



Special Needs Issues in the News

Americans with Disabilities Act

ADA- Signed into law on July 26 1990, the Americans with Disabilities Act is a wide-ranging legislation intended to make American Society more accessible to people with disabilities. The ADAS prohibits discrimination against persons with disabilities. It applies to employment, government services, places of public accommodation and telecommunications.

It is divided into five titles:

1. **Employment (Title I)** Employers must provide reasonable accommodations to protect the rights of individuals with disabilities in all aspects of employment. Possible changes may include restructuring jobs, altering the layout of workstations, or modifying equipment. Employment aspects may include the application process, hiring, wages, benefits, and all other aspects of employment. Medical examinations are highly regulated.
2. **Public Services (Title II)** Public services, which include state and local governments, the National Railroad Passenger Corporation, and other commuter authorities, cannot deny services to people with disabilities participation in programs or activities which are available to people without disabilities. In addition, public transportation systems, such as public transit buses, must be accessible to individuals with disabilities.
3. **Public Accommodations (Title III)** All new construction and modifications must be accessible to individuals with disabilities. For existing facilities, barriers to services must be removed if readily achievable. Public accommodations include facilities such as restaurants, hotels, grocery stores, retail stores, etc., as well as privately owned transportation systems.
4. **Telecommunications (Title IV)** Telecommunications companies offering telephone service to the general public must have telephone relay service to individuals who use telecommunication devices for the deaf (TTYs) or
5. **Miscellaneous (Title V)** Includes a provision prohibiting either (a) coercing or threatening or (b) retaliating against the disabled or those attempting to aid people with disabilities in asserting their rights under the ADA.

The ADA's protection applies primarily, but not exclusively, to "disabled" individuals. An individual is "disabled" if he or she meets at least any one of the following tests:

1. He or she has a physical or mental impairment that substantially limits one or more of his/her major life activities;
2. He or she has a record of such an impairment
3. He or she is regarded as having such an impairment.

Other individuals who are protected in certain circumstances include 1) those, such as parents, who have an association with an individual known to have a disability, and 2) those who are coerced or subjected to retaliation for assisting people with disabilities in asserting their rights under the ADA.

While the employment provisions of the ADA apply to employers of fifteen employees or more, its public accommodations provisions apply to all sizes of business, regardless of number of employees. State and local governments are covered regardless of size. (Source Duncan C. Kinder with the assistance of the Job Accommodation Network, the Great Lakes Disability and Business Technical Assistance Center, and the ADA OHIO Steering Committee)

SSI law changes affect special needs planning across the 50 states.

Parents or applicants for SSI may be in for a real shock when they apply for SSI and present their special needs or supplemental needs trust for review by the Social Security Administration. Benefit determination delays, confusion, and incorrect determination decisions are commonplace, until more expertise and experience is gained with the new regulations. While eligibility criteria have tightened considerably, there are still planning opportunities available to families who want to plan for the future of their children with special needs. A basic understanding of the new regulations and state Medicaid law is critical to proper planning.

The Foster Care Independence Act of 1999 provides, generally, that trusts established with the assets of an individual (or spouse) will be considered a resource for SSI eligibility purposes. It also addresses when earnings or additions to trusts will be considered income. These provisions are effective for trusts established on or after 01/01/00. (See SI 01120.200 for trusts established prior to 01/01/00 and trusts established with the assets of third parties.)

The regulations define SSI eligibility in terms of the following definitions;

- What constitutes a trust and what does not constitute a trust.
- Definition of trust grantor, settler, trustee, or trust beneficiary
- What trust resources, income, earnings or payments are excluded or not excluded for SSI eligibility purposes.
- Treatment of trust assets set up before and after January 1, 2000.
- Treatment of trusts established with the assets of a disabled individual
- Treatment of trusts established with assets of third parties
- Treatment of additional payments into trusts set up before and after January 1, 2000.

All trust documents are thoroughly reviewed by the Social Security Administration to make certain that they comply with the new law change. However, due to the complexity of trust documents and the complexity of the new regulations, incorrect benefit decisions are often made.

The new regulations call for close scrutiny as to whether any trust assets or income can be attributed to the disabled SSI applicant, or can be indirectly tied to the applicant. If any assets can be traced to the applicant, the SSA may deny benefits, require that assets be spent down below the \$2,000 SSI threshold, or that payback provisions be written into the trust document. See SSA trust review procedures below;

**01120.202 DEVELOPMENT AND DOCUMENTATION OF TRUSTS
ESTABLISHED ON OR AFTER 01/01/00
PROCEDURE—DEVELOPMENT**

General Development—Written Trust

Review the Trust Document Obtain a copy of the trust document and related documents and, if possible, review the trust to determine whether the:

- Trust was established before or after 01/01/00;
- Assets were transferred into the trust before of after 01/01/00;
- Trust contains assets of third parties;
- Individual is grantor, trustee or beneficiary;
- Trust is revocable or irrevocable;
- Trust provides for payments to the individual or on his/her behalf;
- Trust generates income (earnings, and if so, whether the individual has the right to any of the income);
- Trust contains a spendthrift clause that prohibits anticipation of any trust payments; and
- Trust is receiving payments from another source.

Which Instructions to Apply

If the trust was established...	And contains...	Then follow instructions in:
On or after 01/01/00	Assets of the individual	SI 01120.201 – .204
	Only assets of third parties	SI 01120.200
Before 01/01/00	Assets of the individual transferred before 01/01/00	SI 01120.200
	Assets of the individual all transferred on or after 01/01/00	SI 01120.201 - .204
	Only assets of third parties	SI 01120.200

NOTE: If at some later point in time, assets of the individual are added to a former third-party trust, the trust must be redeveloped under the instructions in SI 01120.201 - .204.

Consult Regional SSA Instructions

Consult any regional instructions that pertain to trusts to see if there are any State laws governing revocability or irrevocability, grantor trusts or other State law issues to consider. Many issues can be resolved over the phone. If necessary, they will tell you to refer the document with any relevant information or statements to your Assistant Regional Commissioner, Management and Operations Support (ARC, MOS) for possible referral to the Regional Counsel.

Many states have their own additional sets of criteria that they utilize to evaluate SSI eligibility when special needs or supplemental needs trusts are also presented. These state guidelines often impose more stringent guidelines than federal SSA regulations.

Now for the good news! The SSA regulations still allow special needs or supplemental needs trusts established with the assets of third parties not be considered a resource for SSI eligibility purposes. This means that parents, grandparents, or relatives can set up funding for the lifetime care of their disabled relative, without required payback provisions. Again, many states have their own requirements that payback provisions be added onto all trusts, and that the state be paid back after the death of the disabled individual for the cost of all benefits provided, regardless of the changes in the SSI regulations.

Laws and regulations relating to disabilities and eligibility for government benefits are complex and subject to change, both in their language and in administrative interpretation and application. You should consult with an attorney who is well versed in the area to determine how any of the information discussed above applies to your personal situation.