**Section 722.410 Authority to Establish and Manage an ABLE Account**

a) An eligible individual may establish an ABLE account on their own behalf as a designated beneficiary, or a person or entity recognized as a designated representative under this Section may establish an ABLE account for a designated beneficiary who is also an eligible individual.

b) *A designated beneficiary is authorized to act on his or her own behalf unless the designated beneficiary is a minor or the designated beneficiary has been adjudicated to have a disability so that a guardian has been appointed.*

c) A designated beneficiary who is authorized to act on their own behalf under subsection (b) may select any person or entity, not otherwise prohibited from acting as a fiduciary, to act as a designated representative.

d) If a designated beneficiary is not authorized under subsection (b) to act on their own behalf, the Treasurer shall recognize a person or entity listed in subsection (e) as a designated representative, in accordance with Section 1.529A-2(c)(1)(i)(C) of the Treasury Regulation.

e) The Treasurer will recognize the following as a designated representative without appointment by a court in the following order:

1) The agent named by the designated beneficiary in a property power of attorney in accordance with the Illinois Power of Attorney Act [755 ILCS 45] or the law of the state of residence of the designated beneficiary.

2)The designated beneficiary's guardian of the person, plenary guardian of the estate, limited guardian of financial or contractual matters, or any other State-appointed guardian, including the Office of the State Guardian. A guardian acting in this capacity shall not be required to seek court approval for any ABLE account activity.

3) A spouse, parent, sibling, or grandparent, in that order, of the designated beneficiary.

4) A representative payee appointed for the designated beneficiary by the SSA.

f) *A designated representative acts in a fiduciary capacity to the designated beneficiary.* [15 ILCS 505/16.6(a)]

g) A person or entity seeking to be recognized by the Treasurer as a designated representative shall provide a certification, made under penalties of perjury, as to the basis for the person’s or entity’s authority to act as the designated representative and that there is no other person or entity with a higher authority to establish the ABLE account under Section 529A of the Code and Section 1.529A-2(c)(1)(i) of the Treasury Regulation. The certification shall meet the requirements of the certification permitted by Section 1.529A-2(c)(1)(ii) of the Treasury Regulation. The Treasurer may require a person or entity seeking to open an account as a designated representative to provide documentation to establish by a preponderance of the evidence the person’s or entity’s authority to act on behalf of a designated beneficiary when the Treasurer determines proof of that authority is necessary or beneficial to the administration of the program.

h) If a designated representative is a nonresident of Illinois, the Clerk of the Circuit Court of Cook County will be the agent for service of process.

(Source: Amended at 46 Ill. Reg. 19242, effective November 20, 2022)