CHAPTER 12I

DISABILITIES EXPENSES SAVINGS PLAN TRUST

Referred to in §422.7, 450.4

12I.1 Purpose and definitions.

1. The general assembly finds that the general welfare and well-being of the state are directly related to the health, maintenance, independence, and quality of life of its disabled residents, and that a vital and valid public purpose is served by the creation and implementation of programs that encourage and make possible savings to secure funding for disability-related expenses on behalf of individuals with disabilities that will supplement, but not supplant, other benefits provided by various federal, state, and private sources. The creation of the means of encouragement for citizens to invest in such a program represents the carrying out of a vital and valid public purpose. In order to make available to the citizens of the state an opportunity to fund future disability-related expenses of individuals, it is necessary that a public trust be established in which moneys may be invested for payment of future disability-related expenses of an individual.

2. As used in this chapter, unless the context otherwise requires:

a. *"Account balance limit"* means the maximum allowable aggregate balance of an account established for a designated beneficiary. Account earnings, if any, are included in the account balance limit.

b. *"Account owner"* means an individual who enters into a participation agreement under this chapter for the payment of qualified disability expenses on behalf of a designated beneficiary.

c. *"Contracting state"* means the same as defined in section 529A of the Internal Revenue Code.

d. *"Designated beneficiary"* means an individual who is a resident of this state or a resident of a contracting state and who meets the definition of *"eligible individual"* in section 529A of the Internal Revenue Code.

e. *"Internal Revenue Code"* means the Internal Revenue Code of 1986, as amended, and regulations promulgated thereunder.

f. *"Iowa ABLE savings plan trust"* or *"trust"* means the trust created under section 12I.2.

g. *"Participation agreement"* means an agreement between the account owner and the trust entered into under this chapter.

h. *"Qualified ABLE program"* means the same as defined in section 529A of the Internal Revenue Code.

i. *"Qualified disability expenses"* means the same as defined in section 529A of the Internal Revenue Code.

j. *"Resident"* shall be defined by rules adopted by the treasurer of state. The rules shall determine residency in such manner as may be required or permitted under section 529A of the Internal Revenue Code, or, in the absence of any guidance under federal law, as the treasurer of state deems advisable for the purpose of satisfying the requirements of section 529A of the Internal Revenue Code.

2015 Acts, ch 137, §76, 162, 163

Referred to in §12D.1, 12I.10

12I.2 Creation of Iowa ABLE savings plan trust.

An Iowa ABLE savings plan trust is created. The treasurer of state is the trustee of the trust, and has all powers necessary to carry out and effectuate the purposes, objectives, and provisions of this chapter pertaining to the trust, including the power to do all of the following:

1. Make and enter into contracts necessary for the administration of the trust created under this chapter.

2. Enter into agreements with this state or any other state, or any federal or other state agency, or other entity as required to implement this chapter.

3. Carry out the duties and obligations of the trust pursuant to this chapter.

4. Accept any grants, gifts, legislative appropriations, and other moneys from the state, any unit of federal, state, or local government, or any other person, firm, partnership, or corporation which the treasurer of state shall deposit into the administrative fund or program fund.

5. Participate in any federal, state, or local governmental program for the benefit of the trust.

6. Procure insurance against any loss in connection with the property, assets, or activities of the trust.

7. Enter into participation agreements with account owners.

8. Make payments to designated beneficiaries pursuant to participation agreements.

9. Make refunds to account owners upon the termination of participation agreements, and partial nonqualified distributions to account owners, pursuant to this chapter and the limitations and restrictions set forth in this chapter.

10. Invest moneys from the program fund in any investments that are determined by the treasurer of state to be appropriate.

11. Engage investment advisors, if necessary, to assist in the investment of trust assets.

12. Contract for goods and services and engage personnel as necessary, including consultants, actuaries, managers, legal counsel, and auditors for the purpose of rendering professional, managerial, and technical assistance and advice to the treasurer of state regarding trust administration and operation.

13. Establish, impose, and collect administrative fees and charges in connection with transactions of the trust, and provide for reasonable service charges, including penalties for cancellations and late payments with respect to participation agreements.

14. Administer the funds of the trust.

15. Prepare and file reports and notices.

16. Enter into agreements with contracting states to permit residents of the contracting state to participate in the Iowa ABLE savings plan trust.

17. Adopt rules pursuant to chapter 17A for the administration of this chapter.

2015 Acts, ch 137, §77, 162, 163

Referred to in §12I.1

12I.3 Participation agreements for trust.

On or after July 1, 2016, the trust may enter into participation agreements with account owners pursuant to the following terms and agreements:

1. *a.* Unless otherwise permitted under section 529A of the Internal Revenue Code, the treasurer of state shall allow only one participation agreement per designated beneficiary.

b. Unless otherwise permitted under section 529A of the Internal Revenue Code, the account owner must also be the designated beneficiary of the account. However, a trustee or legal guardian may be designated as custodian of an account for a designated beneficiary who is a minor or who lacks capacity to enter into a participation agreement if such designation is not prohibited under section 529A of the Internal Revenue Code.

c. The treasurer of state shall set an annual contribution limit and account balance limit to maintain compliance with section 529A of the Internal Revenue Code. A contribution shall not be permitted to the extent it exceeds the annual contribution limit or causes the aggregate balance of the account established for the designated beneficiary to exceed the applicable account balance limit.

d. The maximum amount that may be deducted per year for Iowa income tax purposes by an individual for contributions on behalf of any one designated beneficiary that is a resident of this state shall not exceed the maximum deductible amount determined for the year pursuant to section 12D.3, subsection 1, paragraph *"a"*.

e. Participation agreements may be amended to provide for adjusted levels of contributions based upon changed circumstances or changes in disability-related expenses.

f. Any person may make contributions pursuant to a participation agreement on behalf of a designated beneficiary under rules adopted by the treasurer of state.

2. The execution of a participation agreement by the trust shall not guarantee in any way that future disability-related expenses will be equal to projections and estimates provided by the trust or that the account owner or designated beneficiary is guaranteed any of the following:

a. A return of principal.

b. A rate of interest or other return from the trust.

c. Payment of interest or other return from the trust.

3. *a.* A designated beneficiary under a participation agreement may be changed as permitted under rules adopted by the treasurer of state upon written request of the account owner as long as such change would be permitted by section 529A of the Internal Revenue Code.

b. Participation agreements may otherwise be freely amended throughout their terms in order to enable account owners to increase or decrease the level of participation, change the designated beneficiary, and carry out similar matters as authorized by rule.

4. Each participation agreement shall provide that the participation agreement may be canceled upon the terms and conditions, and upon payment of applicable fees and costs set forth and contained in the rules adopted by the treasurer of state.

2015 Acts, ch 137, §78, 162, 163

Referred to in §422.7

12I.4 Program and administrative funds — investment and payment.

1. *a.* The treasurer of state shall segregate moneys received by the trust into two funds: the program fund and the administrative fund.

b. All moneys paid by account owners or other persons on behalf of a designated beneficiary in connection with participation agreements shall be deposited as received into separate accounts for each designated beneficiary within the program fund.

c. Contributions to the trust made on behalf of designated beneficiaries may only be made in the form of cash.

d. An account owner or designated beneficiary is not permitted to provide investment direction regarding contributions or earnings held by the trust.

2. Moneys accrued by account owners in the program fund of the trust may be used for payments of qualified disability expenses.

3. Moneys in the account of a designated beneficiary may be claimed by the Iowa Medicaid program as provided in section 529A(f) of the Internal Revenue Code and subject to limitations imposed by the treasurer of state.

4. The trust shall comply with Pub. L. No. 113-295, §103, regarding treatment of ABLE accounts under certain federal programs.

5. Moneys in the funds are not subject to section 8.33. Notwithstanding section 12C.7, interest or earnings on moneys in the funds shall be credited to the funds.

2015 Acts, ch 137, §79, 162, 163

Referred to in §12I.9

12I.5 Cancellation of agreements.

An account owner may cancel a participation agreement at will. Upon cancellation of a participation agreement, an account owner shall be entitled to the return of the account owner's account balance.

2015 Acts, ch 137, §80, 162, 163

12I.6 Repayment and ownership of payments and investment income — transfer of ownership rights.

1. *a.* An account owner retains ownership of all contributions made on behalf of a designated beneficiary under a participation agreement up to the date of utilization for payment of qualified disability expenses of the designated beneficiary.

b. All income derived from the investment of the contributions made on behalf of a designated beneficiary shall be considered to be held in trust for the benefit of the designated beneficiary.

2. In the event the trust is terminated prior to payment of qualified disability expenses for the designated beneficiary, the account owner is entitled to a refund of the account owner's account balance.

3. Any amounts which may be paid to any person or persons pursuant to the Iowa ABLE savings plan trust but which are not listed in this section are owned by the trust.

4. An account owner may transfer ownership rights to another designated beneficiary, including a gift of the ownership rights to a designated beneficiary who is a minor, in accordance with rules adopted by the treasurer of state and the terms of the participation agreement, so long as the transfer would be permitted by section 529A of the Internal Revenue Code.

5. An account owner or designated beneficiary shall not be entitled to utilize any interest in the trust as security for a loan.

2015 Acts, ch 137, §81, 162, 163

12I.7 Reports — annual audited financial report — reports under federal law.

1. *a.* The treasurer of state shall submit an annual audited financial report, prepared in accordance with generally accepted accounting principles, on the operations of the trust by November 1 to the governor and the general assembly.

b. The annual audit shall be made either by the auditor of state or by an independent certified public accountant designated by the auditor of state and shall include direct and indirect costs attributable to the use of outside consultants, independent contractors, and any other persons who are not state employees.

2. The annual audit shall be supplemented by all of the following information prepared by the treasurer of state:

a. Any related studies or evaluations prepared in the preceding year.

b. A summary of the benefits provided by the trust, including the number of account owners and designated beneficiaries in the trust, or, if the trust has caused this state to become a contracting state pursuant to section 12I.10, a summary of the benefits provided to Iowa residents by the contracted qualified ABLE program, including the number of account owners and designated beneficiaries in the contracted qualified ABLE program who are Iowa residents.

c. Any other information deemed relevant by the treasurer of state in order to make a full, fair, and effective disclosure of the operations of the trust or the contracted qualified ABLE program if applicable.

3. The treasurer of state shall prepare and submit to the secretary of the United States treasury or other required party any reports, notices, or statements required under section 529A of the Internal Revenue Code.

2015 Acts, ch 137, §82, 162, 163
Referred to in §12I.10

12I.8 Tax considerations.

1. For federal income tax purposes, the Iowa ABLE savings plan trust shall be considered a qualified ABLE program exempt from taxation pursuant to section 529A of the Internal Revenue Code and shall be operated so that it meets the requirements of section 529A of the Internal Revenue Code.

2. State income tax treatment of the Iowa ABLE savings plan trust shall be as provided in section 422.7, subsections 34 and 34A.

3. State inheritance tax treatment of interests in Iowa ABLE savings plans shall be as provided in section 450.4, subsection 9.
2015 Acts, ch 137, §83, 162, 163

12I.9 Property rights to assets in trust.
1. The assets of the trust shall at all times be preserved, invested, and expended solely and only for the purposes of the trust and shall be held in trust for the account owners and designated beneficiaries.
2. Except as provided in section 12I.4, subsection 3, no property rights in the trust shall exist in favor of the state.
3. Except as provided in section 12I.4, subsection 3, the assets of the trust shall not be transferred or used by the state for any purposes other than the purposes of the trust.
2015 Acts, ch 137, §84, 162, 163

12I.10 Implementation as a contracting state — tax considerations.
1. The general assembly acknowledges that section 529A of the Internal Revenue Code permits access to qualified ABLE programs by residents of a state without such a program. The general assembly finds that becoming a contracting state may accomplish the public purpose set forth in section 12I.1, subsection 1, in the same manner as if the qualified ABLE program under the Iowa ABLE savings plan trust were to be implemented and administered by this state. To that end, the treasurer of state, as trustee of the trust, may defer implementation of the qualified ABLE program under the trust and alternatively cause this state to become a contracting state by entering into an agreement with another state with a qualified ABLE program to provide Iowa residents access to that state's qualified ABLE program. The trust shall not enter into an agreement pursuant to this section unless the treasurer, as trustee of the trust, determines that all of the following requirements are satisfied:
a. The program is a qualified ABLE program.
b. The qualified ABLE program provides comparable benefits and protections to Iowa residents as would be provided under the Iowa ABLE savings plan trust.
c. That entering into an agreement for access to the qualified ABLE program would not result in increased costs to the state or to account owners and designated beneficiaries as compared to the costs of implementing and administering the qualified ABLE program under the Iowa ABLE savings plan trust.
d. The qualified ABLE program will be audited annually by an independent certified public accountant or by the state auditor, or similar public official, of the state that has implemented the qualified ABLE program.
e. The qualified ABLE program will provide information to the treasurer of state as trustee of the trust so as to allow the trustee to fulfill the reporting requirements in section 12I.7.
2. *a.* The maximum amount that may be deducted per year for Iowa income tax purposes by an individual for contributions on behalf of any one designated beneficiary that is a resident of this state to the qualified ABLE program with which the state has contracted pursuant to this section shall not exceed the maximum deductible amount determined for the year pursuant to section 12D.3, subsection 1, paragraph "*a*".
b. State income tax treatment of the qualified ABLE program with which the state has contracted pursuant to this section shall be as provided in section 422.7, subsections 34 and 34A.
3. State inheritance tax treatment of interests in the qualified ABLE program with which the state has contracted pursuant to this section shall be as provided in section 450.4, subsection 9.
2015 Acts, ch 137, §85, 162, 163
Referred to in §12I.7, 422.7, 450.4

12I.11 Construction.
This chapter shall be construed liberally in order to effectuate its purpose.
2015 Acts, ch 137, §86, 162, 163