

State of Arizona
Senate
Forty-eighth Legislature
First Regular Session
2007

SB 1184

Introduced by
Senator Leff

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)

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

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

4 36-2934.01. Creation of trusts; eligibility for the system;
5 share of cost

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

11 1. Specific language that protects the state's beneficiary interest in
12 the trust and that names the administration or the state medicaid agency as
13 the primary beneficiary of the trust if the trust is terminated before or on
14 the death of the member. The trust document shall state that the trustee
15 shall pay on a monthly basis the share of cost amount established by the
16 posteligibility treatment of income determination pursuant to subsection ~~D~~ E
17 of this section.

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

21 3. A detailed description of how the trust funds will be administered
22 and disbursed. The trustee shall submit the description at the same time
23 that the trustee submits the trust document to the administration for
24 review. The administration shall review the planned disbursements or plan
25 approved by the probate court and render a decision on the appropriateness of
26 the disbursements or plan within the time frames established by federal law
27 for processing applications for medical assistance. The administration may
28 extend this limit to enable a trustee to amend a trust or to provide
29 additional information requested by the administration. The trustee shall
30 report to the administration any new trust funding or modifications to the
31 planned disbursements from the trust no less than forty-five days before the
32 intended action or change by the trustee. Under extenuating circumstances,
33 the trustee may forgo the forty-five day reporting requirement and provide
34 notice to the administration within thirty days from the date of
35 disbursement. If the administration determines that the disbursement was not
36 appropriate, or that any other provisions of the trust or this section have
37 been violated, the administration shall consider the trust in accordance with
38 subsection ~~F~~ G of this section. The trustee may appeal this decision, but
39 the provisions described in subsections ~~I~~ and J AND K of this section shall
40 be applied if the administration's action is affirmed. On request of the
41 administration, the trustee shall provide verification of how the funds were
42 administered.

43 4. A statement signed by the trustee acknowledging that an adverse
44 action may be taken against the member's eligibility for the system if the
45 trustee improperly violates the terms of the trust or the requirements of

1 this section or if the trustee takes any action that limits the
2 administration's beneficiary interest in the trust.

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

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

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

11 (a) Trust taxes.

12 (b) Trust investment fees.

13 (c) Reasonable professional expenses, including trustee, accounting
14 and attorney fees related to the administration of the trust.

15 2. The posteligibility share of cost as computed pursuant to section
16 36-2932.

17 3. For trusts created pursuant to section 1917(d)(4)(B) of the social
18 security act, a disbursement to the beneficiary equal to the personal needs
19 allowance as computed pursuant to section 36-2932.

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

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

23 (b) The purchase and maintenance of a specially equipped vehicle
24 titled to the trust or to the beneficiary with a lien against the vehicle
25 held by the trust in an amount equal to the current market value of the
26 vehicle.

27 (c) Durable medical equipment.

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

30 (e) Personal care services that are determined to be medically
31 necessary by the ~~program-contractor~~ BENEFICIARY'S CONTRACTED PHYSICIAN and
32 that are provided by a person who is registered by the administration to
33 provide the services, ~~and who is not~~ INCLUDING a financially responsible
34 relative of the beneficiary. For the purposes of this subdivision,
35 "financially responsible relative" means the spouse of the beneficiary or, if
36 the beneficiary is a child under eighteen years of age, the parent OR
37 GUARDIAN of the beneficiary.

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

41 6. Guardianship and conservatorship fees for the trust beneficiary
42 based on the fair market value of the services provided.

43 7. The following expenses for the benefit of the beneficiary,
44 excluding gifts to, payments for or loans to other persons, whether these are
45 in cash or in kind:

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

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

4 (c) Living expenses for food, clothing and shelter. If home property
5 or other real property is purchased by the trust it must be titled to the
6 trust.

7 (d) Income taxes owed on income from trust investments or on income of
8 the beneficiary that is assigned to the trust when an actual tax liability is
9 established.

10 (e) Provision for burial expenses that is limited to one of the
11 following methods:

12 (i) Purchase of a prepaid burial plan funded by an irrevocable life
13 insurance policy, irrevocable burial account, irrevocable trust account or
14 irrevocable escrow account.

15 (ii) Purchase of life insurance to fund a burial plan for the
16 beneficiary with a face value that does not exceed one thousand five hundred
17 dollars after allowing deductions for burial plot items as defined by the
18 administration.

19 (iii) Funding a burial fund account in an amount not to exceed one
20 thousand five hundred dollars.

21 (f) Travel expenses for a companion, ~~other than a beneficiary's~~
22 ~~financially responsible relative, when~~ IF a companion is required to enable
23 the beneficiary to travel for nonmedical reasons.

24 C. THE ADMINISTRATION SHALL WAIVE ITS RIGHTS PURSUANT TO SUBSECTION A,
25 PARAGRAPH 1 OF THIS SECTION WITH RESPECT TO REAL PROPERTY TITLED TO THE TRUST
26 IF BOTH OF THE FOLLOWING ARE TRUE:

27 1. A RESIDUAL BENEFICIARY OF THE TRUST HAS LIVED IN THE REAL PROPERTY
28 FOR THE PREVIOUS TWELVE MONTHS, LIVES IN THE REAL PROPERTY AT THE TIME THE
29 TRUST TERMINATES AND OWNS NO OTHER RESIDENCE.

30 2. THE ANNUAL GROSS INCOME FOR THE HOUSEHOLD SIZE IS LESS THAN ONE
31 HUNDRED PER CENT OF THE FEDERAL POVERTY GUIDELINES.

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

36 ~~D.~~ E. For trusts that are created pursuant to section 1917(d)(4)(A),
37 (B) and (C) of the social security act, the administration shall require that
38 the posteligibility treatment of income that is determined pursuant to
39 section 36-2932 shall include the income assigned to the trust and any other
40 countable income received by the member, excluding interest and dividends
41 earned by the trust corpus and added to the principal. Each month the
42 administration shall count for income eligibility purposes any disbursements
43 made to the beneficiary and any payments made on behalf of the beneficiary
44 for food or shelter. The administration shall count disbursements issued for

1 the personal needs allowance pursuant to subsection B, paragraph 3 of this
 2 section as disbursements for food or shelter.

3 ~~E.~~ F. In order for a trust that is created pursuant to section
 4 1917(d)(4)(B) of the social security act to be considered under this section,
 5 the sum of the individual's countable nontrust income and the income assigned
 6 to the trust, excluding interest and dividends earned by the trust corpus and
 7 added to the principal shall be equal to or less than the private pay rate
 8 established in the state plan.

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

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

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

32 ~~I.~~ J. The administration shall consider trust disbursements issued in
 33 violation of this section as a transfer without fair consideration.

34 ~~J.~~ K. If the administration determines that the trustee is in
 35 violation of this section or the terms of a new or existing trust, the
 36 administration ~~shall consider all trust assets held in the trust and income~~
 37 ~~held in or produced by the trust, available to the beneficiary under 42~~
 38 ~~United States Code section 1396p(d)(3) until the trustee corrects the~~
 39 ~~violation~~ MAY PETITION A COURT OF COMPETENT JURISDICTION FOR THE REMEDIES
 40 AVAILABLE UNDER THE LAW, INCLUDING THE REMOVAL OF THE TRUSTEE, SURCHARGES
 41 AGAINST THE TRUSTEE AND RECOVERY AGAINST ANY PERSON OR LEGAL ENTITY THAT HAS
 42 IMPROPERLY RECEIVED PAYMENTS FROM THE TRUST.