

## The Voice, *The Official Newsletter of SNA*

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### Welcome!

You are reading *The Voice*, the e-mail newsletter of The Special Needs Alliance. This installment was written by Special Needs Alliance member [Bridget O'Brien Swartz](#). Ms. Swartz is with the [Law Office of Bridget O'Brien Swartz, PLLC](#), in Phoenix, Arizona. Her practice focuses on public benefits and special needs planning for individuals who are disabled. She is a member of the Special Needs Alliance's Board of Directors. Ms. Swartz is certified by the State Bar of Arizona as a specialist in Estate and Trust Law, and she is also certified by the National Elder Law Foundation as a Certified Elder Law Attorney.

### Moving a Special Needs Trust to a New State



**Introduction:** So, you are planning on moving to another state. One issue you need to deal with: you will be taking along your son, who has a disability, requires your care and attention, and receives government benefits. Of course you will continue to provide the care he requires -- but you will be in a new state, with new rules and agencies.

Over the past several years you have navigated state and federal bureaucracies to ensure your son receives the maximum available resources. Along the way, he inherited money, or received a settlement in a personal injury matter requiring the establishment of a special needs trust to continue his eligibility for Supplemental Security Income (SSI), Medicaid and other government benefits. Injecting a special needs trust into the equation caused a bit of anxiety at the time, but after the initial disclosure of the arrangement to Social Security, Medicaid and the other public benefit agencies, all went smoothly. In fact, your son's situation is much improved now that funds are available to provide for needs that are not covered by government programs.

You might reasonably assume that his special needs trust, because it was established according to federal law, is transferable from one state to another, as is his eligibility for public benefits. Before moving, though, you decide to

get the lay of the land in your new state -- and a good thing, too, as everything is not going to work as easily as you had thought it would!

**What will change in the new state?** First you discover that, although SSI eligibility is transferable, all states do not offer a supplementary payment. The amount of your son's SSI benefit may go up or down, depending on whether either your current state or the new state does have an SSI supplemental payment. You learn that your new state (as with most -- but not all -- states) makes acute-care Medicaid services available to anyone who receives SSI payments. That's certainly good news, but then you learn that eligibility for long term care Medicaid services is not automatically transferable and will require you to go through an entirely new application on your son's behalf. You would like to get a jump start on it, but learn that you cannot apply until he is officially a "resident" of the state to which you will be moving. For some Medicaid programs, he might even need to reside in the state for a specified duration before he qualifies.

Next you hear from other parents or advocates in your new state that not all states treat special needs trusts similarly. You decide that it would be best to confer with a local attorney in the new state, and you [locate a member of the Special Needs Alliance](#) there.

You are surprised to learn from the attorney with whom you speak that your new state has a statute and regulations that set out additional requirements for a special needs trust. Failure to comply with those requirements will cause your son's trust to be treated as an available resource for Medicaid in the new state. Your son's trust will have to be amended to comply with the new state's laws and regulations.

**What can you do now?** How can you amend your son's special needs trust when it was set up as an irrevocable trust? The attorney in the new state suggests that she would draft the required amendments or restate the trust entirely to conform with the laws of that state but that you should return to court in the state where it was originally established (or where the trustee operates) to obtain approval of any amendments. Will you need to continue to

deal with the court in your current state? The new attorney recommends that you request a change in which state's law governs the trust, and ask the current court to approve transfer of control to the courts of your new state.

Understandably, you might be frustrated by what seems like starting over with your son's special needs trust, but at least you are able to accomplish the goal of maintaining his eligibility for needs-based public benefits. But wait -- when you inquire of the new attorney what services your son can expect to receive once you move, all is not rosy. She explains that Medicaid has stringent requirements regarding determinations of medical necessity for services. Even if services are authorized, in many instances availability is limited because providers do not exist in the local marketplace.

Perhaps by this time you conclude that the information you have obtained is not terribly encouraging, and you have substantial concerns. Perhaps you revisit the very idea of moving. Perhaps you decide to re-examine whether it is worthwhile maintaining long term care services through Medicaid. You may still be able to maintain eligibility for SSI and acute coverage through Medicaid. You may also have medical coverage for dependents through an employer-sponsored group health insurance plan. In either case, basic coverage may include physician's visits, prescriptions, durable medical equipment, hospitalizations and other major medical expenses. The special needs trust might then be utilized to provide for long term care expenses such as attendant and respite care. You decide to do without long term care assistance through Medicaid in the short term, understanding that you might still make the necessary changes to the trust at a later date should you decide to re-apply for Medicaid long term care services.

In the end you have learned a great deal. One of the most important things you now know is that you must do your research before moving to a new state. Part of that research project should include enlisting the assistance of an attorney with expertise in special needs planning and trust matters in the state to which you are contemplating moving. Imagine how difficult things would have been if you had not gotten information in advance -- at least now you have a game plan and some peace of mind.

Note that this scenario assumes that your son's special

needs trust was “self-settled” -- that is, that it resulted from a court proceeding involving a personal injury action or inheritance. The description would have been similar if the money had been in a trust set up as part of an estate plan, or even a pooled trust arrangement. In either of those cases, however, the precise answers might be different, and the result either more or less comfortable for you to deal with. The primary point would not change: it is important to get information about Medicaid and other public benefits programs in the state to which you are contemplating moving **before** the move

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