

§1212. Trust for beneficiary with disability

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Beneficiary with a disability" means a beneficiary of a first trust who the special-needs fiduciary believes may qualify for governmental benefits based on disability, whether or not the beneficiary currently receives those benefits or is an individual who is subject to a guardianship, a conservatorship or a protective arrangement. [PL 2021, c. 235, §1 (NEW).]

B. "Governmental benefits" means financial aid or services from a state, federal or other public agency. [PL 2021, c. 235, §1 (NEW).]

C. "Special-needs fiduciary" means, with respect to a trust that has a beneficiary with a disability:

(1) A trustee or other fiduciary, other than a settlor, that has discretion to distribute part or all of the principal of a first trust to one or more current beneficiaries;

(2) If no trustee or fiduciary has discretion under subparagraph (1), a trustee or other fiduciary, other than a settlor, that has discretion to distribute part or all of the income of the first trust to one or more current beneficiaries; or

(3) If no trustee or fiduciary has discretion under subparagraphs (1) and (2), a trustee or other fiduciary, other than a settlor, that is required to distribute part or all of the income or principal of the first trust to one or more current beneficiaries. [PL 2021, c. 235, §1 (NEW).]

D. "Special-needs trust" means a trust the trustee believes would not be considered a resource for purposes of determining whether a beneficiary with a disability is eligible for governmental benefits. [PL 2021, c. 235, §1 (NEW).]

[PL 2021, c. 235, §1 (NEW).]

2. Special-needs decanting. A special-needs fiduciary may exercise the decanting power under section 1210 over the principal of a first trust as if the fiduciary had authority to distribute principal to a beneficiary with a disability subject to expanded distributive discretion if:

A. A 2nd trust is a special-needs trust that benefits the beneficiary with a disability; and [PL 2021, c. 235, §1 (NEW).]

B. The special-needs fiduciary determines that exercise of the decanting power will further the purposes of the first trust. [PL 2021, c. 235, §1 (NEW).]

[PL 2021, c. 235, §1 (NEW).]

3. Beneficiary with a disability. In an exercise of the decanting power under this section, the following apply:

A. Notwithstanding section 1210, subsection 3, paragraph B, the interest in the 2nd trust of a beneficiary with a disability may:

(1) Be a pooled trust as defined under the federal Medicaid program for the benefit of the beneficiary with a disability under 42 United States Code, Section 1396p(d)(4)(C); or

(2) Contain payback provisions complying with reimbursement requirements under the federal Medicaid program under 42 United States Code, Section 1396p(d)(4)(A); [PL 2021, c. 235, §1 (NEW).]

B. Section 1210, subsection 3, paragraph C does not apply to the interests of a beneficiary with a disability; and [PL 2021, c. 235, §1 (NEW).]

C. Except as affected by any change to the interests of a beneficiary with a disability, the 2nd trust or, if there are 2 or more 2nd trusts, the 2nd trusts in the aggregate must grant each other beneficiary

of the first trust beneficial interests in the 2nd trusts that are substantially similar to the beneficiary's beneficial interests in the first trust. [PL 2021, c. 235, §1 (NEW).]
[PL 2021, c. 235, §1 (NEW).]

SECTION HISTORY

PL 2021, c. 235, §1 (NEW).

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