effect.

(h) (1) Distributions may be made from the account for payment of any qualified disability expense for the designated beneficiary of the account made in accordance with the provisions of this article.

(2) Any distribution from an account to any individual or for the benefit of any individual during a calendar year shall be reported to the federal Internal Revenue Service and each account owner, the designated beneficiary, or the distributee to the extent required by state or federal law.

(3) Statements shall be provided to each account owner at least four times each year within 30 days after the end of the three-month period to which a statement relates. The statement shall identify the contributions made during the preceding three-month period, the total contributions made to the account through the end of the period, the value of the account at the end of such period, distributions made during such period, and any other information that the Treasurer requires to be reported to the account owner.

(4) Statements and information relating to accounts shall be prepared and filed to the extent required by this article and any other state or federal law.

(i) (1) The program shall provide separate accounting for each designated beneficiary. An annual fee may be imposed upon the account owner for the maintenance of an account.

(2) Moneys in an ABLE savings account or a qualified withdrawal:

(A) Are exempt from attachment, execution, or garnishment;

(B) Are disregarded for the purposes of determining eligibility for or the amount of a public assistance program, unless required by federal law;

(C) Are not subject to claims by the West Virginia Department of Human Services unless required by federal law; and

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(D) On the death of the designated beneficiary, shall be transferred to the estate of the designed beneficiary, unless prohibited by federal law.

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