

## **Distributions from Special Needs Trusts under New Hampshire's new Special Needs Trusts Law**

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This article is designed to help clarify what special needs trustees can pay for, taking into account the New Hampshire's helpful new special needs trusts law. It is important to know about New Hampshire's new special needs trusts law, RSA 167:4(V) which was passed into law as 2007 NH Laws 166. This law is also known as "Emily's Law" after Emily Huff, a young woman with disabilities whose case resulted in (1) the N.H. Supreme Court's decision Appeal of Huff, 2006 NH (2005-856), and then (2) RSA 167:4(V). Emily Huff's Medicaid services had been questioned by a Medicaid official who took the position that state compliance with federal law might be optional. RSA 167:4(V) provides succinctly as follows:

166.01 Amend RSA 167:4 by inserting after paragraph IV the following new paragraph: V. Distributions of the income or principal, or both, of a special needs trust to or for the benefit of the disabled beneficiary shall be disregarded for income eligibility purposes of all categories of public medical assistance to the same extent that such distributions are disregarded for purposes of Title XVI of the Social Security Act [including the Social Security SSI program and standards discussed in this article]. Funds expended by a trustee of a special needs trust to purchase or maintain assets owned by the trustee in his or her capacity as trustee of the trust shall also be disregarded for such income eligibility purposes. For the purposes of this paragraph 'special needs trusts' means any trust established by a third party for the sole benefit of an individual who is considered disabled under the provisions of section 1614(a)(3) of the Social Security Act [the usual Social Security finding of disability], and any trust funded with the resources of such an individual and complying with the provisions of section 1917(d)(4) of such Act.  
166:2 Effective Date. This act shall take effect November 1, 2007.

This new State statute was passed with unanimous votes by the Health and Human Services Committees in both the House and the Senate. It was signed into law by Governor Lynch, who said at the signing ceremony that he did not want people with disabilities and their families to lose sleep over this issue anymore.

The US Social Security Administration Supplemental Security Income ("SSI") program legal standards govern SSI eligibility for special needs trust beneficiaries who receive SSI. These SSI distribution standards also govern Medicaid workers with regard to special needs trusts as a matter of federal law unless individual states provide more lenient standards in accordance with relevant legal standards. 42 U.S.C. 1396a(a)(10)(C)(i)(III) requires states to use a "single standard in determining income

and resource eligibility...which shall be no more restrictive than the methodology which would be employed under the Supplemental Security Income [SSI] program..."

New Hampshire RSA 167:4(V) specifically requires that the NH Department of Health and Human Services follow the federal SSI rules in relation to special needs trusts in operating the medical assistance program.

The Social Security Administration's Programs Operations Manual System (POMS), designed to instruct government employees in carrying out the federal statutes and regulations, provides at POMS SI 00815.001(B) that "An item received is not income if: it is neither food nor shelter; or it cannot be used to obtain food or shelter." POMS SI 00815 and POMS 01130.430 provide a number of examples of permitted expenditures. The federally permitted expenditures include most items people want to purchase.

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