WEST VIRGINIA CODE CHAPTER 44 ARTICLE 16

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§44-16-1. Definitions.

For purposes of this article, the following terms have the meanings ascribed to them, unless the context clearly indicates otherwise:

(a) "Autism" means a complex developmental disability and spectrum disorder, whose diagnosis must be clinically confirmed by qualified physicians and psychiatrists after extensive examination and testing, defined by a certain set of behaviors and symptoms which affects a person's ability to communicate and interact with others.

(b) "Board" means the West Virginia Children with Autism Trust Board created in section three of this article.

(c) "Child with autism" means a child, under the age of eighteen, who has been clinically diagnosed as having autism to a degree to which it results in a moderate or severe impairment in two or more areas of daily living, as the terms "moderate impairment", "severe impairment" and "daily living" are defined under Title II or Title XVI of the Social Security Disability Act, or a child who has been clinically diagnosed with autism and has been determined to be disabled under either Title II or Title XVI of the Social Security Disability Act for any reason.

(d) "Guardian" means a person lawfully invested with the power and charged with the duty of taking care of another person and managing the property and rights of another person who for some peculiarity of status or defect of age, understanding or self-control is considered incapable of administering his or her own affairs.

(e) "Parent" means a person who is another person's natural or adoptive mother or father or who has been granted parental rights by valid court order and whose parental rights have not been terminated by a court of law.

(f) "Qualified trust for a child with autism" means a trust account for a child with autism that: (1) Is established at a national bank, a state bank of a state of the United States or a trust company that at all times is no less than adequately capitalized as determined by standards adopted by United States banking regulators and that is either regulated by state banking laws of a state of the United States or is a member of the Federal Reserve System; and (2) has been approved by the West Virginia Children with Autism Trust Board in accordance with this article.

(g) “Qualified trustee” means any person authorized by the laws of this state or of the United States to act as a trustee who has been approved by the board to serve as the trustee of a qualified trust for a child with autism.

(h) “Tax Commissioner” means the same as that term is used in section one, article one, chapter eleven of this code.

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§44-16-2. Creation of a qualified trust for a child with autism.

(a) Any parent or guardian of a child with autism may establish a qualified trust for a child with autism. No account shall qualify as a qualified trust for a child with autism until it has been approved as such by the West Virginia Children with Autism Trust Board established in section three of this article. The board shall certify the establishment of each qualified trust to the Tax Commissioner.

(b) To qualify for the tax deduction established in section twelve-i, article twenty-one, chapter eleven of this code, the parent or guardian seeking the tax deduction shall provide to the Tax Commissioner certification that the qualified trust has been authorized by the board and any other documentation required by the Tax Commissioner.

(c) The following types of expenses incurred to support the designated beneficiary after the named beneficiary has reached the age of eighteen or after the death of the parent or guardian who established the trust account shall be allowable if made for the benefit of the beneficiary of the trust.

(1) Education. -- Expenses for education, including tuition for preschool through post-secondary education, books, supplies and educational materials related to such education, tutors and special education services.

(2) Housing. -- Expenses for housing maintained for the beneficiary, separate and apart from the housing used by the parent or guardian who established the trust account while the parent or guardian is still alive, including rent, mortgage payments, home improvements and modifications, maintenance and repairs, real property taxes and utility charges.

(3) Transportation. -- Expenses for transportation, including the use of mass transit, the purchase or modification of vehicles and moving expenses.

(4) Employment support. -- Expenses related to obtaining and maintaining employment, including job-related training, assistive technology and personal assistance supports.

(5) Health, prevention and wellness. -- Expenses for the health and wellness, including premiums for health insurance, medical, vision and dental expenses, habilitation and rehabilitation services, durable medical equipment, therapy, respite care, long-term services and supports, and nutritional management.

(6) Life necessities. -- Expenses for life necessities, including clothing, activities which are religious, cultural or recreational, supplies and equipment for personal care, community-based supports, communication services and devices, adaptive equipment, assistive technology, personal assistance supports, financial management and administrative services, life and health insurance premiums, expenses for oversight, monitoring or advocacy, and funeral and burial expenses.

(7) Assistive technology and personal support services. -- Expenses for assistive technology

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and personal support with respect to any item described in subparts (1) through (6) above.

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§44-16-3. West Virginia Children with Autism Trust Board; creation and composition of the trustee board; duties and responsibilities; reimbursement of expenses.

(a) The West Virginia Children with Autism Trust Board is created to qualify and oversee trust accounts created pursuant to this article and held by approved banks or trust companies for administration by qualified trustees.

(b) The West Virginia Children with Autism Trust Board shall consist of the following governmental officials: The Tax Commissioner or his or her designee, who shall serve as the chair, the Secretary of the Department of Human Services, or his or her designee, and the Commissioner of Banking as set forth in article one, chapter thirty-one-a of this code, or his or her designee. The board shall also consist of the following six public members who shall be appointed by the Governor with advice and consent of the Senate:

(1) An attorney at law, licensed to practice law in this state pursuant to article two, chapter thirty of this code. The attorney should have extensive knowledge and experience in the creation, management and administration of trusts;

(2) A counselor licensed in this state pursuant to the provisions of article thirty-one, chapter thirty of this code. The counselor should have experience in the delivery of vocational, rehabilitative or support services to persons with disabilities;

(3) A physician or psychiatrist licensed in this state pursuant to the provisions of article three, chapter thirty of this code. Such physician or psychiatrist must have extensive knowledge and experience in diagnosis and treatment of persons with autism;

(4) One public member with a background in advocacy on behalf of persons with disabilities; and

(5) Two citizen members.

(c) Each of the appointments shall be for a period of five years and appointees are eligible for reappointment at the expiration of their terms. Of the public members of the board first appointed, one shall be appointed for a term ending June 30, 2012, and a second for a four-year term. The remainder shall be appointed for the full five-year terms as provided in this section. In the event of a vacancy among appointed members, the Governor shall appoint a person representing the same interests to fill the unexpired term.

(d) Members of the board may not be compensated in their capacity as members, but shall be reimbursed for reasonable expenses incurred in the performance of their duties by the Department of Administration. Expense payments are to be made at the same rate paid to state employees.

(e) The board shall meet at least once per month to review and recommend to the Tax Department approval of proposed qualified trust funds or to conduct other business as

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required by this article or section twelve-i, article twenty-one, chapter eleven of this code. Board meetings shall be held in person, by video conference or by teleconference, or a combination thereof. Five members of the board shall constitute a quorum.

(f) Notwithstanding the provision of section four, article six, chapter six of this code, the Governor may remove any board member for incompetence, misconduct, gross immorality, misfeasance, malfeasance or nonfeasance in office.

(g) The Department of Administration shall provide support staff and office space for the board.

(h) Nothing in this section creates an obligation of State General Revenue Funds: *Provided*, That funding for expenses and offices of the West Virginia Children with Autism Trust Board shall be paid, subject to appropriation.

(i) The board may propose rules for legislative approval and may adopt procedural and interpretive rules in accordance with the provisions of article three, chapter twenty-nine-a of this code to carry out the provisions of this article.

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§44-16-4. Reports and account.

In addition to any other requirements of this article, the board shall:

(a) Receive annual summary information on the financial condition of qualified trust funds and statements on the qualified trust funds and savings plan accounts from qualified trustees; and

(b) Prepare, or have prepared, by January 1, each year, an annual report on the status of the program, including a summary of the qualified trust funds, and provide a copy of the report to the Joint Committee on Government and Finance and the Legislative Oversight Commission on Health and Human Resources Accountability.

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§44-16-5. Confidentiality.

Any information that would tend to disclose the identity of a beneficiary, account owner or donor is exempt from the provisions of the Freedom of Information Act, located in chapter twenty-nine-b of this code. Nothing in this section prohibits disclosure or publication of information in a statistical or other form which does not identify the individuals involved or provide personal information. Account owners are permitted access to their own personal information.

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§44-16-6. Effective date.

This article is effective for years beginning on or after January 1, 2011.

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§44-16-7. Repeal of article.

The provisions of this section shall sunset, expire, and be of no force and effect on or after January 1, 2027: *Provided*, That qualifying trusts established and having received qualifying contributions on or prior to December 31, 2026, by fulfillment of the requirements of this article, shall continue to qualify for the benefits established in §11-21-12i of this code.

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