

2023 Kansas Statutes

58-5113. Trust for beneficiary with a disability. (a) As used in this section:

(1) "Beneficiary with a disability" means a beneficiary of a first trust who the special-needs fiduciary reasonably believes may qualify for governmental benefits based on disability, whether or not the beneficiary currently receives those benefits or is an individual who has been adjudicated as incapacitated.

(2) "Governmental benefits" means financial aid or services from a state, federal or other public agency.

(3) "Special-needs fiduciary" means, with respect to a trust that has a beneficiary with a disability:

(A) A trustee or other fiduciary, other than a settlor, that has discretion to distribute part or all of the principal of a first trust to one or more current beneficiaries;

(B) if no trustee or fiduciary has discretion under subparagraph (A), a trustee or other fiduciary, other than a settlor, that has discretion to distribute part or all of the income of the first trust to one or more current beneficiaries; or

(C) if no trustee or fiduciary has discretion under subparagraphs (A) and (B), a trustee or other fiduciary, other than a settlor, that is required to distribute part or all of the income or principal of the first trust to one or more current beneficiaries.

(4) "Special-needs trust" means a trust the trustee believes would not be considered a resource for purposes of determining whether a beneficiary with a disability is eligible for governmental benefits.

(b) A special-needs fiduciary may exercise the decanting power under K.S.A. 2023 Supp. 58-5111, and amendments thereto, over the principal of a first trust as if the fiduciary had authority to distribute principal to a beneficiary with a disability subject to expanded distributive discretion if:

(1) A second trust is a special-needs trust that benefits the beneficiary with a disability; and

(2) the special-needs fiduciary determines that exercise of the decanting power will not be inconsistent with a material purpose of the first trust.

(c) In an exercise of the decanting power under this section, the following rules apply:

(1) Notwithstanding K.S.A. 2023 Supp. 58-5111(c)(2), and amendments thereto, the interest in the second trust of a beneficiary with a disability may:

(A) Be a pooled trust as defined by medicaid law for the benefit of the beneficiary with a disability under 42 U.S.C. § 1396p(d)(4)(C); or

(B) contain payback provisions complying with reimbursement requirements of medicaid law under 42 U.S.C. § 1396p(d)(4)(A).

(2) K.S.A. 2023 Supp. 58-5111(c)(3), and amendments thereto, does not apply to the interests of the beneficiary with a disability.

(3) Except as affected by any change to the interests of the beneficiary with a disability, the second trust, or if there are two or more second trusts, the second trusts in the aggregate, shall grant each other beneficiary of the first trust beneficial interests in the second trusts that are substantially similar to the beneficiary's beneficial interests in the first trust.

History: L. 2023, ch. 48, § 13; July 1.