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SENATE

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SPECIAL NEEDS TRUST FAIRNESS ACT OF 2015

—————
JULY 30, 2015.—Ordered to be printed
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Mr. HATCH, from the Committee on Finance,
submitted the following

R E P O R T

[To accompany S. 349]

The Committee on Finance, to which was referred the bill (S. 349) to amend title XIX of the Social Security Act to empower individuals with disabilities to establish their own supplemental needs trusts, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

I. LEGISLATIVE BACKGROUND

The Committee on Finance, to which was referred the bill (S. 349), to amend title XIX of the Social Security Act to empower individuals with disabilities to establish their own supplemental needs trust, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

Background and need for legislative action

Under federal Medicaid law, most trusts are counted as an asset in determining Medicaid eligibility for aged and disabled individuals and are subject to asset transfer rules. However, there are certain exceptions in current law to the general rule of counting trusts as an asset. Specifically, Medicaid does not count certain special-needs trusts and pooled trusts as assets and does not apply asset transfer rules to these trust types. This exception is commonly referred to as the “special needs trust exception.” Special needs trusts must contain assets of the disabled individual and the trust must be used to provide funding for certain expenditures that supplement Medicaid benefits, subject to certain limitations. Special needs trusts allow non-elderly individuals with disabilities to maintain their assets and their eligibility for Medicaid. When the bene-

fiary dies, the state receives the remaining proceeds of the trust equal to any amounts paid for medical assistance provided under the state Medicaid program. Special needs trusts can be established for individuals under the age of 65 who meet the statutory definition of disability (Section 1614(a)(3) of the Social Security Act). However, current law (Section 1917(d)(4)(A) of the Social Security Act) permits only parents, grandparents, legal guardians, or a court to establish a special needs trust on behalf of a non-elderly disabled individual. Individuals wanting to set up a special needs trust for themselves would have to file a petition with a court, which can take months. The committee recognizes the importance of empowering non-elderly individuals with a disability to act on their own behalf to establish a special needs trust rather than relying on others to establish a special needs trust for them, or filing a petition with a court.

II. EXPLANATION OF THE BILL

PRESENT LAW

Section 1917(d)(4)(A) of the Social Security Act, requires that special needs trusts for non-elderly individuals with disabilities can be established by parents, grandparents, legal guardians, or a court.

EXPLANATION OF PROVISION

The bill makes a technical correction to Section 1917(d)(4)(A) of the Social Security Act regarding special needs and pooled trusts under Medicaid, which are exempt from asset counting and transfer rules, to allow non-elderly individuals with disabilities to establish a special needs trust on their own behalf.

EFFECTIVE DATE

The provision is effective on the date of enactment.

III. BUDGET EFFECTS OF THE BILL

A. COMMITTEE ESTIMATES

In compliance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate, the following statement is made concerning the estimated budget effects of the revenue provisions of the of the “Special Needs Trust Fairness Act of 2015” as reported.

S. 349 would reduce the amount of time it would take to establish special needs trusts since individuals would no longer have to file a petition with a court to do so. In turn, individuals who establish trusts independently would receive several more months of Medicaid and SSI benefits. Accordingly, this bill would increase direct spending by \$8 million over the 2015–2015 period. That amount includes \$5 million for additional months of Medicaid coverage and \$3 million for additional months of SSI benefits. Because enacting the bill would affect direct spending pay-as-you-go procedures apply. Enacting the bill would not affect revenues.

B. BUDGET AUTHORITY

Budget authority

In compliance with section 308(a)(1) of the Congressional Budget and Impoundment Control Act of 1974, the Committee states that no provisions of the bill as reported involve new or increased budget authority.

Tax expenditures

In compliance with section 308(a)(1) of the Budget Act, the Committee states that the bill does not involve increased tax expenditures.

C. CONSULTATION WITH CONGRESSIONAL BUDGET OFFICE

In accordance with section 403 of the Budget Act, the Committee advises that the Congressional Budget Office has submitted a statement on the bill.

S. 349—Special Needs Trust Fairness Act of 2015

Summary: S. 349 would permit non-elderly individuals with disabilities to establish their own special needs trusts without having to file a petition with a court, which CBO expects would reduce the amount of time before such a trust is established. Because assets held in such trusts are not counted toward Medicaid or Supplemental Security Income (SSI) asset tests, effectively lowering the eligibility threshold for those programs, enacting the bill would allow some Medicaid and SSI benefits to be drawn sooner.

CBO estimates that the bill would increase direct spending by \$8 million over the 2016–2025 period. Because enacting the legislation would affect direct spending; pay-as-you-go procedures apply. Enacting the bill would not affect revenues.

S. 349 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA).

Estimated cost to the Federal Government: The estimated budgetary impact of S. 349 is shown in the following table. The costs of this legislation fall within budget function 550 (health).

| | By fiscal year, in millions of dollars— | | | | | | | | | | | | 2016– 2020 | 2016– 2025 | |
|------------------------------|-----------------------------------------|------|------|------|------|------|------|------|------|------|---|---|---------------|---------------|--|
| | 2016 | 2017 | 2018 | 2019 | 2020 | 2021 | 2022 | 2023 | 2024 | 2025 | | | | | |
| CHANGES IN DIRECT SPENDING | | | | | | | | | | | | | | | |
| Medicaid | | | | | | | | | | | | | | | |
| Budget Authority | * | * | * | * | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 2 | 5 | | |
| Estimated Outlays | * | * | * | * | 1 | 1 | 1 | 1 | 1 | 1 | 2 | 5 | | | |
| Supplemental Security Income | | | | | | | | | | | | | | | |
| Budget Authority | * | * | * | * | * | * | * | * | * | * | 1 | 3 | | | |
| Estimated Outlays | * | * | * | * | * | * | * | * | * | * | 1 | 3 | | | |
| Total Changes | | | | | | | | | | | | | | | |
| Budget Authority | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 3 | 8 | | | |
| Estimated Outlays | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 3 | 8 | | | |

Note: * = Less than \$500,000.

Basis of estimate: S. 349 would permit non-elderly individuals with disabilities to establish their own special needs trusts without having to file a petition with a court. A special needs trust is a specific type of trust defined in Medicaid statute that can only be established on behalf of non-elderly individuals with disabilities. As-

sets held in a special needs trust are not counted toward Medicaid or Supplemental Security Income (SSI) asset tests.

Under current law, a special needs trust can only be established by parents, grandparents, legal guardians, or a court. Individuals wanting to set up special needs trusts for themselves would have to file a petition with a court, which can take many months. CBO expects this bill would reduce the amount of time it would take to establish special needs trusts since individuals would no longer have to file a petition with a court to do so. In turn, individuals who establish trusts independently would receive several more months of Medicaid and SSI benefits. CBO does not expect the bill to increase the number of special needs trusts established.

Based on information from the Department of Health and Human Services, the Social Security Administration, and other stakeholders, CBO estimates that permitting qualified individuals to establish their own special needs trusts would cost about \$8 million over the 2015–2025 period. That amount includes \$5 million for additional months of Medicaid coverage and \$3 million for additional months of SSI benefits.

Pay-As-You-Go considerations: The Statutory Pay-As-You-Go Act of 2010 establishes budget-reporting and enforcement procedures for legislation affecting direct spending or revenues. The net changes in outlays that are subject to those pay-as-you-go procedures are shown in the following table.

CBO Estimate of Pay-As-You-Go Effects for S. 349, as ordered reported by the Senate Committee on Finance on June 24, 2015

| | By fiscal year, in millions of dollars— | | | | | | | | | | | | | | 2015– 2020 | 2015– 2025 |
|-------------------------------------|-----------------------------------------|------|------|------|------|------|------|------|------|------|------|---|---|---|---------------|---------------|
| | 2015 | 2016 | 2017 | 2018 | 2019 | 2020 | 2021 | 2022 | 2023 | 2024 | 2025 | | | | | |
| | NET INCREASE IN THE DEFICIT | | | | | | | | | | | | | | | |
| Statutory Pay-As-You-Go Impact | 0 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 3 | 8 | | |

Intergovernmental and private-sector impact: S. 349 contains no intergovernmental or private-sector mandates as defined in UMRA. The bill would result in increased spending for Medicaid. Since a portion of Medicaid is paid for by state governments, CBO estimates that state spending on the program would increase by about \$3.8 million over the 2016–2025 period. Because states have broad flexibility to alter optional benefits and eligibility to offset such costs, the increased spending would not result from an intergovernmental mandate as defined in UMRA.

Estimate prepared by: Federal Costs: Andrea Noda and Daniel Hoople; Impact on State, Local, and Tribal Governments: J’nell Blanco Suchy; Impact on the Private Sector: Amy Petz.

Estimate approved by: Holly Harvey, Deputy Assistant Director for Budget Analysis.

IV. VOTES OF THE COMMITTEE

In compliance with paragraph 7(b) of rule XXVI of the Standing Rules of the Senate, the Committee states that, with a majority present, the “Special Needs Trust Fairness Act of 2015” as modified, was ordered favorably reported on June 24, 2015 as follows:

Final Passage of the “Special Needs Trust Fairness Act of 2015”—as modified, approved by voice vote.

V. REGULATORY IMPACT AND OTHER MATTERS

A. REGULATORY IMPACT

Pursuant to paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee makes the following statement concerning the regulatory impact that might be incurred in carrying out the provisions of the bill.

Impact on individuals and businesses, personal privacy and paperwork

The bill is not expected to impose additional administrative requirements or regulatory burdens on individuals. The bill is expected to reduce administrative requirements and regulatory burdens on some businesses.

The provisions of the bill do not impact personal privacy.

B. UNFUNDED MANDATES STATEMENT

This information is provided in accordance with section 423 of the Unfunded Mandates Reform Act of 1995.

The Committee has determined that the bill does not contain any private sector mandates. The Committee has determined that the bill contains no intergovernmental mandate.

VI. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In the opinion of the Committee, it is necessary in order to expedite the business of the Senate, to dispense with the requirements of paragraph 12 of rule XXVI of the Standing Rules of the Senate (relating to the showing of changes in existing law made by the bill as reported by the Committee).

