

HEMS: the four-word rule in many trusts

Health, education, maintenance, and support. What it means, why families use it, and what it leaves out.

When you leave money in a trust for someone, the trust has to tell the trustee when they can hand money out. One of the most common answers is a standard called HEMS: the trustee may distribute money for the beneficiary's **health, education, maintenance, and support**.

What each word covers

Word	Typical examples
Health	Medical and dental bills, insurance premiums, therapy, prescriptions, long-term care
Education	Tuition, books, housing while in school, trade school, often private school
Maintenance and support	Rent or a mortgage payment, groceries, utilities, transportation, reasonable living costs in line with how the beneficiary has been living

What usually falls outside HEMS: a sports car, a luxury vacation, seed money for a risky venture. A trustee can still say yes to some of those if your trust gives broader permission.

Why families pick it

It gives the trustee a clear yardstick. Your brother-in-law serving as trustee doesn't have to guess what you meant. He asks whether the request is for health, education, or living costs, and decides.

It lets a beneficiary serve as their own trustee. This is the tax reason. Under federal tax rules, a trustee's power to distribute to themselves limited by HEMS is an "ascertainable standard," so the trust assets generally aren't counted in that trustee-beneficiary's own taxable estate. That's why you'll often see a surviving spouse named as trustee of a trust for their own benefit, limited by HEMS.

It can steady the money for young adults. Paired with staged distributions (for example at 25, 30, and 35), HEMS lets the trustee cover school and rent in the meantime without handing over the whole account.

Trade-offs to think about

- **It's narrower than "best interests."** Some trusts let an independent trustee distribute for any purpose they think is in the beneficiary's best interest. That's more flexible, and it usually works best when the trustee isn't also the beneficiary.
- **"Support" follows a standard of living.** Trustees generally read it in light of the lifestyle the beneficiary is used to, which can be generous or tight depending on the family.

- **It isn't for special needs.** A beneficiary on SSI or Medicaid usually needs a special needs trust with different language, since HEMS payments for food and housing can reduce benefits.
- **It isn't creditor protection by itself.** Protection from a beneficiary's creditors or divorce depends on other trust terms and state law.

Questions to think through before your Legacy Plan meeting

- ☐ Will the person managing the money also be the one receiving it?
- ☐ Do you want the trustee to be able to say yes to a first home, a wedding, or starting a business?
- ☐ Does anyone who might inherit receive, or may later need, government benefits?

Sources: Internal Revenue Code Section 2041 and Treasury Regulation 20.2041-1(c)(2) (ascertainable standard). ClearMind Capital is not a law firm and does not give legal or tax advice. How your documents word distribution standards is your decision; an estate planning attorney can advise you on the choice.