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**HOUSE BILL NO. 887**

Offered January 8, 2020

Prefiled January 7, 2020

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

Patrons—Filler-Corn, Keam and Murphy

Referred to Committee on Health, Welfare and Institutions

**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

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59 the person entitled to terminate the account;

60 6. The time period during which the qualified beneficiary is required to use benefits from the savings  
61 trust account;

62 7. All other rights and obligations of the contributor and the Plan; and

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

66 D. In addition to the provisions required by subsection A, each prepaid tuition contract entered into  
67 prior to July 1, 2019, shall include provisions for the application of tuition prepayments (i) at accredited  
68 nonprofit independent or private institutions of higher education, including actual interest and income  
69 earned on such prepayments, and (ii) at non-Virginia public and accredited nonprofit independent or  
70 private institutions of higher education, including principal and reasonable return on such principal as  
71 determined by the board. Payments authorized for accredited nonprofit independent or private institutions  
72 of higher education shall not exceed the projected highest payment made for tuition at a public  
73 institution of higher education in the same academic year, less a fee to be determined by the board.  
74 Payments authorized for non-Virginia public and accredited nonprofit independent or private institutions  
75 of higher education shall not exceed the projected average payment made for tuition at a public  
76 institution of higher education in the same academic year, less a fee to be determined by the board. In  
77 no event, however, shall the benefit paid on any prepaid tuition contract entered into prior to July 1,  
78 2019, be less than the sum of tuition prepayments made and a reasonable return on such prepayments to  
79 be determined by the board, less any fees determined by the board.

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

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

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

102 2. *Unless prohibited by federal law, the beneficiary of an ABLE savings trust account may appoint a*  
103 *survivor. In the event of the beneficiary's death, if the survivor is (i) an eligible individual, as defined in*  
104 *26 U.S.C. § 529A(e), then such survivor shall become the beneficiary of the ABLE savings trust account*  
105 *or (ii) not an eligible individual, as defined in 26 U.S.C. § 529A(e), then any proceeds remaining after*  
106 *final distributions have been made on behalf of the deceased beneficiary shall be distributed to the*  
107 *survivor and the account shall be closed.*

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

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

121 pledge, encumbrance, or charge.

122 J. The board's decision on any dispute, claim, or action arising out of or relating to a prepaid tuition  
123 contract or savings trust agreement made or entered into pursuant to this chapter or benefits under such  
124 prepaid tuition contract or savings trust agreement shall be considered a case decision as defined in  
125 § 2.2-4001 and all proceedings related to such dispute, claim, or action shall be conducted pursuant to  
126 Article 3 (§ 2.2-4018 et seq.) of the Administrative Process Act. Judicial review shall be provided  
127 exclusively pursuant to Article 5 (§ 2.2-4025 et seq.) of the Administrative Process Act.

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