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## 21st Century Cures Act has passed

Both Houses of Congress have passed a “sprawling” health bill, the 21<sup>st</sup> Century Cures Act, on December 7, 2016, and President Obama signed it into law on December 13, 2016. Among the provisions are the long awaited Special Needs Trust Fairness Act in section 5007 and a section (14017) that deals with the capacity of veterans to manage money.

A disabled individual, particularly someone who is receiving SSI benefits and Medical Assistance (Medicaid), cannot have more than \$2,000 in his or her name. If that person receives a court ordered settlement, perhaps related to an accident or injury, or an inheritance or any other influx of cash, the options to maintain Medicaid eligibility are limited. There are basically two types of supplemental needs trusts which allow continued Medicaid eligibility, since such eligibility is often vital to maintaining an individual's health and providing needed assistance with care needs. One is a “first party trust” which is the preferred type of trust. However, until now, such a trust could only be established by a parent, grandparent, guardian or a court, and not by the individual. It is not clear if the word “individual” was left out intentionally or by mistake. A “third party trust” can be established by an individual but those types of trust are generally only “pay back” trusts or “pooled trusts” that limit the disabled person's ability to dispose of the funds at death.

Not every disabled individual has a parent, grandparent or guardian to assist him or her with establishing a trust. Furthermore, it should not be presumed that every disabled person is incapable of managing his or her own money and deciding how to best protect it for future needs. For instance, receipt of an inheritance from a relative who did not anticipate needing to protect money for an heir should not prevent the recipient from establishing his or her own trust to protect necessary public benefits. Many groups fought for many years for the Special Needs Trust Fairness Act and the fruits of their labors are finally here. The amendment only applies to future trusts but this is a huge boon for the disabled community.

Section 14017 amends 38 USC Chapter 55 regarding “beneficiaries' rights in mental competence determinations.” It seems to have been the practice of the Veterans' Administration (VA) to make their own determination that the veteran was not mentally competent to handle his or her own finances. This often happens in Aid and Attendance or Special Pension applications where there is a dementia diagnosis, no matter how minor, with no opportunity to refute the determination. This holds up the benefits being paid until a VA worker can meet with a representative for the veteran (usually the agent under the Power of Attorney) which can take months. In the meantime, if the veteran dies, all retroactive benefits will be lost. The new law requires notice and gives the veteran appeal rights.

There are many, many more parts of this massive bill. The FDA was granted new authority and tools to demand fewer studies from pharmaceutical and medical device companies to speed up approvals. Money was provided to the National Institutes of Health to provide research grants, mostly for research on cancer, neurobiology and genetic medicine. State grants were funded to address opioid abuse and addiction. However, funding for preventative medicine was cut down and Medicaid will no longer help pay for drugs to restore hair. Watch for more news about the 21<sup>st</sup> Century Cures Act.