386B.13-120 Definitions for section -- Trust for beneficiary with disability.

(1) As used in this section:

(a) "Beneficiary with a disability" means a beneficiary of a first trust who the special needs fiduciary believes may qualify for governmental benefits based on disability, whether or not the beneficiary currently receives those benefits or is an in individual who has been adjudicated incompetent;

(b) "Governmental benefits" means financial aid or services from a state, federal, or other public agency;

(c) "Special needs fiduciary" means, with respect to a trust that has a beneficiary with a disability:

1. A trustee or other fiduciary, other than a settlor, that has discretion to distribute part or all of the principal of a first trust to one (1) or more current beneficiaries;

2. If no trustee or fiduciary has discretion under subparagraph 1. of this paragraph, a trustee or other fiduciary, other than a settlor, that has discretion to distribute part or all of the income of the first trust to one (1) or more current beneficiaries; or

3. If no trustee or beneficiary has discretion under subparagraphs 1. and 2. of this paragraph, a trustee or other fiduciary, other than a settlor, that is required to distribute part or all of the income or principal of the first trust to one (1) or more current beneficiaries; and

(d) "Special needs trust" means a trust that the trustee believes would not be considered a resource for purposes of determining whether a beneficiary with a disability is eligible for governmental benefits.

(2) A special needs fiduciary may exercise the decanting power in KRS 386B.13-100 over the principal of the first trust as if the fiduciary had authority to distribute principal to a beneficiary with a disability subject to expanded distributive discretion if:

(a) A second trust is a special needs trust that benefits the beneficiary with a disability; and

(b) The special needs fiduciary determines that exercise of the decanting power will further the purposes of the first trust.

(3) In an exercise of the decanting power under this section, the following rules apply:

(a) Notwithstanding KRS 386B.13-100(3)(b), the interest in the second trust of a beneficiary with a disability may:

1. Be a pooled trust as defined by Medicaid law for the benefit of the beneficiary with a disability under 42 U.S.C. sec. 1396p(d)(4)(A), as amended; or

2. Contain payback provisions complying with reimbursement requirements of Medicaid law under 42 U.S.C. sec. 1396p(d)(4)(A), as amended;

(b) KRS 386B.13-100(3)(c) shall not apply to the interests of the beneficiary with a disability; and

(c) Except as affected by any change to the interests of the beneficiary with a disability, the second trust, or if there are two (2) or more second trusts, the second trusts in the aggregate, shall grant each other beneficiary of the first trust beneficial interests in the second trust which are substantially similar to the beneficiary's beneficial interests in the first trust.

Effective: July 15, 2026

History: Created 2026 Ky. Acts ch. 134, sec. 98, effective July 15, 2026.