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HOUSE BILL

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

INTRODUCED BY

FOR THE REVENUE STABILIZATION AND TAX POLICY COMMITTEE

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

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

7 (1) the designated beneficiary of the account;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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1 disability, that include the following:

- 2 (1) education;
- 3 (2) housing;
- 4 (3) transportation;
- 5 (4) employment training and support;
- 6 (5) assistive technology and personal support
- 7 services;
- 8 (6) health, prevention and wellness;
- 9 (7) financial management and administrative
- 10 services;
- 11 (8) legal fees;
- 12 (9) expenses for oversight and monitoring;
- 13 (10) funeral and burial expenses; and
- 14 (11) other expenses approved by the United
- 15 States secretary of the treasury; and

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

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

- 21 A. The office shall:
  - 22 (1) ensure that an account meets the
  - 23 requirements of a qualified program; and
  - 24 (2) promulgate rules to implement and
  - 25 administer the qualified program and other requirements of the

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1 Accounts for Persons with Disabilities Act.

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

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

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

10 SECTION 4. [NEW MATERIAL] ACCOUNTS.--

11 A. An account owner may:

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

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

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

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

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

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

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1 Disabilities Act shall be a resident of New Mexico.

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

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

8 B. If any person attempts to contribute to an  
9 account and such contribution would exceed the limits on annual  
10 or maximum aggregate contributions to the account pursuant to  
11 26 U.S.C. Section 529A, the financial organization or fiduciary  
12 shall return the amount that exceeds such limits to the  
13 contributor.

14 SECTION 6. [NEW MATERIAL] STATE AS CREDITOR OF ACCOUNT.--

15 Subject to any outstanding payments due for qualified  
16 disability expenses, upon the death of the designated  
17 beneficiary, an amount equal to the total medical assistance  
18 paid for the designated beneficiary after the establishment of  
19 the account shall be distributed to the state from funds  
20 remaining in the account upon filing of a claim for payment by  
21 the state. For purposes of this section, the state shall be a  
22 creditor of an account and not a beneficiary.

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

25 A. Notwithstanding any other provision of federal

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

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

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

14 B. The benefits of a designated beneficiary under  
15 the supplemental security income program under Title 16 of the  
16 federal Social Security Act shall not be terminated, but shall  
17 be suspended, by reason of excess resources of the designated  
18 beneficiary attributable to an amount in the account, within  
19 the meaning of Section 529A of the Internal Revenue Code of  
20 1986, as amended.

21 SECTION 8. A new section of Chapter 6, Article 8 NMSA  
22 1978 is enacted to read:

23 "[NEW MATERIAL] ACCOUNTS FOR SUPPORT OF PERSONS WITH  
24 DISABILITIES.--The state treasurer shall establish and maintain  
25 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.