

New Hampshire's Special Needs Trust Statute

It is important to know about New Hampshire's special needs trusts law, RSA 167:4(V). This law clarifies what special needs trusts can pay for. This State law requires the State to follow federal law concerning special needs trust distributions, in relation to medical assistance programs. The law also prohibits the Department from counting assets held by special needs trusts in determining eligibility for Medicaid medical assistance programs. The law went into effect on November 1, 2007. The law is a welcome development.

This law is known as "Emily's Law" after Emily, a young woman with disabilities whose case resulted in the New Hampshire Supreme Court's decision in Appeal of Huff, 2006 NH (2005-856), and then RSA 167:4(V). Emily's Medicaid services had been questioned by a Medicaid official who took the position that State compliance with federal law might be optional. Some Medicaid workers had taken the position that special needs trust payments could not go beyond distributions for education, medical matters and trust administration. In some situations, administrative appeals were necessary to resolve matters. In one administrative appeal, an official ruled that a special needs trust distribution for a special needs camp was considered income to the person with disabilities who attended the camp. The official had said that she was not allowed to consider the federal law. RSA 167:4(V) is short only - three sentences. It says:

V. Distributions of the income or principal, or both, of a special needs trust to or for the benefit of the disabled beneficiary shall be disregarded for income eligibility purposes of all categories of public medical assistance to the same extent that such distributions are disregarded for purposes of Title XVI of the Social Security Act [the Social Security SSI program]. Funds expended by a trustee of a special needs trust to purchase or maintain assets owned by the trustee in his or her capacity as trustee of the trust shall also be disregarded for such income eligibility purposes. For the purposes of this paragraph 'special needs trusts' means any trust established by a third party for the sole benefit of an individual who is considered disabled under the provisions of section 1614(a)(3) of the Social Security Act [the usual Social Security finding of disability], and any trust funded with the resources of such an individual and complying with the provisions of section 1917(d)(4) of such Act.

This statute was passed with unanimous votes by the Health and Human Services Committees in both the House and the Senate. It will have a beneficial effect on special needs trusts in New Hampshire, and help prevent problems in the future.