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REFERENCE TITLE: AHCCCS; trusts

State of Arizona
Senate
Forty-sixth Legislature
Second Regular Session
2004

SB 1167

Introduced by
Senators Allen, Cannell R

AN ACT

AMENDING SECTION 36-2934.01, ARIZONA REVISED STATUTES; RELATING TO THE ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 36-2934.01, Arizona Revised Statutes, is amended to
3 read:

4 36-2934.01. Creation of trusts; eligibility for the system;
5 share of cost

6 A. The administration has sole authority to qualify any trusts that
7 are created pursuant to section 1917(d)(4)(A), (B) and (C) of the social
8 security act and shall require that the trustee provide the following
9 information and assurances when the trustee submits trust documents to the
10 administration for approval:

11 1. Specific language that protects the state's beneficiary interest in
12 the trust and that names the administration **OR THE STATE MEDICAID AGENCY** as
13 the primary beneficiary of the trust if the trust is terminated before or on
14 the death of the member. The trust document shall state that the trustee
15 shall pay on a monthly basis the share of cost amount established by the
16 posteligibility treatment of income determination pursuant to subsection D of
17 this section.

18 2. A provision that requires the direct deposit of all income assigned
19 to the trust by the grantor, when legally permissible, into an account titled
20 to the trust.

21 3. A detailed description of how the trust funds will be administered
22 and disbursed. The trustee shall submit the description at the same time
23 that the trustee submits the trust document to the administration for review.
24 The administration shall review the planned disbursements or plan approved by
25 the probate court and render a decision on the appropriateness of
26 the disbursements or plan within ~~ten working~~ **SIXTY** days. **THE ADMINISTRATION**
27 **MAY EXTEND THIS LIMIT TO ENABLE A TRUSTEE TO AMEND A TRUST OR TO PROVIDE**
28 **ADDITIONAL INFORMATION REQUESTED BY THE ADMINISTRATION.** The trustee shall
29 report to the administration any new trust funding or modifications to the
30 planned disbursements from the trust no less than forty-five days before the
31 intended action or change by the trustee. Under extenuating circumstances,
32 the trustee may forgo the forty-five day reporting requirement, ~~and~~ provide
33 notice to the administration within thirty days from the date of
34 disbursement. If the administration determines that the disbursement was not
35 appropriate, or that any other provisions of the trust or this section have
36 been violated, the administration shall consider the trust in accordance with
37 subsection ~~D~~ **F** of this section. The trustee may appeal this decision, but
38 the provisions described in ~~subsection H~~ **SUBSECTIONS I AND J** of this section
39 shall be applied if the administration's action is affirmed. On request of
40 the administration, the trustee shall provide verification of how the funds
41 were administered.

42 4. A statement signed by the trustee acknowledging that an adverse
43 action may be taken against the member's eligibility for the system if the
44 trustee improperly violates the terms of the trust or the requirements of

1 this section or if the trustee takes any action that limits the
2 administration's beneficiary interest in the trust.

3 5. Specific language that protects the trust for the benefit of the
4 trust beneficiary. The trust document shall state that disbursements shall
5 not be made for other than those purposes allowed pursuant to this section.

6 B. For a trust that qualifies pursuant to subsection A of this
7 section, the trustee shall not make any disbursements from the trust other
8 than for the following:

9 1. Reasonable legal and professional expenses related to the trust
10 including:

11 (a) Trust taxes.

12 (b) Trust investment fees.

13 (c) Reasonable professional expenses, including trustee, accounting
14 and attorney fees related to THE ADMINISTRATION OF the trust.

15 2. The posteligibility share of cost as computed pursuant to section
16 36-2932.

17 3. FOR TRUSTS CREATED PURSUANT TO SECTION 1917(d)(4)(B) OF THE SOCIAL
18 SECURITY ACT, A DISBURSEMENT TO THE BENEFICIARY EQUAL TO THE PERSONAL NEEDS
19 ALLOWANCE AS COMPUTED PURSUANT TO SECTION 36-2932.

20 ~~3-~~ 4. Health insurance premiums, medically necessary medical expenses
21 and special medical needs of the beneficiary including:

22 (a) Expenses required to make the home accessible to the person.

23 (b) The purchase and maintenance of a specially equipped vehicle
24 TITLED TO THE TRUST.

25 (c) Durable medical equipment.

26 (d) Over-the-counter supplies and medications, including diapers,
27 lotions and cleansing wipes.

28 (e) Personal care services that are determined to be medically
29 necessary by the program contractor and that are provided by a person who is
30 registered by the administration to provide the services and who is not a
31 financially responsible relative of the beneficiary. FOR THE PURPOSES OF
32 THIS SUBDIVISION, "FINANCIALLY RESPONSIBLE RELATIVE" MEANS THE SPOUSE OF THE
33 BENEFICIARY OR, IF THE BENEFICIARY IS A CHILD UNDER EIGHTEEN YEARS OF AGE,
34 THE PARENT OF THE BENEFICIARY.

35 ~~4-~~ 5. Maintenance payments for the spouse or family in accordance
36 with 42 United States Code section 1396R-5(d)(1) and (2) and section 36-2932,
37 subsection L.

38 6. GUARDIANSHIP AND CONSERVATORSHIP FEES FOR THE TRUST BENEFICIARY
39 BASED ON THE FAIR MARKET VALUE OF THE SERVICES PROVIDED.

40 ~~5-~~ 7. ~~Other~~ THE FOLLOWING expenses for the benefit of the
41 beneficiary, ~~including~~ EXCLUDING GIFTS, PAYMENTS OR LOANS TO OR FOR OTHER
42 PERSONS, WHETHER THESE ARE IN CASH OR IN KIND:

43 (a) Entertainment, educational or vocational NEEDS OR items that are
44 consistent with the person's ability to use these items.

45 (b) Other expenses that are individually approved by the director.

1 (c) Living expenses for food, clothing and shelter. IF HOME PROPERTY
2 OR OTHER REAL PROPERTY IS PURCHASED BY THE TRUST IT MUST BE TITLED TO THE
3 TRUST.

4 (d) INCOME TAXES OWED ON INCOME FROM TRUST INVESTMENTS OR ON INCOME OF
5 THE BENEFICIARY THAT IS ASSIGNED TO THE TRUST WHEN AN ACTUAL TAX LIABILITY IS
6 ESTABLISHED.

7 (e) PURCHASE OF AN IRREVOCABLE BURIAL PLAN OR LIFE INSURANCE TO FUND A
8 BURIAL PLAN FOR THE BENEFICIARY IN AN AMOUNT THAT DOES NOT EXCEED ONE
9 THOUSAND FIVE HUNDRED DOLLARS.

10 (f) TRAVEL EXPENSES FOR A COMPANION, OTHER THAN A BENEFICIARY'S
11 FINANCIALLY RESPONSIBLE RELATIVE, WHEN A COMPANION IS REQUIRED TO ENABLE THE
12 BENEFICIARY TO TRAVEL FOR NONMEDICAL REASONS.

13 C. For trusts that qualify pursuant to subsection A of this section,
14 the administration shall consider only the person's proportionate share of
15 expenses as for the benefit of the trust beneficiary if these expenses also
16 benefit others.

17 D. For trusts that are created pursuant to section 1917(d)(4)(A), (B)
18 and (C) of the social security act, the administration shall require that the
19 ~~post-eligibility~~ POSTELIGIBILITY treatment of income that is determined
20 pursuant to section 36-2932 shall include the income assigned to the trust
21 and any other countable income received by the member, excluding interest and
22 dividends earned by the trust corpus and added to the principal. Each month
23 the administration shall count for income eligibility purposes any
24 disbursements made to the beneficiary and any payments made on behalf of the
25 beneficiary for food, ~~clothing~~ or shelter. THE ADMINISTRATION SHALL COUNT
26 DISBURSEMENTS ISSUED FOR THE PERSONAL NEEDS ALLOWANCE PURSUANT TO SUBSECTION
27 B, PARAGRAPH 3 OF THIS SECTION AS DISBURSEMENTS FOR FOOD OR SHELTER.

28 E. In order for a trust that is created pursuant to section
29 1917(d)(4)(B) of the social security act to be considered under this section,
30 the sum of the individual's countable nontrust income and the income assigned
31 to the trust, excluding interest and dividends earned by the trust corpus and
32 added to the principal shall be equal to or less than the private pay rate
33 established in the state plan.

34 F. For revocable or irrevocable trusts that are created pursuant to
35 section 1917(d)(3)(A) or (B) of the social security act, the administration
36 shall include the income that is received by the trust, excluding interest
37 and dividends earned by the trust corpus and added to the principal or that
38 is disbursed from the trust, whichever is greater, for both income
39 eligibility calculations under section 36-2934 and ~~post-eligibility~~
40 POSTELIGIBILITY of income under section 36-2932. In determining eligibility
41 for the system, the administration shall consider payments from the trust
42 regardless of the purpose for which the payment is made.

43 G. Notwithstanding this section, a trust that is established before
44 August 11, 1993 shall be evaluated in accordance with the provisions
45 contained in the state plan.

1 H. If the administration determines that the trustee did not report
2 changes in the amount of trust income or disbursements from the trust to the
3 administration in the time frame and manner specified in subsection A of this
4 section, the administration shall notify the member of the noncompliance and
5 shall prospectively apply the adverse action that would have resulted if the
6 change had been reported in a timely manner. If benefits for the system are
7 continued by the administration pending a decision by the director after a
8 hearing on a proposed adverse action that results from trust income or
9 disbursements and the director upholds the administration, the administration
10 shall apply the adverse action on a prospective basis.

11 I. THE ADMINISTRATION SHALL CONSIDER TRUST DISBURSEMENTS ISSUED IN
12 VIOLATION OF THIS SECTION AS A TRANSFER WITHOUT FAIR CONSIDERATION.

13 J. IF THE ADMINISTRATION DETERMINES THAT THE TRUSTEE IS IN VIOLATION
14 OF THIS SECTION OR THE TERMS OF A NEW OR EXISTING TRUST, THE ADMINISTRATION
15 SHALL TERMINATE ELIGIBILITY AND THE ADMINISTRATION SHALL CONSIDER ALL TRUST
16 ASSETS AVAILABLE TO THE BENEFICIARY UNTIL THE TRUSTEE CORRECTS THE VIOLATION.
17 THE ADMINISTRATION SHALL NOT CONSIDER THAT PERSON'S ELIGIBILITY UNTIL:

18 1. THE PERSON APPLIES FOR THE SYSTEM AND MEETS ALL ELIGIBILITY
19 REQUIREMENTS.

20 2. THE TRUSTEE REIMBURSES THE TRUST AN AMOUNT THAT IS EQUAL TO THE
21 IMPROPER DISBURSEMENTS OR TERMINATES THE TRUST AND REIMBURSES THE
22 ADMINISTRATION FOR ALL CAPITATION PAYMENTS, FEE-FOR-SERVICE PAYMENTS,
23 REINSURANCE AND ANY OTHER EXPENSES PAID BY THE ADMINISTRATION ON THE
24 BENEFICIARY'S BEHALF WHILE THE TRUST WAS IN EXISTENCE.

25 Sec. 2. Exemption from rule making

26 For the purposes of this act, the Arizona health care cost containment
27 system administration is exempt from the rule making requirements of title
28 41, chapter 6, Arizona Revised Statutes, for one year after the effective
29 date of this act.