

**SPECIAL NEEDS TRUST**  
*ATTORNEY REVIEW AND STATEMENT*

The Office of the Attorney General will review a Supplemental or Special Needs Trust for compliance with the Maryland Medical Assistance Program regulation defining a special needs trust only if the trust attorney submits an *Attorney Review and Statement* along with the trust document.

The purpose of this requirement is to facilitate the drafting of trust documents and to shorten the time required for this Office's review and approval of trust documents for compliance with provisions of COMAR 10.09.24.08-2C.

If the trust document conforms to the regulation and is approved accordingly, the local department of social services will not count trust assets as an available resource during the determination of the applicant or recipient's financial eligibility for Medical Assistance benefits.

The *Attorney Review and Statement* is reproduced below. Please feel free to print and photocopy this form.

The trust document along with the completed and signed *Attorney Review and Statement* should be submitted to:

Meredith Borden  
Special Needs Trust Attorney  
Office of the Attorney General  
Room 302  
300 West Preston Street  
Baltimore, Maryland 21201  
(410) 767-1855

At this time, the Office of the Attorney General will not review electronically submitted trust documents. Please ensure that your trust document is mailed to the above address.

Questions may be addressed to Sabrina Blackburn, paralegal, at (410) 767-1859. Thank you for your assistance and cooperation in this matter.

Trust Name/Beneficiary \_\_\_\_\_

**COMAR 10.09.24.08-2C defines a special needs trust. Please provide the page numbers where the following criteria are addressed in the trust document:**

- \_\_\_\_\_ (1) The trust is irrevocable;
- \_\_\_\_\_ (2) The trust states that the beneficiary is disabled under Regulation .05E of this chapter;
- \_\_\_\_\_ (3) The beneficiary of the trust is younger than 65 years old;
- \_\_\_\_\_ (4) The trust has been established by the beneficiary's parent, grandparent, legal guardian, or a court;
- \_\_\_\_\_ (6) The trust provides that the Department shall receive all amounts remaining in the trust upon the death of the beneficiary, or upon termination of the trust for any other reason, up to an amount equal to the total Medical Assistance benefits paid on behalf of the beneficiary;
- \_\_\_\_\_ (9) The trust contains the following provisions:
  - \_\_\_\_\_ (a) Additions may not be made to the trust after the beneficiary is 65 years old;
  - \_\_\_\_\_ (b) Expenditures from the trust shall be used for the sole benefit of the beneficiary and shall be directly related to the beneficiary's health care, education, comfort, or support;
  - \_\_\_\_\_ (c) The trust beneficiary may not serve as trustee, cotrustee, trust protector, trust advisor, or in any other capacity that would allow the beneficiary to influence or exercise authority or control over distributions from the trust;
  - \_\_\_\_\_ (d) The trustee shall administer the trust in accordance with the provisions of Estates and Trusts Article, §15-502, Annotated Code of Maryland, and may not:
    - \_\_\_\_\_ (i) Have an interest in trust assets;
    - \_\_\_\_\_ (ii) Have discretion to use trust assets for the trustee's own benefit;
    - \_\_\_\_\_ (iii) Self-deal by selling trust assets to the trustees or buying trust assets from the trustee; or
    - \_\_\_\_\_ (iv) Loan trust assets to the trustee;
  - \_\_\_\_\_ (e) Compensation to the trustee shall be limited in accordance with the provisions of Estates and Trusts Article, §14-103, Annotated Code of Maryland;

- \_\_\_\_\_ (f) Any leases or mortgages that the trust may hold shall contain a provision that they either terminate or become due and payable upon the death of the beneficiary or termination of the trust;
- \_\_\_\_\_ (g) If the trust owns titled property that is valued at more than \$500, the property shall be titled in the name of the trust, except for securities, which may be held in the name of a nominee;
- \_\_\_\_\_ (h) If the trust owns an asset jointly with another, the ownership shall be as tenants in common, and the ownership agreement shall provide that, upon termination of the trust, the property shall either be sold for fair market value or the other owners shall purchase the trust's interest in the property for fair market value
- \_\_\_\_\_ (i) Trust assets may not be held as an ongoing business or enterprise, or as investments in new or untried enterprises;
- \_\_\_\_\_ (j) Trust distributions may not be used to supplement Medical Assistance payments to any health care provider delivering goods or services to the beneficiary;
- \_\_\_\_\_ (k) Trust assets may not be used to compensate family members of the beneficiary for serving the beneficiary in any way, including caring for the beneficiary, accompanying the beneficiary on travel, providing companionship to the beneficiary, or serving as trustees or members of a trust advisory committee;
- \_\_\_\_\_ (l) Trust assets may not be used to purchase gifts;
- \_\_\_\_\_ (m) Trust assets may not be used to purchase a life insurance policy on the life of the beneficiary;
- \_\_\_\_\_ (n) Trust assets may only be used to purchase a life insurance policy on the life of someone other than the trust beneficiary if the trust is the only beneficiary of the life insurance policy;
- \_\_\_\_\_ (o) Trust assets may not be used to purchase an annuity on the life of the beneficiary unless the annuity provides that:
  - \_\_\_\_\_ (i) The final payment to the trust shall be made before the beneficiary is 65 years old; and
  - \_\_\_\_\_ (ii) If the beneficiary dies before the final payments have been made, the remaining payments shall be paid directly to the State until the total Medical Assistance benefits paid on behalf of the beneficiary have been reimbursed;

\_\_\_\_\_ (p) The trust may not loan trust assets without security, which may include an interest in real or personal property of at least equivalent value;

\_\_\_\_\_ (q) The trust may only make loans if the loan agreement provides for immediate repayment in the event of the death of the beneficiary or termination of the trust for any other reason;

\_\_\_\_\_ (r) The only real property in which the trust may invest is in a single home property, which is used as the residence of the beneficiary and is titled in the name of the trust;

\_\_\_\_\_ (s) The trust may not disburse more than \$100,000 for the purchase of property without the approval of the State circuit court in the jurisdiction in which the beneficiary resides;

\_\_\_\_\_ (t) An annual accounting of the trust, including a listing of current assets, income, and itemized distributions during the previous year, shall be sent to the Maryland Medical Assistance Program, Division of Recoveries and Financial Services;

\_\_\_\_\_ (u) Trust assets may not be used to pay funeral expenses of the beneficiary but may be used to purchase an irrevocable burial contract for the beneficiary to cover the beneficiary's funeral and burial expenses;

(v) The trust may not receive payments from an annuity or a structured settlement that may provide lump sum or periodic payments unless the annuity or settlement provides that:

\_\_\_\_\_ (i) The final payment to the trust is received before the beneficiary is 65 years old; and

\_\_\_\_\_ (ii) If the beneficiary dies before the annuity or settlement is fully paid, the balance shall be paid directly to the State until the total Medical Assistance benefits paid on behalf of the beneficiary have been reimbursed;

**Please include the following notices in the trust document.**

\_\_\_\_\_ (10) If any amendments are made to the trust, the amendments shall comply with COMAR 10.09.24.08-2C and a copy of the amendments shall be sent to the Division of Recoveries and Financial Services; and

\_\_\_\_\_ (11) If the trust agreement fails to comply with any provision of COMAR 10.09.24.08-2C, the full value of the assets of the trust shall be considered available resources of the trust beneficiary for Medical Assistance eligibility purposes.

