

VIRGINIA ACTS OF ASSEMBLY -- 2020 SESSION

CHAPTER 923

An Act to amend and reenact § 23.1-707 of the Code of Virginia, relating to ABLE savings trust agreement; Medicaid clawback prohibition.

[H 887]

Approved April 9, 2020

Be it enacted by the General Assembly of Virginia:

1. That § 23.1-707 of the Code of Virginia is amended and reenacted as follows:

§ 23.1-707. Prepaid tuition contracts and college and ABLE savings trust agreements.

A. Each prepaid tuition contract made pursuant to this chapter shall include the following terms and provisions:

1. The amount of payment or payments and the number of payments required from a purchaser on behalf of a qualified beneficiary;
2. The terms and conditions under which purchasers shall remit payments, including the dates of such payments;
3. Provisions for late payment charges, defaults, withdrawals, refunds, and any penalties;
4. The name and date of birth of the qualified beneficiary on whose behalf the contract is made;
5. Terms and conditions for a substitution for the qualified beneficiary originally named;
6. Terms and conditions for termination of the contract, including any refunds, withdrawals, or transfers of tuition prepayments, and the name of the person entitled to terminate the contract;
7. The time period during which the qualified beneficiary is required to claim benefits from the Plan;
8. The number of credit hours or quarters, semesters, terms, or units contracted for by the purchaser, as applicable;
9. All other rights and obligations of the purchaser and the trust; and

10. Any other terms and conditions that the board deems necessary or appropriate, including those necessary to conform the contract with the requirements of § 529 of the Internal Revenue Code of 1986, as amended, which specifies the requirements for qualified state tuition programs.

B. Each college savings trust agreement made pursuant to this chapter shall include the following terms and provisions:

1. The maximum and minimum contribution allowed on behalf of each qualified beneficiary for the payment of qualified higher education expenses, as that term is defined in § 529 of the Internal Revenue Code of 1986, as amended, or other applicable federal law;
2. Provisions for withdrawals, refunds, transfers, and any penalties;
3. The name, address, and date of birth of the qualified beneficiary on whose behalf the savings trust account is opened;
4. Terms and conditions for a substitution for the qualified beneficiary originally named;
5. Terms and conditions for termination of the account, including any refunds, withdrawals, or transfers, and applicable penalties, and the name of the person entitled to terminate the account;
6. The time period during which the qualified beneficiary is required to use benefits from the savings trust account;
7. All other rights and obligations of the contributor and the Plan; and
8. Any other terms and conditions that the board deems necessary or appropriate, including those necessary to conform the savings trust account with the requirements of § 529 of the Internal Revenue Code of 1986, as amended, or other applicable federal law.

C. Each ABLE savings trust agreement made pursuant to this chapter shall include the following terms and provisions:

1. The maximum and minimum annual contribution and maximum account balance allowed on behalf of each qualified beneficiary for the payment of qualified disability expenses, as defined in § 529A of the Internal Revenue Code of 1986, as amended, or other applicable federal law;
2. Provisions for withdrawals, refunds, transfers, return of excess contributions, and any penalties;
3. The name, address, and date of birth of the qualified beneficiary on whose behalf the savings trust account is opened;
4. Terms and conditions for a substitution for the qualified beneficiary originally named;
5. Terms and conditions for termination of the account, including any transfers to the state upon the death of the qualified beneficiary, refunds, withdrawals, transfers, applicable penalties, and the name of the person entitled to terminate the account;
6. The time period during which the qualified beneficiary is required to use benefits from the savings trust account;
7. All other rights and obligations of the contributor and the Plan; and

8. Any other terms and conditions that the board deems necessary or appropriate, including those necessary to conform the savings trust account with the requirements of § 529A of the Internal Revenue Code of 1986, as amended, or other applicable federal law.

D. In addition to the provisions required by subsection A, each prepaid tuition contract entered into prior to July 1, 2019, shall include provisions for the application of tuition prepayments (i) at accredited nonprofit independent or private institutions of higher education, including actual interest and income earned on such prepayments, and (ii) at non-Virginia public and accredited nonprofit independent or private institutions of higher education, including principal and reasonable return on such principal as determined by the board. Payments authorized for accredited nonprofit independent or private institutions of higher education shall not exceed the projected highest payment made for tuition at a public institution of higher education in the same academic year, less a fee to be determined by the board. Payments authorized for non-Virginia public and accredited nonprofit independent or private institutions of higher education shall not exceed the projected average payment made for tuition at a public institution of higher education in the same academic year, less a fee to be determined by the board. In no event, however, shall the benefit paid on any prepaid tuition contract entered into prior to July 1, 2019, be less than the sum of tuition prepayments made and a reasonable return on such prepayments to be determined by the board, less any fees determined by the board.

E. In addition to the provisions required by subsection A, each prepaid tuition contract entered into on or after July 1, 2019, shall include provisions for the application of tuition prepayments, at a rate equal to the percentage of enrollment-weighted average tuition at public institutions of higher education to be determined by the board, at (i) public institutions of higher education, (ii) accredited nonprofit independent or private institutions of higher education, and (iii) non-Virginia public and accredited nonprofit independent or private institutions of higher education. In no event, however, shall the benefit paid on any prepaid tuition contract entered into on or after July 1, 2019, be less than tuition prepayments made, less any fees as determined by the board.

F. All prepaid tuition contracts and savings trust agreements shall specifically provide that if after a specified period of time the contract or savings trust agreement has not been terminated and the qualified beneficiary's rights have not been exercised, the board, after making a reasonable effort to contact the purchaser or contributor and the qualified beneficiary or their agents, shall report such unclaimed moneys to the State Treasurer pursuant to § 55.1-2524.

G. 1. Notwithstanding any provision of law to the contrary, money in the Plan is exempt from creditor process, is not liable to attachment, garnishment, or other process, and shall not be seized, taken, appropriated, or applied by any legal or equitable process or operation of law to pay any debt or liability of any purchaser, contributor, or beneficiary, ~~except that the state of residence of the beneficiary of an ABLÉ savings trust account shall be a creditor of such account in the event of the death of the beneficiary.~~ *Unless required by federal law, the Commonwealth, its agencies, and its instrumentalities shall not seek payment pursuant to 26 U.S.C. § 529A from any ABLÉ savings trust account or its proceeds for benefits provided to the beneficiary of the account and shall not undertake estate recovery from any ABLÉ savings trust account pursuant to 26 U.S.C. § 529A.*

2. *Unless prohibited by federal law, the beneficiary of an ABLÉ savings trust account may appoint a survivor. In the event of the beneficiary's death, if the survivor is (i) an eligible individual, as defined in 26 U.S.C. § 529A(e), then such survivor shall become the beneficiary of the ABLÉ savings trust account or (ii) not an eligible individual, as defined in 26 U.S.C. § 529A(e), then any proceeds remaining after final distributions have been made on behalf of the deceased beneficiary shall be distributed to the survivor and the account shall be closed.*

H. Notwithstanding any other provision of state law that requires consideration of one or more financial circumstances of an individual for the purpose of determining (i) the individual's eligibility to receive any assistance or benefit pursuant to such provision of state law or (ii) the amount of any such assistance or benefit that such individual is eligible to receive pursuant to such provision of state law, any (a) moneys in an ABLÉ savings trust account for which such individual is the beneficiary, including any interest on such moneys, (b) contributions to an ABLÉ savings trust account for which such individual is the beneficiary, and (c) distribution for qualified disability expenses for such individual from an ABLÉ savings trust account for which such individual is the beneficiary shall be disregarded for such purpose with respect to any period during which such individual remains the beneficiary of, makes contributions to, or receives distributions for qualified disability expenses from such ABLÉ savings trust account.

I. No prepaid tuition contract or savings trust account shall be assigned for the benefit of creditors, used as security or collateral for any loan, or otherwise subject to alienation, sale, transfer, assignment, pledge, encumbrance, or charge.

J. The board's decision on any dispute, claim, or action arising out of or relating to a prepaid tuition contract or savings trust agreement made or entered into pursuant to this chapter or benefits under such prepaid tuition contract or savings trust agreement shall be considered a case decision as defined in § 2.2-4001 and all proceedings related to such dispute, claim, or action shall be conducted pursuant to Article 3 (§ 2.2-4018 et seq.) of the Administrative Process Act. Judicial review shall be provided

exclusively pursuant to Article 5 (§ 2.2-4025 et seq.) of the Administrative Process Act.