

Special Needs Fairness Act

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On December 14, 2016, President Obama signed the Special Needs Trust Fairness Act into law amended federal law to enable disabled individuals to establish their own first-party payback Special Needs Trusts under 42 U.S.C. § 1396p(d)(4)(A).

Prior to the passage of the Special Needs Fairness Act, federal law required disabled adults who were capable of handling their own affairs (and thus without legal guardians) to rely upon their parents, their grandparents or the courts to establish a first-party funded non-pooled payback Special Needs Trusts for their benefit.

This requirement was at odds with the fact such Trusts were effectively being funded by such disabled individuals with assets legally belonging to them (i.e. not third-party funds). This requirement was also inconsistent with the law governing the creation of Pooled Special Needs Trust under 1396p(d)(4)(C), which has always allowed disabled individuals to create their own first-party funded Pooled Special Needs Trust with non-profits. It is believed that this inconsistency was due a drafting oversight in the law since its enactment over 20 years ago.

A first-party funded Special Needs Trust is an invaluable planning tool that enables disabled individuals who receive assets outright, including through a gift, inheritance, personal injury settlement or child support, etc. to protect such assets for their future use while remaining eligible for essential means-tested government benefits like Supplemental Security Income and Medicaid (also known as Medical Assistance).

The Special Needs Fairness Act has removed a major obstacle and inequitable hurdle for the establishment of Special Needs Trust by competent, disabled adults and will greatly simplify their planning. Such individuals previously needed to seek court involvement and incur unnecessary delays and legal and court costs to establish first-party funded Special Needs Trusts. With the passage of this Act, such individuals are now able to set up their first-party funded Special Needs Trusts special needs trust without having to petition the court sand incur unnecessary legal costs, loss of privacy.

The Special Needs Fairness Act will amend Section 1396p(d)(4)(A) of the Social Security Act to exclude first-party funded Special Needs Trust as a transfer for less than fair consideration and countable asset as follows:

“A trust containing the assets of an individual under age 65 who is disabled (as defined in section 1382c(a)(3) of this title) and which is established for the benefit of such individual by the individual, a parent, grandparent, legal guardian of the individual, or a court if the State will receive all amounts remaining in the trust upon the death of such individual up to an amount equal to the total medical assistance paid on behalf of the individual under a State plan under this subchapter.”

This amendment will apply to trusts established on or after the date of the enactment of the Special Needs Fairness Act, and thus while greatly beneficial to the prospective establishment of such Special Needs Trust won't necessarily remove obstacles faced by individuals who had previously established Trusts in contravention of then-existing laws.

This change is also similar to the recently enacted Achieving Better Life Experience (ABLE) Act and the ABLE accounts it allows certain disabled individuals to create. While ABLE accounts are another useful planning tool they do have many restrictions that inapplicable to Special Needs Trusts. Use this link to view prior blog posts.

Contact Nora Gieg Chatha at 412-594-3940 or to discuss the significance of the Act or your planning needs.