CHAPTER 59-08
TRUSTS FOR INDIVIDUALS WITH DISABILITIES

59-08-01. Definitions.

As used in this chapter, unless the context otherwise requires:

1. "Individual with a disability" means an individual who, before creation of a third-party special needs trust or a self-settled special needs trust for that individual's benefit, is considered to be an individual with a disability as defined in 42 U.S.C. 1382c(a)(3).
2. "Self-settled special needs trust" means a trust created by an individual with a disability after August 10, 1993, which qualifies under 42 U.S.C. 1396p(d)(4).
3. "Third-party special needs trust" means a trust that does not make an individual with a disability ineligible for publicly funded benefits while maintaining assets in that trust and which is created for the benefit of an individual with a disability and funded by someone other than the trust beneficiary, the beneficiary's spouse, a parent of a minor beneficiary, or anyone obligated to pay any sum for damages or any other purpose to or for the benefit of the trust beneficiary under the terms of a settlement agreement or judgment.

59-08-02. Third-party special needs trusts under state law.

1. A third-party special needs trust must provide for the living expenses and other needs of an individual with a disability when publicly funded benefits are not sufficient to provide adequately for those needs. A third-party special needs trust must limit distributions in a manner and for purposes that supplement or complement publicly funded benefits for an individual with a disability. A third-party special needs trust may not have the effect of replacing, reducing, or substituting for publicly funded benefits otherwise available to a beneficiary with a disability or rendering a beneficiary with a disability ineligible for publicly funded benefits.
2. This section applies to any third-party special needs trust that complies with the requirements of this chapter, regardless of the date on which the trust was created or funded. Notwithstanding any other provision of the law, this chapter does not disqualify any beneficiary of a third-party special needs trust from receiving publicly funded benefits if the trust did not disqualify that individual under previous law.

59-08-03. Self-settled special needs trusts.

The district court may authorize the creation and funding of self-settled special needs trusts.

59-08-04. Interpretation or enforcement - Reformation - Unenforceable trust provisions.

1. This chapter does not require the submission of a third-party special needs trust or a self-settled special needs trust to a court for interpretation or enforcement.
2. A third-party special needs trust may not disqualify a recipient of publicly funded benefits solely because a contingent beneficiary is named to receive the net balance of the trust estate upon the death of a beneficiary with a disability, or upon other termination of the trust.
3. The trustee or the grantor of any trust intended to be a third-party special needs trust or a self-settled special needs trust may seek court reformation of the trust to accomplish the purpose of a third-party special needs trust or a self-settled special needs trust.
4. Except for self-settled special needs trusts and third-party special needs trusts, a provision in a trust which provides for the suspension, termination, limitation, or diversion of the principal, income, or beneficial interest of a beneficiary if the beneficiary applies for, is determined eligible for, or receives publicly funded benefits is unenforceable as against the public policy of this state, without regard to the irrevocability of the trust or the purpose for which the trust was created.

59-08-05. Conflicts with other chapters.

If any provision of this chapter conflicts with chapter 59-09, 59-10, 59-11, 59-12, 59-13, 59-14, 59-15, 59-16, 59-17, 59-18, or 59-19, the provision of this chapter takes precedence.