

THE BEGLEY LAWYER ALERT

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DISTRIBUTIONS FROM SELF-SETTLED SPECIAL NEEDS TRUSTS RELATING TO MEDICAL EXPENSES

By Thomas D. Begley, Jr., Esquire

One of the most pressing needs for disabled beneficiaries is medical care.

Medical Insurance

It is crucial that the disabled beneficiary obtain some form of medical insurance. Options include the following:

- *Private Medical Insurance.* Typically, the only source of private medical insurance at regular rates is through the parent's coverage with the parent's employer. Parents of such child must make every effort not to lose their jobs.
- *COBRA.* The Consolidated Omnibus Budget Reconciliation Act of 1996 (COBRA) allows former employees and their dependents to continue the employer's coverage for a limited period of time, commonly 18

months. However, if the employee became disabled within two months of the qualifying event causing him to lose medical insurance coverage, COBRA coverage may be extended for 29 months. If the former employee died, divorced, or became entitled to Medicare, then the employee's dependents are eligible for 36 months of coverage.

- *State-Mandated High-Risk Pools.* Many states have high-risk pools to cover persons who are uninsurable in the private market. This coverage often tends to be very expensive.
- *Medicare.* Medicare is only available to persons under 65 if they are disabled and have 20 quarters of coverage. If they receive SSD, then two years after the determination of disability they are entitled to Medicare. Persons receiving Medicare should obtain a Medicare supplement policy. There is usually a very limited open enrollment period to obtain this coverage after which it becomes impossible to obtain because of pre-existing conditions.
- *Medicaid.* Persons receiving SSI also receive Medicaid. In non-SSI states having a Medically Needy program, persons qualify for Medicaid by spending down their income if income is above a certain amount. Some states have income caps. Other ways of obtaining Medicaid are through state Medicaid waiver programs, including various Kid Care programs available in many states. Eligibility rules vary. A Katie Beckett waiver program is very desirable, because the income and assets of the parent are not deemed to the children. Some states do not call their programs Katie Beckett, which is a specific categorically eligible group of Medicaid recipients, but the effect is the same because those state identify groups of children with disabilities and provide for Medicaid eligibility so the waiver services are available. Slots tend to be extremely limited.

Non-Covered Medical Expenses

Typically, Medicaid pays for 100 percent of covered expenses. However, very often, psychological services, certain types of testing and some special therapies are not covered. It is appropriate for a trustee to pay for these non-covered services. It is also appropriate for a trustee to pay for dental care, prescriptions, and podiatrist care.

Provider Non-Acceptance

Some providers do not accept Medicaid, because of the low reimbursement rate. It is difficult to find a dentist participating in the program. Some persons with disabilities choose physicians who do not accept Medicaid. It is appropriate for a special needs trust to pay for services from those physicians.

Out-of-Pocket

If the person with a disability receives Medicare, rather than Medicaid, there may be copayments, deductibles and payments for services that Medicare does not cover. It is appropriate to pay for those costs from a special needs trust.

Speakers

If you are interested in having an Elder & Disabilities Law Attorney from Begley, Begley, & Bookbinder speak at an event, please contact Colleen Caruso at (856) 787-4237.

Begley, Begley & Bookbinder

Begley, Begley & Bookbinder, P.C. is an Elder & Disability Law Firm with offices in Moorestown, Stone Harbor and Lawrenceville, New Jersey and Huntington Valley, Pennsylvania and can be contacted at 800-533-7227. The firm services southern and central New Jersey and eastern Pennsylvania.

The Firm provides services in connection with protecting assets from nursing home costs, Medicaid applications, Estate Planning and Estate Administration, Special Needs Planning and Guardianships. If you have a legal problem in one of these areas of law, contact Begley, Begley & Bookbinder at 800-533-7227.

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