

4472--B

2015-2016 Regular Sessions

I N S E N A T E

March 23, 2015

Introduced by Sens. CARLUCCI, ADDABBO, AMEDORE, AVELLA, BOYLE, CROCI, DIAZ, DILAN, ESPAILLAT, FARLEY, FELDER, FUNKE, GALLIVAN, GOLDEN, GRIFFO, HAMILTON, HOYLMAN, KLEIN, KRUEGER, LANZA, LARKIN, LATIMER, MARCHIONE, MARTINS, MONTGOMERY, MURPHY, NOZZOLIO, O'MARA, ORTT, PANEPINTO, PARKER, PERALTA, RANZENHOFER, RITCHIE, RIVERA, ROBACH, SANDERS, SAVINO, SERRANO, SQUADRON, VALESKY -- read twice and ordered printed, and when printed to be committed to the Committee on Banks -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- reported favorably from said committee and committed to the Committee on Finance -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the mental hygiene law, the tax law and the social services law, in relation to establishing the NY ABLE act

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. This act shall be known and may be cited as the "New York  
2 achieving a better life experience (NY ABLE) act".  
3 S 2. Legislative intent. The legislative intent of this act is to  
4 encourage and assist individuals and families in saving private funds  
5 for the purpose of supporting individuals with developmental disabili-  
6 ties to maintain health, independence and quality of life; and to  
7 provide secure funding for disability related expenses on behalf of  
8 designated beneficiaries with intellectual or developmental disabilities  
9 that will supplement, but not supplant, benefits provided through exist-  
10 ing sources.  
11 S 3. The mental hygiene law is amended by adding a new article 84 to  
12 read as follows:  
13 ARTICLE 84  
14 NEW YORK ACHIEVING A BETTER LIFE EXPERIENCE SAVINGS ACCOUNT ACT  
15 SECTION 84.01 SHORT TITLE.

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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1 84.03 DEFINITIONS.  
2 84.05 POWERS AND DUTIES OF THE COMPTROLLER.  
3 84.07 NY ABLE ACCOUNT ADVISORY COUNCIL.  
4 84.09 PROGRAM REQUIREMENTS.  
5 84.11 DISTRIBUTION REQUIREMENTS.

6 S 84.01 SHORT TITLE.

7 THIS ARTICLE SHALL BE KNOWN AND MAY BE CITED AS THE "NEW YORK ACHIEV-  
8 ING A BETTER LIFE EXPERIENCE (NY ABLE) SAVINGS ACCOUNT ACT".

9 S 84.03 DEFINITIONS.

10 AS USED IN THIS ARTICLE:

11 1. THE TERM "FINANCIAL ORGANIZATION" MEANS AN ORGANIZATION AUTHORIZED  
12 TO DO BUSINESS IN THE STATE OF NEW YORK AND WHICH: (A) IS LICENSED OR  
13 CHARTERED BY THE DEPARTMENT OF FINANCIAL SERVICES; (B) IS LICENSED OR  
14 CHARTERED BY AN AGENCY OF THE FEDERAL GOVERNMENT; OR (C) IS SUBJECT TO  
15 THE JURISDICTION AND REGULATION OF THE SECURITIES AND EXCHANGE COMMIS-  
16 SION OF THE FEDERAL GOVERNMENT.

17 2. "ACCOUNT" OR "NY ABLE ACCOUNT" SHALL MEAN AN INDIVIDUAL SAVINGS  
18 ACCOUNT ESTABLISHED IN ACCORDANCE WITH THE PROVISIONS OF THIS ARTICLE.

19 3. "ACCOUNT OWNER" SHALL MEAN A PERSON WHO OPENS A SAVINGS ACCOUNT  
20 PURSUANT TO THE PROVISIONS OF THIS ARTICLE. THE ACCOUNT OWNER MAY ALSO  
21 BE THE DESIGNATED BENEFICIARY OF THE ACCOUNT.

22 4. "DESIGNATED BENEFICIARY" SHALL MEAN, WITH RESPECT TO AN ACCOUNT OR  
23 ACCOUNTS, ANY INDIVIDUAL WHO IS AN "ELIGIBLE INDIVIDUAL" AS DEFINED  
24 UNDER PARAGRAPH (1) OF SUBSECTION (E) OF SECTION 529A OF THE INTERNAL  
25 REVENUE CODE OF 1986, AS AMENDED, OR ANY REGULATIONS PROMULGATED THERE-  
26 UNDER AND WHOSE QUALIFIED EXPENSES ARE EXPECTED TO BE PAID FROM THE  
27 ACCOUNT OR ACCOUNTS. A DESIGNATED BENEFICIARY SHALL BE A RESIDENT OF  
28 NEW YORK STATE OR A RESIDENT OF A STATE THAT: (A) DOES NOT HAVE A QUALI-  
29 FIED ABLE PROGRAM RECOGNIZED UNDER SECTION 529-A OF THE INTERNAL REVENUE  
30 CODE OF 1986, AS AMENDED; AND (B) HAS ENTERED INTO A CONTRACT WITH NEW  
31 YORK STATE TO PROVIDE RESIDENTS OF THE CONTRACTING STATE WITH ACCESS TO  
32 NEW YORK STATE'S ABLE PROGRAM.

33 5. "QUALIFIED EXPENSES" SHALL MEAN ANY QUALIFIED DISABILITY EXPENSE  
34 INCLUDED IN PARAGRAPH (5) OF SUBSECTION (E) OF SECTION 529A OF THE  
35 INTERNAL REVENUE CODE OF 1986, AS AMENDED, OR ANY REGULATIONS PROMULGAT-  
36 ED THEREUNDER.

37 6. "NONQUALIFIED WITHDRAWAL" SHALL MEAN A WITHDRAWAL FROM AN ACCOUNT  
38 FOR OTHER THAN A QUALIFIED EXPENSE, OR A WITHDRAWAL MADE AS THE RESULT  
39 OF THE DEATH OR DISABILITY OF THE DESIGNATED BENEFICIARY OF AN ACCOUNT.

40 7. "MANAGEMENT CONTRACT" SHALL MEAN THE CONTRACT EXECUTED BY THE COMP-  
41 TROLLER AND A FINANCIAL ORGANIZATION SELECTED TO ACT AS A DEPOSITORY AND  
42 MANAGER OF THE PROGRAM.

43 8. "SAVINGS AGREEMENT" SHALL MEAN AN AGREEMENT BETWEEN THE COMPTROLLER  
44 OR A FINANCIAL ORGANIZATION AND THE ACCOUNT OWNER.

45 9. "PROGRAM MANAGER" SHALL MEAN A FINANCIAL ORGANIZATION SELECTED BY  
46 THE COMPTROLLER TO ACT AS A DEPOSITORY AND MANAGER OF THE PROGRAM.

47 S 84.05 POWERS AND DUTIES OF THE COMPTROLLER.

48 1. THE COMPTROLLER, SHALL ESTABLISH A NY ABLE ACCOUNT PLAN FOR ALL  
49 ELIGIBLE INDIVIDUALS AND FAMILIES FOR THE PURPOSE OF SUPPORTING INDIVID-  
50 UALS WITH DISABILITIES TO MAINTAIN HEALTH, INDEPENDENCE, AND QUALITY OF  
51 LIFE. THE COMPTROLLER IS HEREBY AUTHORIZED TO PROMULGATE ANY AND ALL  
52 RULES AND REGULATIONS NECESSARY FOR THE IMPLEMENTATION OF THIS ARTICLE  
53 IN CONSULTATION WITH THE COMMISSIONERS OF THE OFFICE FOR PEOPLE WITH  
54 DEVELOPMENTAL DISABILITIES, THE OFFICE OF MENTAL HEALTH, THE DEPARTMENT  
55 OF HEALTH, THE OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE, AND THE  
56 ABLE ACCOUNT ADVISORY COMMITTEE.

1 2. THE COMPTROLLER MAY IMPLEMENT THE NY ABLE SAVINGS ACCOUNT PROGRAM  
2 THROUGH USE OF THIRD PARTY VENDORS AS ADMINISTRATORS OF SUCH ACCOUNTS,  
3 AND FINANCIAL ORGANIZATIONS AS ACCOUNT DEPOSITORIES AND MANAGERS. UNDER  
4 THE PROGRAM, INDIVIDUALS MAY ESTABLISH ACCOUNTS DIRECTLY WITH AN ACCOUNT  
5 DEPOSITORY.

6 3. THE COMPTROLLER MAY SOLICIT PROPOSALS FROM FINANCIAL ORGANIZATIONS  
7 TO ACT AS DEPOSITORIES AND MANAGERS FROM THE PROGRAM. FINANCIAL ORGAN-  
8 IZATIONS SUBMITTING PROPOSALS SHALL DESCRIBE THE INVESTMENT INSTRUMENT  
9 WHICH WILL BE HELD IN ACCOUNTS. THE COMPTROLLER SHALL SELECT AS PROGRAM  
10 DEPOSITORIES AND MANAGERS THE FINANCIAL ORGANIZATION, FROM AMONG THE  
11 BIDDING FINANCIAL ORGANIZATIONS, THAT DEMONSTRATES THE MOST ADVANTAGEOUS  
12 COMBINATION, BOTH TO POTENTIAL PROGRAM PARTICIPANTS AND THIS STATE, OF  
13 THE FOLLOWING FACTORS:

- 14 (A) FINANCIAL STABILITY AND INTEGRITY OF THE FINANCIAL ORGANIZATION;
- 15 (B) THE SAFETY OF THE INVESTMENT INSTRUMENT BEING OFFERED;
- 16 (C) THE ABILITY OF THE INVESTMENT INSTRUMENT TO TRACK INCREASING COSTS  
17 OF OBTAINING CARE FOR INDIVIDUALS WITH DISABILITIES;
- 18 (D) THE ABILITY OF THE FINANCIAL ORGANIZATION TO SATISFY RECORDKEEPING  
19 AND REPORTING REQUIREMENTS;
- 20 (E) THE FINANCIAL ORGANIZATION'S PLAN FOR PROMOTING THE PROGRAM AND  
21 THE INVESTMENT IT IS WILLING TO MAKE TO PROMOTE THE PROGRAM;
- 22 (F) THE FEES, IF ANY, PROPOSED TO BE CHARGED TO PERSONS FOR OPENING OR  
23 MAINTAINING ACCOUNTS;
- 24 (G) THE MINIMUM INITIAL DEPOSIT AND MINIMUM CONTRIBUTIONS THAT THE  
25 FINANCIAL ORGANIZATION WILL REQUIRE;
- 26 (H) THE ABILITY OF BANKING ORGANIZATIONS TO ACCEPT ELECTRONIC WITH-  
27 DRAWALS, INCLUDING PAYROLL DEDUCTION PLANS; AND
- 28 (I) OTHER BENEFITS TO THE STATE OR ITS RESIDENTS INCLUDED IN THE  
29 PROPOSAL, INCLUDING FEES PAYABLE TO THE STATE TO COVER EXPENSES OF OPER-  
30 ATION OF THE PROGRAM.

31 4. THE COMPTROLLER MAY ENTER INTO A CONTRACT WITH A FINANCIAL ORGAN-  
32 IZATION. SUCH FINANCIAL ORGANIZATION MANAGEMENT MAY PROVIDE ONE OR MORE  
33 TYPES OF INVESTMENT INSTRUMENT.

34 5. THE COMPTROLLER MAY SELECT MORE THAN ONE FINANCIAL ORGANIZATION FOR  
35 THE PROGRAM.

36 6. A MANAGEMENT CONTRACT SHALL INCLUDE, AT A MINIMUM, TERMS REQUIRING  
37 THE FINANCIAL ORGANIZATION TO:

38 (A) TAKE ANY ACTION REQUIRED TO KEEP THE PROGRAM IN COMPLIANCE WITH  
39 REQUIREMENTS OF SECTION 84.09 OF THIS ARTICLE AND ANY ACTIONS NOT  
40 CONTRARY TO ITS CONTRACT TO MANAGE THE PROGRAM TO QUALIFY AS A "QUALI-  
41 FIED ABLE ACCOUNT" UNDER SUBSECTION (1) OF PARAGRAPH (B) OF SECTION 529A  
42 OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED.

43 (B) KEEP ADEQUATE RECORDS OF EACH ACCOUNT, KEEP EACH ACCOUNT SEGRE-  
44 GATED FROM EACH OTHER ACCOUNT, AND PROVIDE THE COMPTROLLER WITH INFORMA-  
45 TION AS REQUIRED;

46 (C) COMPILE AND TOTAL INFORMATION CONTAINED IN STATEMENTS REQUIRED TO  
47 BE PREPARED UNDER SECTION 84.09 OF THIS ARTICLE AND PROVIDE SUCH COMPI-  
48 LATIONS TO THE COMPTROLLER.

49 (D) IF THERE IS MORE THAN ONE PROGRAM MANAGER, PROVIDE THE COMPTROLLER  
50 WITH SUCH INFORMATION NECESSARY TO DETERMINE COMPLIANCE;

51 (E) PROVIDE THE COMPTROLLER OR HIS OR HER DESIGNEE ACCESS TO THE BOOKS  
52 AND RECORDS OF THE PROGRAM MANAGER TO THE EXTENT NEEDED TO DETERMINE  
53 COMPLIANCE WITH THE CONTRACT;

54 (F) HOLD ALL ACCOUNTS FOR THE BENEFIT OF THE ACCOUNT OWNER;

1 (G) BE AUDITED AT LEAST ANNUALLY BY A FIRM OF CERTIFIED PUBLIC  
2 ACCOUNTANTS SELECTED BY THE PROGRAM MANAGER AND THAT THE RESULTS OF SUCH  
3 AUDIT BE PROVIDED TO THE COMPTROLLER; AND

4 (H) PROVIDE THE COMPTROLLER WITH COPIES OF ALL REGULATORY FILINGS AND  
5 REPORTS MADE BY IT DURING THE TERM OF THE MANAGEMENT CONTRACT OR WHILE  
6 IT IS HOLDING ANY ACCOUNTS, OTHER THAN CONFIDENTIAL FILINGS OR REPORTS  
7 THAT WILL NOT BECOME PART OF THE PROGRAM. THE PROGRAM MANAGER SHALL MAKE  
8 AVAILABLE FOR REVIEW BY THE COMPTROLLER THE RESULTS OF ANY PERIODIC  
9 EXAMINATION OF SUCH MANAGER BY ANY STATE OR FEDERAL BANKING, INSURANCE,  
10 OR SECURITIES COMMISSION, EXCEPT TO THE EXTENT THAT SUCH REPORT OR  
11 REPORTS MAY NOT BE DISCLOSED UNDER APPLICABLE LAW OR THE RULES OF SUCH  
12 COMMISSION.

13 7. THE COMPTROLLER MAY PROVIDE THAT AN AUDIT SHALL BE CONDUCTED OF THE  
14 OPERATIONS AND FINANCIAL POSITION OF THE PROGRAM DEPOSITORY AND MANAGER  
15 AT ANY TIME IF THE COMPTROLLER HAS ANY REASON TO BE CONCERNED ABOUT THE  
16 FINANCIAL POSITION, THE RECORDKEEPING PRACTICES, OR THE STATUS OF  
17 ACCOUNTS OF SUCH PROGRAM DEPOSITORY AND MANAGER.

18 8. DURING THE TERM OF ANY CONTRACT WITH A PROGRAM MANAGER, THE COMP-  
19 TROLLER SHALL CONDUCT AN EXAMINATION OF SUCH MANAGER AND ITS HANDLING OF  
20 ACCOUNTS. SUCH EXAMINATION SHALL BE CONDUCTED AT LEAST BIENNIALLY IF  
21 SUCH MANAGER IS NOT OTHERWISE SUBJECT TO PERIODIC EXAMINATION BY THE  
22 SUPERINTENDENT OF FINANCIAL SERVICES, THE FEDERAL DEPOSIT INSURANCE  
23 CORPORATION OR OTHER SIMILAR ENTITY.

24 9. (A) IF SELECTION OF A FINANCIAL ORGANIZATION AS A PROGRAM MANAGER  
25 OR DEPOSITORY IS NOT RENEWED, AFTER THE END OF ITS TERM:

26 (I) ACCOUNTS PREVIOUSLY ESTABLISHED AND HELD IN INVESTMENT INSTRUMENTS  
27 AT SUCH FINANCIAL ORGANIZATION MAY BE TERMINATED;

28 (II) ADDITIONAL CONTRIBUTIONS MAY BE MADE TO SUCH ACCOUNTS;

29 (III) NO NEW ACCOUNTS MAY BE PLACED WITH SUCH FINANCIAL ORGANIZATION;  
30 AND

31 (IV) EXISTING ACCOUNTS HELD BY SUCH DEPOSITORY SHALL REMAIN SUBJECT TO  
32 ALL OVERSIGHT AND REPORTING REQUIREMENTS ESTABLISHED BY THE COMPTROLLER.

33 (B) IF THE COMPTROLLER TERMINATES A FINANCIAL ORGANIZATION AS A  
34 PROGRAM MANAGER OR DEPOSITORY, HE OR SHE SHALL TAKE CUSTODY OF ACCOUNTS  
35 HELD BY SUCH FINANCIAL ORGANIZATION AND SHALL SEEK TO PROMPTLY TRANSFER  
36 SUCH ACCOUNTS TO ANOTHER FINANCIAL ORGANIZATION THAT IS SELECTED AS A  
37 PROGRAM MANAGER OR DEPOSITORY AND INTO INVESTMENT INSTRUMENTS AS SIMILAR  
38 TO THE ORIGINAL INSTRUMENTS AS POSSIBLE.

39 10. THE COMPTROLLER MAY ENTER INTO SUCH CONTRACTS AS IT DEEMS NECES-  
40 SARY AND PROPER FOR THE IMPLEMENTATION OF THE PROGRAM.

41 S 84.07 NY ABLE ACCOUNT ADVISORY COUNCIL.

42 1. THE NY ABLE ACCOUNT ADVISORY COUNCIL IS HEREBY ESTABLISHED AND  
43 SHALL CONSIST OF THE FOLLOWING PERSONS OR THEIR DESIGNEES: THE COMP-  
44 TROLLER, THE COMMISSIONER OF THE OFFICE OF MENTAL HEALTH, THE COMMIS-  
45 SIONER OF THE OFFICE FOR PEOPLE WITH DEVELOPMENTAL DISABILITIES, THE  
46 COMMISSIONER OF THE DEPARTMENT OF HEALTH, THE SUPERINTENDENT OF THE  
47 DEPARTMENT OF FINANCIAL SERVICES, THE COMMISSIONER OF THE DEPARTMENT OF  
48 TAXATION AND FINANCE, THE COMMISSIONER OF THE OFFICE OF TEMPORARY DISA-  
49 BILITY ASSISTANCE, THREE INDIVIDUALS APPOINTED BY THE GOVERNOR, AND TWO  
50 INDIVIDUALS EACH BY THE TEMPORARY PRESIDENT OF THE SENATE AND BY THE  
51 SPEAKER OF THE ASSEMBLY. SUCH EXECUTIVE AND LEGISLATIVE APPOINTEES SHALL  
52 HAVE KNOWLEDGE, SKILL AND EXPERTISE IN ISSUES RELATING TO INDIVIDUALS  
53 WITH DISABILITIES; EXPERTISE IN SERVICES TO PERSONS WITH DISABILITIES;  
54 OR KNOWLEDGE IN MANAGEMENT AND SUPPORT OF THE FISCAL AFFAIRS OF SUCH  
55 DISABILITIES.

1 2. THE MEMBERS SHALL BE APPOINTED FOR A TERM OF THREE YEARS AND SHALL  
2 BE REPRESENTATIVE OF ALL GEOGRAPHIC AREAS OF THE STATE.

3 3. THE ADVISORY COUNCIL SHALL:

4 (A) STUDY AND REVIEW THE WORK OF THE COMPTROLLER IN RELATION TO THE  
5 ESTABLISHMENT OF THE NY ABLE ACCOUNT PROGRAM;

6 (B) ADVISE THE COMPTROLLER AND MAKE RECOMMENDATIONS FOR THE IMPROVE-  
7 MENT OF THE NY ABLE ACCOUNT PROGRAM;

8 (C) ADVISE THE COMPTROLLER ON LEGISLATIVE AND REGULATORY ACTIVITY  
9 WHICH MAY BE REQUIRED FOR COMPLIANCE; AND

10 (D) ADVISE THE COMPTROLLER ON THE DEVELOPMENT OF MATERIALS TO BE  
11 PROVIDED TO ACCOUNT OWNERS, PROSPECTIVE ACCOUNT OWNERS, AND DESIGNATED  
12 BENEFICIARIES IN ACCORDANCE WITH SUBDIVISION FOURTEEN OF SECTION 84.09  
13 OF THIS ARTICLE.

14 4. THE ADVISORY COUNCIL SHALL MEET AT LEAST FOUR TIMES IN EACH FULL  
15 CALENDAR YEAR DURING THE FIRST THREE YEARS OF THE IMPLEMENTATION OF ABLE  
16 ACCOUNTS, ANNUALLY THEREAFTER, AND ADDITIONALLY UPON THE REQUEST OF THE  
17 COMPTROLLER.

18 5. THE MEMBERS OF THE ADVISORY COUNCIL SHALL RECEIVE NO COMPENSATION  
19 FOR THEIR SERVICES AS MEMBERS, BUT EACH SHALL BE ALLOWED THE NECESSARY  
20 AND ACTUAL EXPENSES INCURRED IN THE PERFORMANCE OF HIS OR HER DUTIES  
21 UNDER THIS SECTION.

22 S 84.09 PROGRAM REQUIREMENTS.

23 1. "NY ABLE" ACCOUNTS ESTABLISHED PURSUANT TO THE PROVISIONS OF THIS  
24 ARTICLE SHALL BE GOVERNED BY THE PROVISIONS OF THIS SECTION.

25 2. A NY ABLE ACCOUNT MAY BE OPENED BY ANY PERSON WHO DESIRES TO SAVE  
26 MONEY FOR THE PAYMENT OF THE QUALIFIED LIVING EXPENSES OF A DESIGNATED  
27 BENEFICIARY. SUCH PERSON WHO OPENS A NY ABLE ACCOUNT SHALL BE CONSIDERED  
28 THE ACCOUNT OWNER AS SET FORTH IN THIS ARTICLE.

29 (A) AN APPLICATION FOR SUCH ACCOUNT SHALL BE IN THE FORM PRESCRIBED BY  
30 THE PROGRAM AND CONTAIN THE FOLLOWING:

31 (I) THE NAME, ADDRESS AND SOCIAL SECURITY NUMBER OR EMPLOYER IDENTIFI-  
32 CATION NUMBER OF THE ACCOUNT OWNER;

33 (II) THE DESIGNATION OF A DESIGNATED BENEFICIARY;

34 (III) THE NAME, ADDRESS AND SOCIAL SECURITY NUMBER OF THE DESIGNATED  
35 BENEFICIARY; AND

36 (IV) SUCH OTHER INFORMATION AS THE PROGRAM MAY REQUIRE.

37 (B) THE COMPTROLLER MAY ESTABLISH A NOMINAL FEE FOR SUCH APPLICATION.

38 3. AN ACCOUNT OWNER MAY OWN ONLY ONE NY ABLE ACCOUNT UNLESS OTHERWISE  
39 PERMITTED BY SECTION 529A OF THE INTERNAL REVENUE CODE OF 1986, AS  
40 AMENDED.

41 4. ANY PERSON, INCLUDING THE ACCOUNT OWNER, MAY MAKE CONTRIBUTIONS TO  
42 THE ACCOUNT AFTER THE ACCOUNT IS OPENED.

43 5. CONTRIBUTIONS TO ACCOUNTS MAY BE MADE ONLY IN CASH.

44 6. CONTRIBUTIONS TO A NY ABLE ACCOUNT SHALL NOT EXCEED THE LIMIT ON  
45 ANNUAL CONTRIBUTIONS ESTABLISHED UNDER PARAGRAPH (2) OF SUBSECTION (B)  
46 OF SECTION 529A OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED.

47 7. AN ACCOUNT OWNER MAY WITHDRAW ALL OR PART OF THE BALANCE FROM AN  
48 ACCOUNT ON SIXTY DAYS NOTICE OR SUCH SHORTER PERIOD AS MAY BE AUTHORIZED  
49 UNDER RULES GOVERNING THE PROGRAM. SUCH RULES SHALL INCLUDE PROVISIONS  
50 THAT WILL GENERALLY ENABLE THE DETERMINATION AS TO WHETHER A WITHDRAWAL  
51 IS A NONQUALIFIED WITHDRAWAL OR A QUALIFIED WITHDRAWAL.

52 8. AN ACCOUNT OWNER MAY CHANGE THE DESIGNATED BENEFICIARY OF AN  
53 ACCOUNT TO ANOTHER BENEFICIARY WHO IS QUALIFIED UNDER THE PROVISIONS OF  
54 THIS ARTICLE.

55 9. THE PROGRAM SHALL PROVIDE A SEPARATE ACCOUNTING FOR EACH DESIGNATED  
56 BENEFICIARY.

1 10. AN ACCOUNT OWNER SHALL BE PERMITTED TO DIRECT THE INVESTMENT OF  
2 ANY CONTRIBUTIONS TO AN ACCOUNT OR THE EARNINGS THEREON NO MORE THAN TWO  
3 TIMES IN A CALENDAR YEAR.

4 11. NEITHER AN ACCOUNT OWNER NOR A DESIGNATED BENEFICIARY MAY USE AN  
5 INTEREST IN AN ACCOUNT AS SECURITY FOR A LOAN. ANY PLEDGE OF AN INTEREST  
6 IN AN ACCOUNT SHALL BE OF NO FORCE AND EFFECT.

7 12. THE COMPTROLLER SHALL PROMULGATE RULES OR REGULATIONS TO PREVENT  
8 CONTRIBUTIONS ON BEHALF OF A DESIGNATED BENEFICIARY IN EXCESS OF AN  
9 AMOUNT THAT WOULD CAUSE THE AGGREGATE ACCOUNT BALANCE FOR ALL ACCOUNTS  
10 FOR A DESIGNATED BENEFICIARY TO EXCEED A MAXIMUM ACCOUNT BALANCE, AS  
11 ESTABLISHED FROM TIME TO TIME BY THE COMPTROLLER. SUCH MAXIMUM AMOUNT  
12 SHALL REFLECT REASONABLE EXPENDITURES AND SHALL BE DETERMINED IN ACCORD-  
13 ANCE WITH ANY APPLICABLE STATE OR FEDERAL LAW, RULE, OR REGULATION.

14 13. (A) IF THERE IS ANY DISTRIBUTION FROM AN ACCOUNT TO ANY INDIVIDUAL  
15 OR FOR THE BENEFIT OF ANY INDIVIDUAL DURING A CALENDAR YEAR, SUCH  
16 DISTRIBUTION SHALL BE REPORTED TO THE INTERNAL REVENUE SERVICE AND THE  
17 ACCOUNT OWNER, THE DESIGNATED BENEFICIARY, OR THE DISTRIBUTE TO THE  
18 EXTENT REQUIRED BY FEDERAL LAW OR REGULATION.

19 (B) STATEMENTS SHALL BE PROVIDED TO EACH ACCOUNT OWNER AT LEAST ONCE  
20 EACH YEAR WITHIN SIXTY DAYS AFTER THE END OF THE TWELVE MONTH PERIOD TO  
21 WHICH THEY RELATE. THE STATEMENT SHALL IDENTIFY THE CONTRIBUTIONS MADE  
22 DURING A PRECEDING TWELVE MONTH PERIOD, THE TOTAL CONTRIBUTIONS MADE TO  
23 THE ACCOUNT THROUGH THE END OF THE PERIOD, THE VALUE OF THE ACCOUNT AT  
24 THE END OF SUCH PERIOD, DISTRIBUTIONS MADE DURING SUCH PERIOD AND ANY  
25 OTHER INFORMATION THAT THE COMPTROLLER SHALL REQUIRE TO BE REPORTED TO  
26 THE ACCOUNT OWNER.

27 (C) STATEMENTS AND INFORMATION RELATING TO ACCOUNTS SHALL BE PREPARED  
28 AND FILED TO THE EXTENT REQUIRED BY FEDERAL AND STATE TAX LAW.

29 14. THE PROGRAM SHALL DISCLOSE THE FOLLOWING INFORMATION IN WRITING TO  
30 EACH ACCOUNT OWNER AND PROSPECTIVE ACCOUNT OWNER OF A NY ABLE ACCOUNT:

31 (A) THE TERMS AND CONDITIONS FOR PURCHASING A NY ABLE ACCOUNT;

32 (B) ANY RESTRICTIONS ON THE SUBSTITUTION OF BENEFICIARIES;

33 (C) THE PERSON OR ENTITY ENTITLED TO TERMINATE THE SAVINGS AGREEMENT;

34 (D) THE PERIOD OF TIME DURING WHICH A BENEFICIARY MAY RECEIVE BENEFITS  
35 UNDER THE SAVINGS AGREEMENT;

36 (E) THE TERMS AND CONDITIONS UNDER WHICH MONEY MAY BE WHOLLY OR  
37 PARTIALLY WITHDRAWN FROM THE PROGRAM, INCLUDING, BUT NOT LIMITED TO, ANY  
38 REASONABLE CHARGES AND FEES THAT MAY BE IMPOSED FOR WITHDRAWAL;

39 (F) THE PROBABLE TAX CONSEQUENCES ASSOCIATED WITH CONTRIBUTIONS TO AND  
40 DISTRIBUTIONS FROM ACCOUNTS; AND

41 (G) ALL OTHER RIGHTS AND OBLIGATIONS PURSUANT TO NY ABLE SAVINGS  
42 AGREEMENTS, INCLUDING BUT NOT LIMITED TO THE POTENTIAL IMPACT ON MEANS  
43 TESTED PROGRAMS, THAT UPON THE DEATH OF THE BENEFICIARY ANY REMAINING  
44 BALANCE MAY BE SUBJECT TO STATE RECOVERY FOR MEDICAID PAYMENTS AND ANY  
45 OTHER TERMS, CONDITIONS, AND PROVISIONS DEEMED NECESSARY AND APPROPRIATE  
46 BY THE COMMISSIONER, THE ADVISORY COUNCIL, AND THE COMPTROLLER.

47 15. NY ABLE SAVINGS AGREEMENTS SHALL BE SUBJECT TO SECTION FOURTEEN-C  
48 OF THE BANKING LAW AND THE "TRUTH-IN-SAVINGS" REGULATIONS PROMULGATED  
49 THEREUNDER.

50 16. NOTWITHSTANDING ANY OTHER PROVISIONS OF LAW, RULE, OR REGULATION  
51 TO THE CONTRARY, ASSETS CONTAINED IN NY ABLE ACCOUNT, THAT IS IN COMPLI-  
52 ANCE WITH ALL APPLICABLE STATE AND FEDERAL LAWS, RULES, AND REGULATIONS,  
53 SHALL NOT BE USED IN DETERMINING THE ELIGIBILITY OF A DESIGNATED BENEFI-  
54 CIARY FOR ANY FEDERAL, STATE, OR LOCAL MEANS-TESTED PROGRAM.

55 17. SUBJECT TO ANY OUTSTANDING PAYMENTS DUE FOR QUALIFIED DISABILITY  
56 EXPENSES, UPON THE DEATH OF THE DESIGNATED BENEFICIARY, ALL AMOUNTS

1 REMAINING WILL BE SUBJECT TO STATE RECOVERY FOR MEDICAL ASSISTANCE  
2 PAYMENTS MADE ON BEHALF OF THE BENEFICIARY AFTER THE DATE OF ESTABLISH-  
3 MENT OF THE ACCOUNT.

4 S 84.11 DISTRIBUTION REQUIREMENTS.

5 DESIGNATED BENEFICIARIES SHALL BE ELIGIBLE FOR A DISTRIBUTION FROM THE  
6 ACCUMULATED FUNDS DEFERRED TO THEIR NY ABLE SAVINGS ACCOUNT ESTABLISHED  
7 PURSUANT TO THIS ARTICLE, IN FULL AND PARTIAL DISBURSEMENT OPTIONS FOR  
8 QUALIFIED EXPENSES.

9 S 4. Subsection (b) of section 612 of the tax law is amended by adding  
10 a new paragraph 42 to read as follows:

11 (42) DISTRIBUTIONS RECEIVED DURING THE TAXABLE YEAR BY A DESIGNATED  
12 BENEFICIARY OF A "NY ABLE ACCOUNT" ESTABLISHED UNDER THE NEW YORK  
13 ACHIEVING A BETTER LIFE EXPERIENCE SAVINGS ACCOUNT ACT PROVIDED FOR  
14 UNDER ARTICLE EIGHTY-FOUR OF THE MENTAL HYGIENE LAW, TO THE EXTENT SUCH  
15 DISTRIBUTIONS ARE NONQUALIFIED WITHDRAWALS WITHIN THE MEANING OF SUBDI-  
16 VISION SIX OF SECTION 84.03 OF SUCH LAW.

17 S 5. Subsection (c) of section 612 of the tax law is amended by adding  
18 two new paragraphs 42 and 43 to read as follows:

19 (42) CONTRIBUTIONS MADE DURING THE TAXABLE YEAR BY AN ACCOUNT OWNER TO  
20 ONE OR MORE "NY ABLE" ACCOUNTS ESTABLISHED UNDER ARTICLE EIGHTY-FOUR OF  
21 THE MENTAL HYGIENE LAW, PROVIDED, HOWEVER THAT SUCH EXCLUSION SHALL BE  
22 AVAILABLE ONLY TO THE ACCOUNT OWNER AND NOT TO ANY OTHER PERSON.

23 (43) DISTRIBUTIONS FOR QUALIFIED EXPENSES OF A DESIGNATED BENEFICIARY  
24 FROM A "NY ABLE" ACCOUNT ESTABLISHED UNDER ARTICLE EIGHTY-FOUR OF THE  
25 MENTAL HYGIENE LAW, TO THE EXTENT INCLUDIBLE IN GROSS INCOME FOR FEDERAL  
26 INCOME TAX PURPOSES.

27 S 6. Paragraph (a) of subdivision 2 of section 366 of the social  
28 services law is amended by adding a new subparagraph 11 to read as  
29 follows:

30 (11) SUBJECT TO THE AVAILABILITY OF FEDERAL FINANCIAL PARTICIPATION,  
31 ANY AMOUNT, INCLUDING EARNINGS THEREON, IN A QUALIFIED NY ABLE ACCOUNT  
32 AS ESTABLISHED PURSUANT TO ARTICLE EIGHTY-FOUR OF THE MENTAL HYGIENE  
33 LAW, ANY CONTRIBUTIONS TO SUCH NY ABLE ACCOUNT, AND ANY DISTRIBUTION FOR  
34 QUALIFIED DISABILITY EXPENSES FROM SUCH ACCOUNT; PROVIDED HOWEVER, THAT  
35 SUCH EXEMPTION SHALL BE CONSISTENT WITH SECTION 529A OF THE INTERNAL  
36 REVENUE CODE OF 1986, AS AMENDED.

37 S 7. This act shall take effect April 1, 2016; provided, however, that  
38 effective immediately, the addition, amendment and/or repeal of any  
39 rules or regulations necessary for the implementation of this act on its  
40 effective date are authorized and directed to be made and completed on  
41 or before such effective date.