STATE OF NEW YORK

7134

2023-2024 Regular Sessions

IN ASSEMBLY

May 11, 2023

Introduced by M. of A. CRUZ -- read once and referred to the Committee on Governmental Operations

AN ACT to amend the executive law and the state finance law, in relation to establishing the New York children's COVID-19 fund program

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The executive law is amended by adding a new article 19-I to read as follows:

ARTICLE 19-I

NEW YORK COVID-19 CHILDREN'S FUND PROGRAM

Section 535. Definitions.

535-a. New York COVID-19 children's fund program board.

535-b. New York COVID-19 children's fund program.

§ 535. Definitions. As used in this article, the following terms shall have the following meanings:

1. "Board" shall mean the New York COVID-19 children's fund program board established pursuant to section five hundred thirty-five-a of this article.

2. "Program" shall mean the New York COVID-19 children's fund program established pursuant to section five hundred thirty-five-b of this article.

3. "Fund" shall mean the New York COVID-19 children's fund established pursuant to section seventy-eight-c of the state finance law.

4. "Eligible child" shall mean any child who is a minor resident of New York who is under eighteen years of age, has not emancipated from their parent, custodian, or legal guardian, and meets one of the following qualifications: (i) they reside in New York and their parent, custodian, legal guardian, or related adult household member, died during the federally declared COVID-19 public health emergency and the cause of death is listed as COVID-19 on their death certificate or they died as a consequence of having long-term COVID-19 and (ii) the eligible child's

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

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family household has an annual household income of less than five hundred percent of the federal poverty level.

5. "Household income" shall mean the sum of the adjusted gross incomes of the eligible child's birth parents. Such gross income amounts shall be calculated based on information from the most recent taxable year available as provided and certified by the department of taxation and finance.

6. "Qualified expenses" shall mean expenses for the education of the account holder, ownership of a home by the account holder, and costs associated with establishing or otherwise building a business.

§ 535-a. New York COVID-19 children's fund program board. 1. (a) There is hereby established the New York COVID-19 children's fund program board to administer the New York COVID-19 children's fund program established pursuant to section five hundred thirty-five-b of this article. Such board shall consist of nine members, as follows: (i) the comptroller, or their designee, who shall serve as the chair, (ii) the commissioner of taxation and finance, or their designee, (iii) the inspector general, or their designee, (iv) an individual with expertise in poverty alleviation and the racial wealth gap appointed by the temporary president of the senate, (v) an individual with investment expertise appointed by the speaker of the assembly, (vi) an individual with expertise on financial empowerment and consumer protection appointed by the governor, (vii) a public member who has experienced childhood poverty appointed by the governor, and (viii) two additional nonvoting members appointed by the governor.

(b) The comptroller shall, on behalf of the board, appoint an executive director, who shall not be a member of the board and who shall serve at the pleasure of the comptroller. The comptroller shall determine the duties of the executive director and other staff, as appropriate, and set their compensation. The board may authorize the executive director to enter into contracts on behalf of the board or conduct any business necessary for the efficient operation of the board.

(c) Members of the board appointed by the governor, the temporary president of the senate, and the speaker of the assembly shall serve at the pleasure of the appointing authority. All members of the board shall serve without compensation. Members of the board shall be reimbursed for necessary travel expenses incurred in connection with their board duties. Board members and other staff of the board shall not do any of the following:

(i) Directly or indirectly have any interest in the making of any investment made for the program, or in the gains or profits accruing from any investment made for the program;

(ii) Borrow any funds or deposits of the fund's trust accounts, or use those funds or deposits in any manner, for themselves or as an agent or partner of others; or

(iii) Become an endorser, surety, or obligor on investments by the board.

(d) The board and staff, including any contracted administrators and consultants, shall discharge their duties as fiduciaries with respect to the fund's trust accounts solely in the interest of the program enrollees as follows:

(i) For the exclusive purposes of providing benefits to program enrollees and defraying reasonable expenses of administering the program; and

(ii) By investing with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like

capacity and familiar with those matters would use in the conduct of an enterprise of a like character and with like aims.

(e) The board, subject to its authority and fiduciary duty, shall administer the program and the funds appropriated for the program in alignment with the intent of the legislature to create opportunities, economic autonomy, and hope, and to promote wealth and asset building for an eligible child and eligible youth to address New York's record levels of inequality.

(f) To achieve the functions specified in this section, the board shall have the power and authority to do all of the following:

(i) Make and enter into contracts necessary for the administration of the program;

(ii) Adopt a seal and change and amend it from time to time;

(iii) Cause moneys in the fund's trust accounts to be held and invested and reinvested;

(iv) (1) Accept any grants, gifts, legislative appropriation, and other moneys from the state, any unit of federal, state, or local government, or any other person, firm, partnership, philanthropic entity, or corporation for deposit to the fund;

(2) The board shall provide a way for grants, gifts, appropriations or other moneys to the fund to be made in any amount and with the ability to have the funds targeted to specific subgroups, as defined by the entity giving, granting, or appropriating the funds, provided that they are not limited in such a way that would conflict with the intent of the legislature in establishing the program;

(v) Make provisions for the payment of costs of administration and operation of the program;

(vi) Employ staff;

(vii) Retain and contract with private financial institutions, other financial and service providers, consultants, actuaries, counsel, auditors, third-party administrators, and other professionals, as necessary;

(viii) Procure insurance against any loss in connection with the property, assets, or activities of the trust;

(ix) Procure insurance indemnifying each member of the board from personal loss or liability resulting from a member's action or inaction as a member of the board;

(x) Cause expenses incurred to initiate, implement, maintain, and administer the program to be paid from deposits to, or investment returns or assets of, the program or arrangements established under the program, to the extent permitted under state and federal law;

(xi) Carry out the duties and obligations of the program pursuant to this chapter and exercise any and all other powers as appropriate for the effectuation of the purposes, objectives, and provisions of this chapter pertaining to the program; and

(xii) Adopt rules and regulations to implement the provisions of this article.

§ 535-b. New York COVID-19 children's fund program. 1. There is hereby established the New York COVID-19 children's fund program to provide assistance to children whose parent, custodian, legal guardian, or related adult household member died as a result of contracting COVID-19, regardless of immigration status of such children utilizing the monies available in the New York COVID-19 children's fund established pursuant to section seventy-eight-c of the state finance law.

2. (a) The program shall provide for the deposit of (i) one thousand dollars into an individual trust account in the fund for each eligible child within six months of receipt of an application to the program for

such child, and (ii) one thousand dollars each year thereafter of eligibility. Monies within each trust account shall be invested in a manner that generates a rate of return at least equal to the rate of return earned on a thirty-year treasury bond. The board, in consultation with the department of health, shall promulgate application forms to be submitted to the comptroller to determine the eligibility of a child whose parent, custodian, legal guardian, or related adult household member died as a result of contracting COVID-19, regardless of the immigration status of such child.

(b) Monies in each account shall be identified by a unique identification number and may only be accessed by the eligible child for which the account was originally created. In order to access such funds, the eligible child shall be at least eighteen years old. Such monies shall only be utilized for qualified expenses.

3. (a) Within one hundred twenty days of the effective date of this section, the board shall convene an advisory workgroup to work in coordination with the board on the program design, including, but not limited to, data sharing with relevant governmental agencies and departments, outreach to families of an eligible child and to eligible children directly, and the process for program enrollment and continuous measurement of outcomes of the individual trust accounts established pursuant to subdivision two of this section.

(b) The advisory workgroup shall invite participation in the workgroup from the following entities:

(i) Representatives from the office of children and family services, the department of social services, the department of public health and the department of corrections and community supervision; and

(ii) Community stakeholders with knowledge and experience in poverty alleviation, youth development, access to banking for underbanked individuals, asset building, race-wealth gap, consumer protections, and wealth coaching.

(c) The workgroup shall specifically focus on, but need not be limited to, all of the following:

(i) Who is included as an "eligible child" under this article, including the ability to include individuals without social security numbers or individual tax identification numbers, the responsible agency for determining eligibility, and estimates of likely program enrollees by year;

(ii) Necessary available data and data sharing agreements needed between government entities to meet the requirements of this article;

(iii) Application of appropriate privacy protections under state and federal law in the identification of, and outreach to, an eligible child;

(iv) Acceptable investment products, strategies, risk guidelines, and management requirements to ensure a balance between safety of the principal, liquidity, and expected yield or return for moneys of the fund;

(v) Actuarial estimates of the amount of investment per program enrollee and the range of financial outcomes;

(vi) Effective outreach strategies to ensure accounts are established for the maximum amount of children who may be an eligible child and moneys are drawn down when available;

(vii) Determination of necessary administrative components, such as information technology services, recordkeeping, and other services, as well as the ability to use state agency resources or the need for third-party administrators;

(viii) Additional areas determined as critical to the implementation of the program, as identified during the course of the workgroup; and

(ix) Timelines for implementation of this article.

(d) The advisory workgroup may consult with additional experts, as necessary, to inform their recommendations.

4. On or before the first of February next succeeding the effective date of this section, the board shall submit a report to the comptroller and the legislature, that includes, at a minimum, recommendations of the board on all of the following:

(a) A detailed plan for implementing the program and establishing and maintaining the individual trust accounts in the fund for an eligible child that maximizes their participation and their autonomous wealth-building capacity;

(b) The anticipated number of individual trust accounts to be opened and initial deposit amounts;

(c) A description of the efforts to be used to solicit philanthropic or nonstate moneys to support the program; and

(d) Further statutory and budget allocations.

§ 2. The state finance law is amended by adding a new section 78-c to read as follows:

§ 78-c. New York COVID-19 children's fund. 1. There is hereby established in the joint custody of the comptroller, the commissioner of taxation and finance and the commissioner of health a fund to be known as the New York COVID-19 children's fund. Such fund shall be utilized for the purposes of the New York COVID-19 children's fund program pursuant to the provisions of section five hundred thirty-five-b of the executive law.

2. The New York COVID-19 children's fund shall consist of moneys transferred to the fund by the comptroller from the general fund and all other moneys appropriated, credited, or transferred thereto from any other fund or source pursuant to law. Nothing contained herein shall prevent the state from receiving grants, gifts or bequests for the purposes of the fund as defined in this section and depositing them into the fund according to law.

3. (a) The comptroller may invest moneys in the fund that are not required for current needs of the fund in the eligible securities pursuant to the provisions of this chapter and subdivision two of section five hundred thirty-five-b of the executive law.

(b) Notwithstanding any provision of law to the contrary, all interest or other increment resulting from the investment or deposit of moneys of the fund shall be deposited in the fund.

4. (a) Of the total moneys of the fund, five percent shall be available to administer the New York COVID-19 children's fund program, pursuant to the provisions of section five hundred thirty-five-b of the executive law.

(b) The New York COVID-19 children's fund program board, established pursuant to section five hundred thirty-five-a of the executive law, shall submit a written annual expenditure plan detailing proposed uses of funding to the division of the budget, the senate finance committee and the assembly ways and means committee by October first of every year. To the extent the board's administrative costs will or are projected to exceed five percent, the board shall submit a written request, in addition to the annual expenditure plan, for the release of additional funding for administrative costs and the necessity to exceed five percent to the division of the budget, the senate finance committee and the assembly ways and means committee. The comptroller may provide

funds for administration of the program that exceed five percent, not sooner than thirty days after notifying, in writing, the division of the budget, the senate finance committee and the assembly ways and means committee, or any lesser time determined by the director of the budget, or the director's designee.

5. (a) All assets of the fund and moneys allocated to individual trust accounts established pursuant to subdivision two of section five hundred thirty-five-b of the executive law shall be considered to be owned by the state until an eligible child withdraws or transfers money from their individual trust account.

(b) To the extent allowed under federal law, because it shall be considered an asset of the state until withdrawn or transferred by an eligible child, all of the following apply to funds deposited and investment returns accrued in an individual trust account of the fund:

(i) It is nontransferable to any person other than the eligible child, and only as permitted pursuant to this chapter;

(ii) It shall not be pledged as collateral for any loan; and

(iii) It may be subject to a lien.

6. Monies of the fund shall be expended by the comptroller solely for the purpose of administering the provisions of this section and the New York COVID-19 children's fund program.

7. As used in this section, the term "eligible child" shall have the same meaning as such term is defined in section five hundred thirty-five of the executive law.

§ 3. This act shall take effect on the one hundred twentieth day after it shall have become a law. Effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized to be made and completed on or before such effective date.