

LETTER TO CLIENTS RE MARYLAND TRUST REGULATION

The Maryland Medicaid agency is attempting to destroy the use of special needs trusts through restrictive regulation. My colleagues in the elder/disability law community have responded with proposed legislation that will protect and slightly expand their use. We need your assistance.

I am writing now to ask whether you can support this effort by joining me in Annapolis on Tuesday, March 22, in the afternoon to say a few words about your experience with a special needs trust at a House committee hearing on this bill. If you would rather not testify, you could still help by coming to the hearing and, if you were willing, providing a short statement that I might submit on your behalf.

If that day is not good for you, there will be a Senate committee hearing within a few more weeks where you could show your support.

The threat is quite real. Here is a short history. In March 2009 the agency (DHMH) issued SNT "guidelines" that would, among other things, have prohibited the use of SNTs to pay for any food and shelter - really - and would have severely limited most other uses, such as no more than \$2,000 per year for travel and vacations. Those guidelines were blatantly illegal and were withdrawn a short time later in the face of vigorous protests from SNT advocates.

In late 2010, those guidelines reappeared as proposed regulations, which were formally proposed in January, 2011. These proposed regulations were even worse. Besides limiting the use of individual trusts like yours, they would also have destroyed pooled trusts by limiting accounts to \$100,000, among other restrictions. We opposed those regulations and sent our objections to a legislative committee that oversees new regulations. In the face of that opposition, the new secretary of DHMH agreed to withdraw the regulations for further analysis and re-submission.

We have no reason to think a new proposal will be any better since the same staff that generated the prior proposals will write anything new.

The proposed legislation would prevent any new restrictive regulation. It would:

- Make the use of SNTs affirmative state policy to be encouraged by all agencies.
- Limit regulations to being no more restrictive than Federal regulations, which from our point of view are fine.

- Allow SNTs to be used for food, shelter, utilities and transportation.
- Allow individuals to fund SNTs for a child without regard to age.
- Allow all assignable income to be assigned to an SNT so that it would be protected for use in the future.
- For pooled trusts, allow them to retain an account after a beneficiary's death if that is what the beneficiary wanted, eliminate dollar limits on the size of SNT accounts, and eliminate any age restriction for funding an account.

A copy of the legislation, SB 888, is attached, along with the earlier "guidelines," my letter in response, the proposed regulation, and the analysis submitted on behalf of the First Maryland Disability Trust.

We hope you can assist in some way. We hope to talk to you in the next week.

Thank you.

Yours truly,

Ron M. Landsman