



BOUSQUET HOLSTEIN PLLC

# Alert

## Trusts and Estates Planning and Administration

### Special Needs Trust Fairness Act Finally Enacted into Law

Syracuse, New York

December 2016

On Tuesday, December 13, 2016, President Obama signed H.R. 34, named the "21<sup>st</sup> Century Cures Act," into law. Embedded in this legislation is the culmination of many years of work by Elder Law attorneys across the country to effectively amend the federal statute allowing for the establishment of self-settled special needs trusts for disabled individuals (otherwise known as 42 U.S.C. §1396p(d)(4)(A)). Section 5007 of this act had been independently lobbied in Congress as a separate bill entitled the "SNT Fairness Act" before it was included as a provision in this particular legislation.

The change to the federal statute is relatively simple - the words, "the individual" were added to the statutory language. This small, yet powerful change now effectively enables competent, disabled Americans who are under 65 to independently establish and fund special needs trusts. As a result, individuals who qualify will be able to protect their assets from Medicaid and SSI consideration without the need for a parent, grandparent, legal guardian or a court to establish the trust on their behalf. Prior to this legislation, the statute required a proxy to establish this particular trust, regardless of an individual's capacity. Such requirement often led to significant delays and costly court intervention merely to establish a self-settled special needs trust for individuals. This impediment for many competent individuals is now removed.

The statutory language indicates that the change to federal law is in effect immediately upon enactment so any disabled individuals who are capable of setting up such a trust should have access to this option. However, the New York State Department of Health has not yet amended its own regulatory language to conform with the federal changes as of yet. It is anticipated that this change will be accomplished in January 2017 and will likely be retroactive to the date of the federal statute. The Social Security Administration, however, issued an Emergency Message on December 13<sup>th</sup> acknowledging this statutory amendment.

Should you have any additional questions regarding special needs trusts, public benefits matters, or any other Elder Law issues that you or a loved one may be facing, please feel free to contact Bousquet Holstein PLLC. The highly competent Elder Law attorneys in our firm have dedicated themselves to serve as advocates for seniors and individuals with disabilities and we are committed to ensuring that these individuals maintain their dignity, protect their assets and families, and remain self-sufficient as long as possible.

## Bousquet Holstein Trusts and Estates Practice

*How may we be of service?*



The services of our Trusts and Estates Practice Group include estate, tax, business succession, financial and retirement planning; estate and trust administration; estate planning for families with special needs; elder law; Medicaid planning; estate and trust litigation; charitable gift planning; and representation of tax-exempt and charitable organizations.

For more information on how this legislation and NY Medicaid law impacts your planning, please contact:  
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