

# CHARTER

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## NORTH CAROLINA ABLE PROGRAM BOARD OF TRUSTEES

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### I. Purpose and Authority

The North Carolina ABLE Program Board of Trustees (the “Board”), in conjunction with the Treasurer of the State of North Carolina (the “Treasurer”) and staff at the North Carolina Department of State Treasurer (the “Department”), administers the state’s Achieving a Better Life Experience Program (the “NC ABLE Program”). The Board has a fiduciary duty to establish, manage, and oversee all aspects of the Program for the exclusive benefit of designated beneficiaries. This Charter establishes the general structure of the Board in discharging these duties and is subject at all times to the North Carolina General Statutes. N.C.G.S. §§ 147-71; 147-86.72(a), (c), (d), and (e); and 147-86.73(a) and (c).

The NC ABLE Program is a member of the National ABLE Alliance (the “Alliance”), and Ascensus College Savings (“Ascensus”) serves as the third-party administrator. Many of the features and processes, including investment options, investment managers, and the processes for changing both, are provided at an Alliance level by or through Ascensus and therefore, are necessarily the same for all of the Alliance members, including the the NC ABLE Program.

### II. Composition

The composition of the Board and the terms of its members are established by N.C.G.S. § 147-86.72(a) and (b). The Board consists of six members.

#### A. Membership

The Treasurer, the Commissioner of Banks, and the Secretary of the North Carolina Department of Health and Human Services serve *ex officio*. An *ex officio* member may designate an employee of the *ex officio* member’s department to act at any meeting of the Board from which the *ex officio* member is absent. The designee may act to the same extent that the *ex officio* member could act if present in person at such meeting. An ongoing designation – versus a designation for a single meeting – by the *ex officio* member must be in writing and filed with the Board Secretary.

The remaining three members of the Board are appointed. One member serves by appointment of the Governor and shall have experience in investments and finance. One member serves by appointment of the President Pro Tempore of the Senate and shall have experience in advocacy for the disabled. One member serves by appointment

of the Speaker of the House of Representatives and shall be an immediate family member or guardian of an eligible individual.

B. Terms

The Treasurer, Commissioner of Banks, and Secretary of the North Carolina Department of Health and Human Services, as *ex officio* members, serve for as long as they hold office. The three appointed members serve three-year terms and shall continue to serve on the Board until the member's successor is appointed. No appointed member may serve longer than any of the following: (1) two consecutive three-year terms; (2) three consecutive terms of any length; or (3) eight consecutive years.

III. Officers

A. Chair

The Treasurer serves as Chair of the Board *ex officio*. N.C.G.S. § 147-86.72(a)(1). The Chair's duties and authority include, without limitation, the following: (1) conducting meetings of the Board; (2) calling special and emergency meetings of the Board; (3) appointing members and chairs of the Board's subcommittees (subject to the Board's ratification); (4) enforcing the policies of the Board; and (5) recommending the appointment or removal of members. The Chair may delegate his or her chair duties to another member during the Chair's absence. (Note that this is different than the general delegation by an *ex officio* member that is discussed above.)

B. Secretary

The Treasurer shall appoint a member of the Department's staff or a member of the Board to serve as Secretary of the Board. The Secretary is responsible for the following: (1) assisting the Chair in conducting meetings in an efficient and effective manner and in compliance with applicable laws and policies; (2) maintaining a current list of Board members, with their contact information and Board terms; (3) providing a meeting agenda and materials to Board members in advance of each meeting; (4) assisting the Board in scheduling meetings; (5) notifying members of the public of meetings in compliance with North Carolina's open meetings law (N.C.G.S. Chap. 143, Art. 33C, the "Open Meetings Law"); (6) accepting service of process on behalf of the Board; and (7) other duties as assigned by the Chair or the Board.

IV. Meetings

A. Schedule

The Board shall establish an annual schedule of at least quarterly meetings of the Board. Special or emergency meetings of the Board may be called by the Chair or a majority of the current members of the Board.

B. Notices and materials

The annual meeting schedule and notices of all meetings of the Board and its subcommittees shall be posted on the Department's website and as otherwise required by the Open Meetings Law. The agenda and meeting materials for each meeting of the Board or a subcommittee shall be posted on the Department's website.

C. Open meetings

All meetings shall be conducted in compliance with the Open Meetings Law, which applies to meetings of the Board or a subcommittee at which a quorum is present. All meetings shall be open to the public, unless closed by vote of the Board or subcommittee in compliance with the Open Meetings Law. Members of the public shall be permitted to speak at all meetings. The Board Chair or subcommittee chair may reasonably limit the time for public comment.

D. Minutes

Departmental staff shall take the official minutes of all meetings. The minutes are subject to approval by the Board.

E. Quorum and voting

Any action by the Board or a subcommittee requires a majority vote of the members in attendance, provided that a quorum exists at the time the vote is taken. A quorum of the Board or a subcommittee requires a majority of the members currently serving on the Board or the subcommittee. All members of the Board or a subcommittee are voting members and are permitted to make motions.

F. Attendance

Each member of the Board is expected to attend all meetings of the Board and any subcommittee on which the member serves. Members may attend meetings in person or (if available) by phone or videoconference.

G. Proxy

A Board or subcommittee member may delegate his or her vote for a meeting in which such member is absent. The proxy shall be in writing and shall direct the member's proxy how to vote on specific issues that are scheduled to be before the Board or the subcommittee for a vote.

V. Duties

A. Standard of care

Members of the Board shall act at all times:

1. Solely in the best interests of designated beneficiaries and for the exclusive purpose of providing their benefits; and
2. With the care, skill, and prudence exercised by reasonable people in similar situations.

B. Responsibility

The Board is responsible at all times for the administration of the NC ABLE Program, including investment options, investment managers and vendors, the plan disclosure document, and policies, subject to the limitations placed on the NC ABLE Program as a member of the Alliance. The Board may delegate primary administrative responsibilities to Departmental staff, Board subcommittees, and vendors but shall remain responsible at all times for the NC ABLE Program and for the oversight of such delegates.

C. Investments

The Board is responsible for monitoring the performance, cost, and management of – and (as warranted) recommending changes to – the NC ABLE Program’s investment options and managers. The Board is also responsible for establishing, monitoring, and (as warranted) recommending changes to the NC ABLE Program’s investment policy statement. In discharging its duties, the Board may obtain the assistance of Ascensus, an investment consultant, and/or Departmental staff and/or any other parties as determined by the Board. The investment options and the investment managers within these options are the same for all Alliance members; therefore, the Board cannot unilaterally change the investments in the NC ABLE Program. However, the Board shall provide its recommended changes to the Alliance for consideration. N.C.G.S. §§ 147-86.72(d) and 147-86.73(a).

D. Policies

The Board is responsible for establishing, monitoring, and (as necessary) revising the policies for the administration of the NC ABLE Program, subject to the limitations placed on the NC ABLE Program as a member of the Alliance.

E. Administrative Fee

The Board shall monitor the administrative fee established by the Treasurer pursuant to (c) and (as warranted) shall recommend changes.

F. Delegation

The Board may delegate primary responsibility for the following matters to Departmental staff, a subcommittee of the Board, and/or another entity or person retained by the Board: (1) selection of, and contracting with, vendors other than Ascensus and the investment managers, auditor, and other vendors hired by Ascensus for the Alliance; (2) day-to-day compliance, monitoring, operations, management, and legal affairs; (3) performance and cost monitoring; (4) plan design monitoring and reporting; (5) recommendations regarding investment options, managers, and funds and plan features; (6) auditing at the NC ABLE Program level; and (7) communications and marketing. As noted above, the Board remains ultimately responsible at all times for the NC ABLE Program and for the oversight of any delegees.

G. Ethics and training

Board members shall file all disclosures and complete all ethics training that are required by the North Carolina State Ethics Commission or state law. Board members shall complete orientation training within 90 days of joining the Board and shall complete fiduciary training on an annual basis. The orientation and fiduciary training shall be provided by Departmental staff.

VI. Subcommittees

The Board may appoint ad hoc subcommittees as needed to address specific issues of limited scope. Subcommittees consist of at least three but not more than four Board members. Members and chairs of subcommittees are appointed by the Board Chair and ratified by Board Members. The chair of a subcommittee may delegate his or her duties to another member of the subcommittee during the chair's absence.

VII. Staff

The Treasurer may appoint members of the Department to serve as staff to the Board and its subcommittees, subject to removal or replacement by the Board. The Board and its subcommittees may request legal, compliance, operational, communications, and/or other assistance from staff.

VIII. Review

Departmental staff shall review this charter annually and propose any recommended changes to the Board.

Adopted by the Board, this 19<sup>th</sup> day of November, 2019.

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North Carolina State Treasurer, Dale R. Folwell, CPA, Chair  
North Carolina ABLE Program Board of Trustees