

S. 349

Special Needs Trust Fairness Act of 2015

Current Law:

Under federal Medicaid law, most trusts are counted as an asset in determining Medicaid eligibility for aged and disabled individuals and are subject to asset transfer rules. However, there are certain exceptions in current law to the general rule of counting trusts as an asset. Specifically, Medicaid does not count certain special-needs trusts and pooled trusts as assets and does not apply asset transfer rules to these trust types. This exception is commonly referred to as the “special needs trust exception.” In order for a trust to meet this exception under Medicaid, a trust must contain the assets of an individual under age 65 (i.e., non-elderly individual) who meets the statutory definition of disability (Section 1614[a][3] of the Social Security Act). Federal Medicaid law (Section 1917[d][4][A] of the Social Security Act) permits only parents, grandparents, legal guardians, or a court to establish a special needs trust on behalf of a non-elderly disabled individual. Such trusts must contain assets of the disabled individual and the trust must be used to provide funding for certain expenditures that supplement Medicaid benefits, subject to certain limitations. Special needs trusts allow non-elderly individuals with disabilities to maintain their eligibility for Medicaid. When the beneficiary dies, the state receives the remaining proceeds of the trust equal to any amounts paid for medical assistance provided under the state Medicaid program.

S. 349, as modified:

The bill would make a technical correction to Section 1917(d)(4)(A) of the Social Security Act regarding special needs and pooled trusts under Medicaid, which are exempt from asset counting and transfer rules, to allow non-elderly individuals with disabilities to establish a special needs trust on their own behalf. This provision would be effective on or after the date of enactment.