House Engrossed Senate Bill

FILED
JANICE K. BREWER
SECRETARY OF STATE

State of Arizona
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CHAPTER 225

SENATE BILL 1167

AN ACT

AMENDING SECTION 36-2934.01, ARIZONA REVISED STATUTES; RELATING TO THE ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 36-2934.01, Arizona Revised Statutes, is amended to read:

36-2934.01. Creation of trusts; eligibility for the system; share of cost

A. The administration has sole authority to qualify any trusts that are created pursuant to section 1917(d)(4)(A), (B) and (C) of the social security act and shall require that the trustee provide the following information and assurances when the trustee submits trust documents to the administration for approval:

1. Specific language that protects the state's beneficiary interest in the trust and that names the administration OR THE STATE MEDICAID AGENCY as the primary beneficiary of the trust if the trust is terminated before or on the death of the member. The trust document shall state that the trustee shall pay on a monthly basis the share of cost amount established by the posteligibility treatment of income determination pursuant to subsection D of this section.

2. A provision that requires the direct deposit of all income assigned to the trust by the grantor, when legally permissible, into an account titled to the trust.

3. A detailed description of how the trust funds will be administered and disbursed. The trustee shall submit the description at the same time that the trustee submits the trust document to the administration for review. The administration shall review the planned disbursements or plan approved by the probate court and render a decision on the appropriateness of the disbursements or plan within ~~ten working days~~ THE TIME FRAMES ESTABLISHED BY FEDERAL LAW FOR PROCESSING APPLICATIONS FOR MEDICAL ASSISTANCE. THE ADMINISTRATION MAY EXTEND THIS LIMIT TO ENABLE A TRUSTEE TO AMEND A TRUST OR TO PROVIDE ADDITIONAL INFORMATION REQUESTED BY THE ADMINISTRATION. The trustee shall report to the administration any new trust funding or modifications to the planned disbursements from the trust no less than forty-five days before the intended action or change by the trustee. Under extenuating circumstances, the trustee may forgo the forty-five day reporting requirement~~,~~ and provide notice to the administration within thirty days from the date of disbursement. If the administration determines that the disbursement was not appropriate, or that any other provisions of the trust or this section have been violated, the administration shall consider the trust in accordance with subsection ~~D~~ F of this section. The trustee may appeal this decision, but the provisions described in ~~subsection H~~ SUBSECTIONS I AND J of this section shall be applied if the administration's action is affirmed. On request of the administration, the trustee shall provide verification of how the funds were administered.

4. A statement signed by the trustee acknowledging that an adverse action may be taken against the member's eligibility for the system if the trustee improperly violates the terms of the trust or the requirements of this section or if the trustee takes any action that limits the administration's beneficiary interest in the trust.

5. Specific language that protects the trust for the benefit of the trust beneficiary. The trust document shall state that disbursements shall not be made for other than those purposes allowed pursuant to this section.

B. For a trust that qualifies pursuant to subsection A of this section, the trustee shall not make any disbursements from the trust other than for the following:

1. Reasonable legal and professional expenses related to the trust including:

(a) Trust taxes.

(b) Trust investment fees.

(c) Reasonable professional expenses, including trustee, accounting and attorney fees related to THE ADMINISTRATION OF the trust.

2. The posteligibility share of cost as computed pursuant to section 36-2932.

3. FOR TRUSTS CREATED PURSUANT TO SECTION 1917(D)(4)(B) OF THE SOCIAL SECURITY ACT, A DISBURSEMENT TO THE BENEFICIARY EQUAL TO THE PERSONAL NEEDS ALLOWANCE AS COMPUTED PURSUANT TO SECTION 36-2932.

~~3.~~ 4. Health insurance premiums, medically necessary medical expenses and special medical needs of the beneficiary including:

(a) Expenses required to make the home accessible to the person.

(b) The purchase and maintenance of a specially equipped vehicle TITLED TO THE TRUST OR TO THE BENEFICIARY WITH A LIEN AGAINST THE VEHICLE HELD BY THE TRUST IN AN AMOUNT EQUAL TO THE CURRENT MARKET VALUE OF THE VEHICLE.

(c) Durable medical equipment.

(d) Over-the-counter supplies and medications, including diapers, lotions and cleansing wipes.

(e) Personal care services that are determined to be medically necessary by the program contractor and that are provided by a person who is registered by the administration to provide the services and who is not a financially responsible relative of the beneficiary. FOR THE PURPOSES OF THIS SUBDIVISION, "FINANCIALLY RESPONSIBLE RELATIVE" MEANS THE SPOUSE OF THE BENEFICIARY OR, IF THE BENEFICIARY IS A CHILD UNDER EIGHTEEN YEARS OF AGE, THE PARENT OF THE BENEFICIARY.

~~4.~~ 5. Maintenance payments for the spouse or family in accordance with 42 United States Code section 1396R-5(d)(1) and (2) and section 36-2932, subsection L.

6. GUARDIANSHIP AND CONSERVATORSHIP FEES FOR THE TRUST BENEFICIARY BASED ON THE FAIR MARKET VALUE OF THE SERVICES PROVIDED.

~~5.~~ 7. ~~Other~~ THE FOLLOWING expenses for the benefit of the beneficiary, ~~including~~ EXCLUDING GIFTS TO, PAYMENTS FOR OR LOANS TO OTHER PERSONS, WHETHER THESE ARE IN CASH OR IN KIND:

(a) Entertainment, educational or vocational NEEDS OR items that are consistent with the person's ability to use these items.

(b) Other expenses that are individually approved by the director.

(c) Living expenses for food, clothing and shelter. IF HOME PROPERTY OR OTHER REAL PROPERTY IS PURCHASED BY THE TRUST IT MUST BE TITLED TO THE TRUST.

(d) INCOME TAXES OWED ON INCOME FROM TRUST INVESTMENTS OR ON INCOME OF THE BENEFICIARY THAT IS ASSIGNED TO THE TRUST WHEN AN ACTUAL TAX LIABILITY IS ESTABLISHED.

(e) PROVISION FOR BURIAL EXPENSES THAT IS LIMITED TO ONE OF THE FOLLOWING METHODS:

(i) PURCHASE OF A PREPAID BURIAL PLAN FUNDED BY AN IRREVOCABLE LIFE INSURANCE POLICY, IRREVOCABLE BURIAL ACCOUNT, IRREVOCABLE TRUST ACCOUNT OR IRREVOCABLE ESCROW ACCOUNT.

(ii) PURCHASE OF LIFE INSURANCE TO FUND A BURIAL PLAN FOR THE BENEFICIARY WITH A FACE VALUE THAT DOES NOT EXCEED ONE THOUSAND FIVE HUNDRED DOLLARS AFTER ALLOWING DEDUCTIONS FOR BURIAL PLOT ITEMS AS DEFINED BY THE ADMINISTRATION.

(iii) FUNDING A BURIAL FUND ACCOUNT IN AN AMOUNT NOT TO EXCEED ONE THOUSAND FIVE HUNDRED DOLLARS.

(f) TRAVEL EXPENSES FOR A COMPANION, OTHER THAN A BENEFICIARY'S FINANCIALLY RESPONSIBLE RELATIVE, WHEN A COMPANION IS REQUIRED TO ENABLE THE BENEFICIARY TO TRAVEL FOR NONMEDICAL REASONS.

C. For trusts that qualify pursuant to subsection A of this section, the administration shall consider only the person's proportionate share of expenses as for the benefit of the trust beneficiary if these expenses also benefit others.

D. For trusts that are created pursuant to section 1917(d)(4)(A), (B) and (C) of the social security act, the administration shall require that the ~~post-eligibility~~ POSTELIGIBILITY treatment of income that is determined pursuant to section 36-2932 shall include the income assigned to the trust and any other countable income received by the member, excluding interest and dividends earned by the trust corpus and added to the principal. Each month the administration shall count for income eligibility purposes any disbursements made to the beneficiary and any payments made on behalf of the beneficiary for food~~, clothing~~ or shelter. THE ADMINISTRATION SHALL COUNT DISBURSEMENTS ISSUED FOR THE PERSONAL NEEDS ALLOWANCE PURSUANT TO SUBSECTION B, PARAGRAPH 3 OF THIS SECTION AS DISBURSEMENTS FOR FOOD OR SHELTER.

E. In order for a trust that is created pursuant to section 1917(d)(4)(B) of the social security act to be considered under this section, the sum of the individual's countable nontrust income and the income assigned to the trust, excluding interest and dividends earned by the trust corpus and

added to the principal shall be equal to or less than the private pay rate established in the state plan.

F. For revocable or irrevocable trusts that are created pursuant to section 1917(d)(3)(A) or (B) of the social security act, the administration shall include the income that is received by the trust, excluding interest and dividends earned by the trust corpus and added to the principal or that is disbursed from the trust, whichever is greater, for both income eligibility calculations under section 36-2934 and ~~post-eligibility~~ POSTELIGIBILITY of income under section 36-2932. In determining eligibility for the system, the administration shall consider payments from the trust regardless of the purpose for which the payment is made.

G. Notwithstanding this section, a trust that is established before August 11, 1993 shall be evaluated in accordance with the provisions contained in the state plan.

H. If the administration determines that the trustee did not report changes in the amount of trust income or disbursements from the trust to the administration in the time frame and manner specified in subsection A of this section, the administration shall notify the member of the noncompliance and shall prospectively apply the adverse action that would have resulted if the change had been reported in a timely manner. If benefits for the system are continued by the administration pending a decision by the director after a hearing on a proposed adverse action that results from trust income or disbursements and the director upholds the administration, the administration shall apply the adverse action on a prospective basis.

I. THE ADMINISTRATION SHALL CONSIDER TRUST DISBURSEMENTS ISSUED IN VIOLATION OF THIS SECTION AS A TRANSFER WITHOUT FAIR CONSIDERATION.

J. IF THE ADMINISTRATION DETERMINES THAT THE TRUSTEE IS IN VIOLATION OF THIS SECTION OR THE TERMS OF A NEW OR EXISTING TRUST, THE ADMINISTRATION SHALL CONSIDER ALL TRUST ASSETS HELD IN THE TRUST AND INCOME HELD IN OR PRODUCED BY THE TRUST, AVAILABLE TO THE BENEFICIARY UNDER 42 UNITED STATES CODE SECTION 1396P(D)(3) UNTIL THE TRUSTEE CORRECTS THE VIOLATION.

Sec. 2. Exemption from rule making

For the purposes of this act, the Arizona health care cost containment system administration is exempt from the rule making requirements of title 41, chapter 6, Arizona Revised Statutes, for one year after the effective date of this act.

APPROVED BY THE GOVERNOR MAY 12, 2004.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 12, 2004.