

SPECIAL NEEDS TRUST AMENDMENTS

2018 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Lyle W. Hillyard

House Sponsor: Edward H. Redd

LONG TITLE

General Description:

This bill amends provisions related to the creation of a trust for an individual with a disability.

Highlighted Provisions:

This bill:

- ▶ expands who may establish a discretionary trust for an individual with a disability;
- and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

62A-5-110, as last amended by Laws of Utah 2011, Chapter 366

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **62A-5-110** is amended to read:

62A-5-110. Discretionary trust for an individual with a disability -- Impact on state services.



28 (1) For purposes of this section:

29 (a) "Discretionary trust for [~~a person with disabilities~~] an individual with a disability"
30 means a trust:

31 (i) that is established for the benefit of an individual who, at the time the trust is
32 created, is under age 65 and has a disability, as defined in 42 U.S.C. Sec. 1382c;

33 (ii) under which the trustee has discretionary power to determine distributions;

34 (iii) under which the [~~beneficiary~~] individual may not control or demand payments
35 unless an abuse of the trustee's duties or discretion is shown;

36 [~~(iv) that contains the assets of the beneficiary and is established for the benefit of the~~
37 ~~beneficiary by a parent, grandparent, legal guardian, or court;~~]

38 (iv) that contains the assets of the individual and is established for the benefit of the
39 individual by the individual, a court, or a parent, grandparent, or legal guardian of the
40 individual;

41 (v) that is irrevocable, except that the trust document may provide that the trust be
42 terminated if the [~~beneficiary~~] individual no longer has a disability, as defined in 42 U.S.C.
43 Sec. 1382c;

44 (vi) that is invalid as to any portion funded by property that is or may be subject to a
45 lien by the state; and

46 (vii) [~~providing~~] that provides that, upon the death of the [~~beneficiary~~] individual, the
47 state will receive all amounts remaining in the trust, up to an amount equal to the total medical
48 assistance paid on behalf of the [~~beneficiary~~] individual.

49 (b) "Medical assistance" means the same as that term is defined in Section 26-18-2.

50 (2) A state agency providing services or support to [~~a person with disabilities~~] an
51 individual with a disability may:

52 (a) waive application of Subsection (1)(a)(v) with respect to that individual if [~~it~~] the
53 state agency determines that application of the criteria would place an undue hardship upon that
54 individual; and

55 (b) define, by rule, what constitutes "undue hardship" for purposes of this section.

56 (3) A discretionary trust for [~~a person with disabilities~~] an individual with a disability
57 is not liable for reimbursement or payment to the state or any state agency, for financial aid or
58 services provided to that individual except:

59 (a) to the extent that the trust property has been distributed directly to or is otherwise
60 under the control of the beneficiary with a disability; or

61 (b) as provided in Subsection (1)(a)(vi).

62 (4) Property, goods, and services that are purchased or owned by a discretionary trust
63 for ~~[a person with disabilities]~~ an individual with a disability and that are used or consumed by
64 a beneficiary with a disability shall not be considered trust property that is distributed to or
65 under the control of the beneficiary.

66 (5) The benefits that ~~[a person with disabilities]~~ an individual with a disability is
67 otherwise legally entitled to may not be reduced, impaired, or diminished in any way because
68 of contribution to a discretionary trust for that ~~[person]~~ individual.

69 (6) All state agencies shall disregard a discretionary trust for ~~[a person with disabilities,~~
70 ~~as defined in Subsection (1);]~~ an individual with a disability as a resource when determining
71 eligibility for services or support except as, and only to the extent that it is otherwise prohibited
72 by federal law.

73 (7) This section applies to all discretionary trusts that meet the requirements contained
74 in Subsection (1) created before, on, or after July 1, 1994.

Legislative Review Note
Office of Legislative Research and General Counsel