

**Effective 5/3/2023**

**26B-6-412 Discretionary trust for an individual with a disability -- Impact on state services.**

- (1) For purposes of this section:
  - (a) "Discretionary trust for an individual with a disability" means a trust:
    - (i) that is established for the benefit of an individual who, at the time the trust is created, is under 65 years old and has a disability, as defined in 42 U.S.C. Sec. 1382c;
    - (ii) under which the trustee has discretionary power to determine distributions;
    - (iii) under which the individual may not control or demand payments unless an abuse of the trustee's duties or discretion is shown;
    - (iv) that contains the assets of the individual and is established for the benefit of the individual by the individual, a court, or a parent, grandparent, or legal guardian of the individual;
    - (v) that is irrevocable, except that the trust document may provide that the trust be terminated if the individual no longer has a disability, as defined in 42 U.S.C. Sec. 1382c;
    - (vi) that is invalid as to any portion funded by property that is or may be subject to a lien by the state; and
    - (vii) that provides that, upon the death of the individual, the state will receive all amounts remaining in the trust, up to an amount equal to the total medical assistance paid on behalf of the individual.
  - (b) "Medical assistance" means the same as that term is defined in Section 26B-3-101.
- (2) A state agency providing services or support to an individual with a disability may:
  - (a) waive application of Subsection (1)(a)(v) with respect to that individual if the state agency determines that application of the criteria would place an undue hardship upon that individual; and
  - (b) define, by rule, what constitutes "undue hardship" for purposes of this section.
- (3) A discretionary trust for an individual with a disability is not liable for reimbursement or payment to the state or any state agency, for financial aid or services provided to that individual except:
  - (a) to the extent that the trust property has been distributed directly to or is otherwise under the control of the beneficiary with a disability; or
  - (b) as provided in Subsection (1)(a)(vi).
- (4) Property, goods, and services that are purchased or owned by a discretionary trust for an individual with a disability and that are used or consumed by a beneficiary with a disability shall not be considered trust property that is distributed to or under the control of the beneficiary.
- (5) The benefits that an individual with a disability is otherwise legally entitled to may not be reduced, impaired, or diminished in any way because of contribution to a discretionary trust for that individual.
- (6) All state agencies shall disregard a discretionary trust for an individual with a disability as a resource when determining eligibility for services or support except as, and only to the extent that it is otherwise prohibited by federal law.
- (7) This section applies to all discretionary trusts that meet the requirements contained in Subsection (1) created before, on, or after July 1, 1994.

Renumbered and Amended by Chapter 308, 2023 General Session