§ 84.09 Program requirements.

1. "NY ABLE" accounts established pursuant to the provisions of this article shall be governed by the provisions of this section.

2. (a) An application for a NY ABLE account shall be in the form prescribed by the program and contain the following:

(i) the name, address and social security number or employer identification number of the account owner;

(ii) the designation of a designated beneficiary;

(iii) the name, address and social security number of the designated beneficiary; and

(iv) such other information as the program may require.

(b) The comptroller may establish a nominal fee for such application.

3. An account owner may own only one NY ABLE account unless otherwise permitted by section 529A of the Internal Revenue Code of 1986, as amended.

4. Any person, including the account owner, may make contributions to the account after the account is opened.

5. Contributions to accounts may be made only in cash.

6. Contributions to a NY ABLE account shall not exceed the limit on annual contributions established under paragraph (2) of subsection (b) of section 529A of the Internal Revenue Code of 1986, as amended.

7. An account owner may withdraw all or part of the balance from an account on sixty days notice or such shorter period as may be authorized under rules governing the program. Such rules shall include provisions that will generally enable the determination as to whether a withdrawal is a nonqualified withdrawal or a qualified withdrawal. Nonqualified withdrawals shall be subject to any penalties imposed under section 529A of the internal revenue code of 1986, as amended.

8. An account owner may change the designated beneficiary of an

account to another beneficiary only as permitted under section 529A of the Internal Revenue Code.

9. The program shall provide a separate accounting for each designated beneficiary.

10. An account owner shall be permitted to direct the investment of any contributions to an account or the earnings thereon no more than two times in a calendar year.

11. Neither an account owner nor a designated beneficiary may use an interest in an account as security for a loan. Any pledge of an interest in an account shall be of no force and effect.

12. The comptroller shall promulgate rules or regulations to prevent contributions on behalf of a designated beneficiary in excess of an amount that would cause the aggregate account balance for all accounts for a designated beneficiary to exceed a maximum account balance, as established from time to time by the comptroller. Such maximum amount shall reflect reasonable expenditures and shall be determined in accordance with any applicable state or federal law, rule, or regulation. Such maximum amount shall not exceed the federally authorized level of contribution established for the New York college choice tuition savings program pursuant to subdivision ten of section six hundred ninety-five-e of the education law unless otherwise permitted by law.

13. (a) If there is any distribution from an account to any individual or for the benefit of any individual during a calendar year, such distribution shall be reported to the Internal Revenue Service and the account owner, the designated beneficiary, or the distributee to the extent required by federal law or regulation.

(b) Statements shall be provided to each account owner at least once each year within sixty days after the end of the twelve month period to which they relate. The statement shall identify the contributions made during a preceding twelve month period, the total contributions made to the account through the end of the period, the value of the account at

the end of such period, distributions made during such period and any other information that the comptroller shall require to be reported to the account owner.

(c) Statements and information relating to accounts shall be prepared and filed to the extent required by federal and state tax law.

14. The program shall disclose the following information in writing to each account owner and prospective account owner of a NY ABLE account:

(a) the terms and conditions for purchasing a NY ABLE account;

(b) any restrictions on the substitution of beneficiaries;

(c) the person or entity entitled to terminate the savings agreement;

(d) the period of time during which a beneficiary may receive benefits under the savings agreement;

(e) the terms and conditions under which money may be wholly or partially withdrawn from the program, including, but not limited to, any reasonable charges and fees that may be imposed for withdrawal;

(f) the probable tax consequences associated with contributions to and distributions from accounts; and

(g) all other rights and obligations pursuant to NY ABLE savings agreements, including but not limited to the potential impact on means tested programs, that upon the death of the beneficiary any remaining balance may be subject to state recovery for Medicaid payments and any other terms, conditions, and provisions deemed necessary and appropriate by the commissioner, the advisory council, and the comptroller.

15. NY ABLE savings agreements shall be subject to section fourteen-c of the banking law and the "truth-in-savings" regulations promulgated thereunder.

16. Notwithstanding any other provisions of law, rule, or regulation to the contrary, assets contained in NY ABLE account, that is in compliance with all applicable state and federal laws, rules, and regulations, shall not be used in determining the eligibility of a designated beneficiary for any federal, state, or local means-tested program.

17. Subject to any outstanding payments due for qualified disability

expenses, upon the death of the designated beneficiary, all amounts remaining will be subject to state recovery for medical assistance payments made on behalf of the beneficiary after the date of establishment of the account.

18. Nothing in this article shall create or be construed to create any obligation of the comptroller, the state, or any agency or instrumentality of the state to guarantee for the benefit of any account owner or designated beneficiary with respect to:

(a) the rate of interest or other return on any account; and

(b) the payment of interest or other return on any account.