



People With Disabilities Can Now Create Their Own Special Needs Trust

By Margaret Spaziani, Esq.

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The Special Needs Trust Fairness Act (<http://specialneedsanswers.com/special-needs-trust-fairness-act-reintroduced-in-congress-15070>), federal legislation that allows people with disabilities to create their own special needs trusts instead of having to rely on others, is now law. The measure was included in the 21st Century Cures Act (<http://www.usnews.com/news/articles/2016-12-07/senate-approves-21st-century-cures-act-sending-it-to-president-barack-obamas-desk>), a \$6.3 billion package of health-related initiatives signed by President Obama on December 13, 2016.

The Fairness Act fixes a drafting error in the Social Security Act that has prevented people with disabilities from creating special needs trust to hold their own funds. Under previous law, only a parent, grandparent, guardian or court can establish a first-party special needs trust to hold the beneficiary's assets. This forces a competent person with disabilities to incur unnecessary expenses and waste time to set up a trust that she could otherwise create on her own with the help of an attorney. In most cases, not setting up a special needs trust is not an option, since the trust is typically needed to protect a person with disabilities' access to government benefits.

The Special Needs Trust Fairness Act inserts language into the Social Security Act to give individuals with special needs the same right to create a trust as a parent, grandparent, guardian, or court. If competent to do so, they can now create a trust on their own behalf using their own assets. (This change in law does not affect people with disabilities who do not have capacity to set up a trust.) The two-sentence law makes no other changes to the Social Security Administration's treatment of trusts and it does not alter the requirement that first-party trust contain payback provisions allowing state Medicaid offices to recoup costs from a trust after the beneficiary's death.

For More Information Contact:

Timothy J. Dengler, Esq.
tdengler@ghclaw.com

Margaret A. Spaziani, Esq.
mspaziani@ghclaw.com

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The Fairness Act will apply to trusts established on or after the date that the Cures Act was enacted, December 13, 2016.

To learn how a special needs trust might benefit you or a loved one, contact your special needs attorney.



**GIORDANO,
HALLERAN &
CIESLA**

A PROFESSIONAL
CORPORATION
ATTORNEYS AT LAW

*125 Half Mile Road, Suite 300
Red Bank, NJ 07701
(732) 741-3900*

*441 East State Street
Trenton, NJ 08608
(609) 695-3900*

*One Gateway Center
Suite 2600
Newark, NJ 07012
(973) 353-8413*

*1250 Broadway, 36th Floor
New York, NY 10001
(646) 475-8065*

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