

The Chronically Ill Eligible Designated Beneficiary

Take-Away: It may be much easier, and cheaper, for a beneficiary to be certified as *chronically ill* than *disabled*, if the goal is to have the beneficiary classified as an Eligible Designated Beneficiary (EDB) for *stretch* distributions from an inherited IRA.

Background: We know that the SECURE Act gave us a new category of designated beneficiary, called the *eligible designated beneficiary*, or EDB. Two of those new categorized beneficiaries, a *disabled* beneficiary and a *chronically ill* beneficiary, are entitled to *stretch annual* distributions from an inherited IRA over that EDB's life expectancy. There is, though, a major difference between those two new EDB classifications. A *disabled* beneficiary is one with a disability or serious medical condition as the Social Security Administration (SSA) defines *disabled*. A *chronically ill* EDB does not have to meet to the SSA's rigorous definition of *disability*. [IRC 7702B(c)(2).]

Chronically Ill Beneficiary: In 2024 the IRS finalized its Regulations on a *chronically ill* EDB certification. The Regulations waived the requirement to submit medical certifications furnished to an IRA custodian. The documentation is only needed if there is a subsequent audit (to address privacy and HIPAA concerns.) What should be noted is that while this Regulation waiver now exists that the IRA custodian will not have its own rules to follow; it is highly unlikely that the IRA custodian will willingly accept verbal instructions to set up a *stretch* lifetime distribution without additional proof of the *chronically ill* certification.

Chronically Ill "Test:" Practically speaking there are three tests under the statute that can be used to establish an individual's *chronically ill* status. Probably the *substantial supervision* 'test' is the one that is most likely that will be used on behalf of the beneficiary. This 'test' focuses on the mental capacity and safety of the beneficiary rather than on the ability of the beneficiary to perform tasks. A beneficiary who is likely to meet this 'test' is one who has a condition such as autism, traumatic brain injury, intellectual disability, or early-onset dementia. These individuals often do not meet the SAA's definition of *disability*, particularly if they can engage in some form of employment yet they clearly need substantial supervision in their daily life to protect their health and safety. The *chronically ill* definition does not require that the beneficiary be incapable of all meaningful activity, e.g., they can hold a job and still qualify. The focus instead is on the beneficiary's need for supervision and the degree to which he/she depends on others for protection- not merely for the other's convenience or preference.

Chronically Ill Certification: A *chronically ill* EDB is an individual who must receive a formal certification from a licensed health care practitioner, e.g., a physician, registered

professional nurse, or a licensed social worker. This certification must reflect the beneficiary's condition as it existed on the date of the IRA owner's death, and it must be used within a 12-month period after the certification is issued. The Final Regulations note that this certification need not be 'overly detailed' but probably it would be best to over-explain the beneficiary's diagnosis, the nature of his/her functional limitations, the level of supervision or assistance that the beneficiary requires daily, and how those facts support and satisfy the eligibility 'test' the statute requires to be met.

- **Aside:** A word of caution. Leave it to Congress to use a different, more challenging, set of rules to establish a *chronically ill certification* if the EDB is for qualified plan distributions rather than distributions from an IRA. Suffice it to say that if the EDB is *chronically ill*, it might be best to roll the funds from the qualified plan into an IRA, which then uses a slightly easier EDB eligibility standard to meet.

Substantial Supervision: There is no formal definition for this key requirement. Rather, it is a judgment call. The certifying practitioner will apply his/her clinical judgment to the statute's standard; the strength of the certification will come down to the quality of the facts that support it. Describing the nature of the beneficiary's need for supervision along with the frequency when that supervision is required, and the risks faced by the beneficiary if there were no supervision, will all strengthen the certification.

Chronically Ill v. Disabled: In contrast to the *chronically ill* substantial supervision 'test' the SSA *disability EDB* determination process is much more time-consuming and difficult to meet. The SSA *disability EDB* determination requires extensive medical documentation, which in turn leads to long wait times, hair-trigger denials, and appeals (with lawyers and health care professionals' fees.) The *chronically ill EDB* determination process relies on the certification from a treating professional practitioner, often with a compressed timeline easily met if the certification and supporting documentation are vetted in advance of submission.

It Is Not a 'One and Done' Process: Assume that a certification is obtained and filed with the IRA custodian and the EDB begins to take annual *stretch* distributions using his/her life expectancy. Three years later that *stretch* distribution is reported on the beneficiary's Form 1040. The IRS might choose only then to audit that 1040 and only then look closely at the *chronically ill* certification and the documentation that supported it (at that time.) It would be wise to annually update the documentation that supported the initial *chronically ill* certification/determination, probably with a letter from the beneficiary's treating professional of the beneficiary's continuing need for substantial supervision and document recent examples why that supervision continues to be necessary to protect the EDB's health and safety.

Conclusion: There are obvious advantages to avoiding the SECURE Act's 10-year distribution rule if possible. Perhaps underutilized is the *chronically ill* eligible designated beneficiary certification, which may be much easier, and more quickly obtained, than seeking the *disabled* beneficiary EDB designation.