

# LEGAL ALERT

December 13, 2016

## SPECIAL NEEDS TRUST FAIRNESS ACT

*By Crystal West Edwards, Esq.*

Today, President Obama signed into law the 21st Century Cures Act. The legislative package included the Special Needs Trust Fairness Act (“SNT Fairness Act”), which allows individuals with disabilities to establish their own special needs trust.

A special needs trust (often referred to as a first-party SNT, OBRA ’93 trust or (d)(4)(A) trust) allows an individual with disabilities to utilize his or her assets to fund supplemental care and support services without jeopardizing eligibility for means-tested government benefits, such as Medicaid.

Prior to implementation of the SNT Fairness Act, a special needs trust could only be established by a parent, grandparent, guardian, or court for the sole benefit of the beneficiary. The law did not allow individuals with disabilities, who are mentally competent to handle legal and financial matters, to establish a special needs trust. Instead, a court application was required if a parent or grandparent was unavailable or otherwise unable to establish the trust for the disabled individual, resulting in increased time and cost to the disabled individual. The SNT Fairness Act now allows the disabled individual to establish a special needs trust without requiring a parent, grandparent or the court to do so on his or her behalf.

The SNT Fairness Act does not alter other provisions of the governing federal law, 42 U.S.C. 1396p(d)(4)(A), which still provides (i) the beneficiary must be under the age of 65 when the trust is established and funded, (ii) the beneficiary must be disabled as defined under Social Security law, and (iii) the state must “receive all amounts remaining in the trust upon the death of such individual up to an amount equal to the total medical assistance paid on behalf of the individual under a State plan under this title [42 U.S.C. §1396 et seq.]”

If you have any questions or request additional information, please contact any member of Schenck, Price, Smith & King’s Elder and Special Needs Law Practice Group: Shirley B. Whitenack, Regina M. Spielberg, Gary Mazart, Meredith L. Grocott and Crystal West Edwards.

*DISCLAIMER: This Alert is designed to keep you aware of recent developments in the law. It is not intended to be legal advice, which can only be given after the attorney understands the facts of a particular matter and the goals of the client.*

**Florham Park**  
220 Park Avenue  
Florham Park, NJ 07932  
(973) 539-1000

**Paramus**  
115 West Century Road  
Suite 100  
Paramus, NJ 07652  
(201) 262-1600

**Sparta**  
351 Sparta Avenue  
Sparta, NJ 07871  
(973) 295-3670

**New York**  
116 West 23rd Street  
Suite 500  
New York, NY 10011  
(212) 386-7628