



Proposed Revisions to Rule Concerning Disability Trusts

Summary

The Colorado Department of Health Care Policy and Financing (Department) is proposing changes to the rule concerning disability trusts, which are scheduled to become effective May 30, 2020.

If adopted, these changes would positively impact Health First Colorado clients who have a disability trust as defined under our rules and regulations.

Currently, a disability trust is required to terminate when the trust beneficiary moves out of Colorado and is no longer receiving Health First Colorado benefits. Upon termination of the disability trust, the trustee is required to remit the balance of the trust to the Department, up to the amount of benefits received, which reduces or eliminates the trust balance available to the trust beneficiary.

The proposed changes allow a disability trust to continue for the benefit of a trust beneficiary who moves out of Colorado if certain requirements are met.

Other proposed changes:

- Codify that any other state which paid benefits to the trust beneficiary will also be entitled to a portion of the disability trust remainder upon termination,
- Permit the disability trust to be named as a remainder beneficiary of an annuity funding the disability trust, and
- Add and clarify accounting notification requirements.

FAQs

Why is the Department proposing these changes?

The Department believes that these changes will benefit trust beneficiary by allowing more money to be available for their personal needs during their lifetime should they need to change their state of residence.

My child has a special needs trust, will this rule impact my child's trust?

The rule changes only impact trusts that are defined as disability trusts in the Department's rules and regulations. Often the terms disability trust, supplemental needs trust, special



needs trust and the like are used by attorneys to describe a variety of trusts, but for our purposes when we use the term disability trust we are referring to a specific type of trust that is created pursuant to these regulations and federal law (42 U.S.C. § 1396p(d)(4)(A)). Disability trusts are funded with first-party funds, meaning that the client funds the trust with their own assets. Commonly disability trusts are funded with personal injury settlements. If a parent or any other individual uses their own assets to fund a trust for the benefit of the client, that trust would be considered a third-party trust, which generally are not drafted as disability trusts.

Does this change eliminate the payback requirement?

No, the trustee will still be required to remit the balance of the trust to the Department (and any other state that paid medical assistance benefits to the trust beneficiary) upon the death of the trust beneficiary or termination of the trust for any other reason, whichever occurs first.

What are the requirements for the trust to continue in a different state?

1. The beneficiary must be receiving medical assistance benefits in another state;
2. The disability trust is required to receive those benefits; and
3. The Department must receive the proof of the above no later than sixty (60) calendar days from the date the trustee acquires knowledge of the change in residency, but an extension may be requested if additional time is needed.

What are the accounting notification changes?

Trustees are currently required to provide an annual accounting to either the eligibility site (likely the county) or the Department. The proposed change requires the trustee to provide copies of the annual accounting to both the eligibility site and the Department. The same information may be provided to both agencies.

Additionally, the Department must be notified within 30 days of any distribution of funds in excess of \$5,000. This is a noticing requirement, not an approval or disapproval process. However, the Department will provide guidance on whether it considers the distribution to be proper in consideration of the federal rule that all trust distributions must be for the "sole benefit" of the trust beneficiary. This is the same process that currently occurs for annual accounting reviews.

For more information contact

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