§ 84.05 Powers and duties of the comptroller.

1. The comptroller shall establish a NY ABLE account plan for all eligible individuals for the purpose of supporting individuals with disabilities to maintain health, independence, and quality of life. The comptroller is hereby authorized to promulgate any and all rules and regulations necessary for the implementation of this article in consultation with the commissioners of the office for people with developmental disabilities, the office of mental health, the department of health, and the office of temporary and disability assistance.

2. The comptroller may implement the NY ABLE savings account program through use of third party vendors as administrators of such accounts, and financial organizations as account depositories and managers. Under the program, eligible individuals may establish accounts directly with an account depository.

3. The comptroller may solicit proposals from financial organizations to act as depositories and managers from the program. Financial organizations submitting proposals shall describe the investment instrument which will be held in accounts. The comptroller shall select as program depositories and managers the financial organization, from among the bidding financial organizations, that demonstrates the most advantageous combination, both to potential program participants and this state, of the following factors:

(a) Financial stability and integrity of the financial organization;

(b) The safety of the investment instrument being offered;

(c) The ability of the investment instrument to track increasing costs of obtaining care for individuals with disabilities;

(d) The ability of the financial organization to satisfy recordkeeping and reporting requirements;

(e) The financial organization's plan for promoting the program and the investment it is willing to make to promote the program;

(f) The fees, if any, proposed to be charged to persons for opening or maintaining accounts;

(g) The minimum initial deposit and minimum contributions that the financial organization will require;

(h) The ability of banking organizations to accept electronic withdrawals, including payroll deduction plans; and

(i) Other benefits to the state or its residents included in the proposal, including fees payable to the state to cover expenses of operation of the program.

3-a. Notwithstanding the provisions of subdivision three of this section, the comptroller may, in his or her discretion, enter into a contract with the existing third party administrator of the NYS college choice tuition savings program for the purpose of administering the NY ABLE savings account program and providing account depositories and managers. The term of such contract shall expire on the same date as the contract for the administration of the NYS college choice tuition savings program expires. Following such expiration, the comptroller may, in his or her discretion, solicit proposals for the purpose of administering the NY ABLE savings account program and solicit proposals for the purpose of administering the NYS college choice tuition savings program jointly or separately.

4. The comptroller may enter into a contract with a financial organization. Such financial organization management may provide one or more types of investment instrument.

5. The comptroller may select more than one financial organization for the program.

6. A management contract shall include, at a minimum, terms requiring the financial organization to:

(a) Take any action required to keep the program in compliance with requirements of section 84.09 of this article and any actions not contrary to its contract to manage the program to qualify as a "Qualified ABLE account" under subsection (1) of paragraph (b) of section 529A of the Internal Revenue Code of 1986, as amended.

(b) Keep adequate records of each account, keep each account segregated from each other account, and provide the comptroller with information as required;

(c) compile and total information contained in statements required to

be prepared under section 84.09 of this article and provide such compilations to the comptroller.

(d) If there is more than one program manager, provide the comptroller with such information necessary to determine compliance;

(e) Provide the comptroller or his or her designee access to the books and records of the program manager to the extent needed to determine compliance with the contract;

(f) Hold all accounts for the benefit of the account owner;

(g) Be audited at least annually by a firm of certified public accountants selected by the program manager and that the results of such audit be provided to the comptroller; and

(h) Provide the comptroller with copies of all regulatory filings and reports made by it during the term of the management contract or while it is holding any accounts, other than confidential filings or reports that will not become part of the program. The program manager shall make available for review by the comptroller the results of any periodic examination of such manager by any state or federal banking, insurance, or securities commission, except to the extent that such report or reports may not be disclosed under applicable law or the rules of such commission.

7. The comptroller may provide that an audit shall be conducted of the operations and financial position of the program depository and manager at any time if the comptroller has any reason to be concerned about the financial position, the recordkeeping practices, or the status of accounts of such program depository and manager.

8. During the term of any contract with a program manager, the comptroller shall conduct an examination of such manager and its handling of accounts. Such examination shall be conducted at least biennially if such manager is not otherwise subject to periodic examination by the superintendent of financial services, the federal deposit insurance corporation or other similar entity.

9. (a) If selection of a financial organization as a program manager or depository is not renewed, after the end of its term:

(i) Accounts previously established and held in investment instruments

at such financial organization may be terminated;

(ii) Additional contributions may be made to such accounts;

(iii) No new accounts may be placed with such financial organization; and

(iv) Existing accounts held by such depository shall remain subject to all oversight and reporting requirements established by the comptroller.

(b) If the comptroller terminates a financial organization as a program manager or depository, he or she shall take custody of accounts held by such financial organization and shall seek to promptly transfer such accounts to another financial organization that is selected as a program manager or depository and into investment instruments as similar to the original instruments as possible.

10. The comptroller may enter into such contracts as it deems necessary and proper for the implementation of the program.