



THE LAW OFFICES OF
HOYT & BRYAN, LLC
FAMILY WEALTH & LEGACY COUNSELLORS

MARGARET "PEGGY" R. HOYT, J.D., M.B.A., B.C.S. ††*
RANDY C. BRYAN, J.D., B.C.S. ††
SARAH S. AUMILLER, J.D.
MICHELLE A. ADAMS, J.D.

‡ BOARD CERTIFIED IN WILLS, TRUSTS & ESTATES
† BOARD CERTIFIED IN ELDER LAW
*CERTIFIED LEGACY ADVISOR™

Recent Social Security POMS Change and How it Affects Special Needs Trusts

In May of this year the Social Security Administration (SSA) published a change to its Program Operations Manual System (POMS). This change occurred in SI 01120.201. It is important to note that a change to the SSA POMS is not a change in the law. The POMS only suggest to SSA employees a process for carrying out their job responsibilities. Specifically, two examples were added under the section defining the term "sole benefit" as it applies to trusts. These new examples eliminated the previously provided examples in an effort to tighten the interpretation of the sole benefit rule and have had an effect on the SSA's long-standing policy on sole benefit trusts. This new interpretation is important because it impacts specific language contained in special needs trusts (SNTs) in addition to how the funds of such trusts are to be used.

According to the SSA, first party special needs trusts (also known as (d)(4)A and (d)(4)C trusts and sole benefit trusts) must be established "for the sole benefit of the individual." New Example 1 to POMS SI 01120.201 F2 indicates a change in SSA policy regarding what expenses will be allowed for sole benefit trusts. Prior to the change it was not uncommon for the travel of the beneficiary's family member to be paid for by the special needs trust. Under the change, the SSA will consider a special needs trust that allows for payment of travel for family members to visit the beneficiary to be in violation of the sole benefit rule and therefore invalid. Additionally, the SNT will be considered invalid if it does not contain the specific language but the trustee nevertheless pays for the travel of visitors of the beneficiary.

If a SNT were to be deemed invalid, any Supplemental Security Income (SSI) recipient who is a beneficiary of the trust would lose SSI benefits. And, if the beneficiary's Medicaid is linked to SSI, Medicaid would also be lost. Therefore, we are recommending that any trust containing language which allows for family members of the beneficiary to be paid for travel needs to be amended.

Further, we have learned from a top SSA official that the Administration is also closely reviewing SNT language which authorizes compensation to both family and non-family caregivers. This new SSA policy requires that any trust authorizing payment to caregivers contain language that limits payments only to caregivers who are "medically certified or medically trained or approved to provide care," with "approval" coming from the application state Medicaid agency.

The Law Offices of Hoyt & Bryan assists families in the protection of their loved ones by focusing their practice in the areas of Estate Planning, Probate and Trust Administration, Elder Law including Medicaid and VA Planning and Special Needs Planning, Pet Planning, Business Succession Planning and Real Estate. The founders,

Peggy Hoyt and Randy Bryan, are both dual board certified by the Florida Bar in Wills, Trusts and Estates as well as Elder Law. Hoyt & Bryan is the only law firm in Florida with the distinction of two attorneys with these certifications. We offer many complimentary educational workshops each week in our Learning Center at The Law Offices of Hoyt & Bryan and monthly workshops in the Auditorium of One Senior Place in Altamonte Springs. For more information please contact our office at 407-977-8080 or visit our website HoytBryan.com.