

Words and Music: Implementing the Words of the Trust

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Why Language Matters

The wrong language can:

- Inadvertently cause conflict between the trustee and the beneficiary and his or her family
- Can thwart the aim of the special needs trust to provide the beneficiary with the highest possible quality of life
- Can cause problems with State Medicaid agencies and the Social Security Administration
- Could invalidate the trust

Distribution Standards

Challenging Language

No part of the principal or income of this trust may be distributed for food or shelter or to reduce, supplant or replace any public assistance benefits for which the beneficiary may be eligible through any local, state or Federal government agency. The trustee may supplement but not supplant any benefits for which the beneficiary may be eligible.

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- Does not allow TA to supplement a beneficiary's rent or food because this would reduce the amount of SSI received by the beneficiary. This could endanger the beneficiary's health and welfare.
- Does not allow TA to purchase better quality of items than provided by Medicaid (example, diapers) because this would supplant benefits. Forces beneficiary to possibly experience additional discomfort.
- Stresses relationship between beneficiary's family and TA because family may not understand constraints on distributions due to document. The justified feeling that the money is there to help the beneficiary, so why can't we buy better diapers?

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Alternative Language

I ask the Trustee to make reasonable efforts to avoid making distributions that supplant services, benefits or medical care otherwise available to the Beneficiary from governmental or private sources, or both. However, if the trustee has determined in its sole, absolute, and unfettered discretion that the provided service or benefit does not adequately meet the Beneficiary's needs, OR that the benefit to the Beneficiary from the particular trust distributions outweighs the reduction of a particular public benefit program that may be a consequence of the trust distribution, the trustee may make distributions to meet the uncovered or insufficiently covered need.

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Distribution Standards

- Allows TA make distributions which will supplement the beneficiary's rent or food, providing a better quality of life.
ISM = 1/3rd reduction in SSI payments
- Allows TA to purchase better quality medical devices and supplies contributing to a better quality of life for the beneficiary
- Allows for more flexibility in discretionary distributions
- TA can be more creative in finding solutions for their beneficiary
- Encourages family to look upon their TA as a consultant who is supportive of enhancing the beneficiary's quality of life and adds to a trusting relationship between TA, beneficiary and family

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Title search: Words and Music: Implementing the Words of the Trust

Also available as part of the eCourse

[Drafting Special Needs Trusts: Blatant Mistakes; Understanding the Meaning in Your Words; plus Drafting for Various Beneficiary Circumstances](#)

First appeared as part of the conference materials for the
9th Annual Changes and Trends Affecting Special Needs Trusts session
"SNT Language Roadmap: Understanding the Meaning in Your Words"