

A Special Needs Trust (SNT), or supplemental needs trust, is a legal vehicle enabling assets to be held on behalf of someone with disabilities without affecting their eligibility for means-tested benefits. Assets held by the trust are not considered a “resource” when qualifying for the type of government benefits that are restricted to people with “resources” below a certain level, such as Social Security Income (SSI) and Medicaid. An SNT provides for the maintenance of an individual with disabilities, by supplementing, rather than replacing, government benefits. A beneficiary will keep government benefits and still be able to access their Special Needs Trust. Most beneficiaries of a Special Needs Trust are eligible for, or seeking eligibility for, Supplemental Security Income (SSI) payments. In many states, receipt of SSI payments automatically qualifies one for Medicaid. Many other government programs explicitly rely on SSI eligibility rules.

In determining SSI eligibility, a single person cannot have more than \$2000 in available assets to qualify for SSI. Some types of assets are not counted when determining eligibility. Examples of “non-countable” assets include a beneficiary’s home, one automobile, household furnishings, prepaid burial amounts up to \$1500 set aside for funeral expenses, or life insurance in that amount.

For Special Needs Trusts, the term “disability” refers to the standard used to determine eligibility for Social Security Disability Insurance (SSDI) or Supplemental Security Income (SSI) benefits: the inability to perform any substantial, gainful employment. “Incapacity” of a beneficiary is important to consider as well. Not every disability will result in an incapacity finding, and it is possible for a Special Needs Trust beneficiary to be disabled, but not incapacitated. Special Needs Trusts are Irrevocable, whereas no one has reserved the power to revoke the trust.

A **First Party Special Needs Trust**, or self-settled Special Needs Trust, is created with assets that belong to an individual with disabilities. Examples of funds in a First Party Special Needs Trust include a personal injury settlement or unplanned inheritance. A person creating a First Party Special Needs Trust must be under age 65 at the time that the trust is established. Funds remaining in a First Party Trust are subject to a Medicaid payback. Upon the death of the beneficiary, funds remaining in the trust must first be used to reimburse Medicaid for services to that individual, paid by Medicaid, before any remaining funds can be distributed to anyone else.

A **Third-Party Special Needs Trust** is created with assets from a donor. Examples of a donor are parents, grandparents, other relatives, or friends of the beneficiary. A Third-Party Special Needs Trust is often used to hold an inheritance or gift. A Third-Party Special Needs Trust does not have a Medicaid payback. Upon the death of the beneficiary, there is no requirement to use residual funds to reimburse Medicaid for services provided to the individual. The donor of the funds may designate how remainder funds are to be allocated.

A **Pooled Special Needs Trust** is a good option for small estates or in instances where it is difficult to identify a trustee. Unlike PLAN of MA & RI, many financial institutions do not handle small Special Needs Trusts and charge fees that are not cost-effective for small trusts. A Pooled SNT is an option to give families access to highly skilled trustees. Under OBRA-93 regulations, Pooled Trusts or (d)(4)(c) were established and are required to be administered by a non-profit 501(c)3. The non-profit develops a Master Trust which serves as an “umbrella” trust document for every beneficiary who enrolls by signing and executing a Joinder Agreement. Every beneficiary in a Pooled SNT has their own sub account. Funds are “pooled” for investment purposes only. Pooled SNT’s can be either First Party or Third Party.

Future Funded Special Needs Trusts are usually funded by a donor's Estate.

There are Government Benefits Programs that are available to assist individuals with special needs. These programs vary from state to state. Some of the major programs are:

Medicaid provides basic medical care to low-income individuals. Most states also have “waiver” Medicaid programs covering residential, day care, career, and other services.

Supplemental Security Income (SSI) provides funds for food and shelter to individuals with disabilities. To qualify, a person must have less than \$2,000 in “countable assets.”

Social Security Disability Insurance (SSDI) requires that participants have been unable to work for at least a year due to their disability. Benefits are based on the individual’s income history and the number of quarters they have worked and contributed to the program.

Disabled Adult Child (DAC) requires a determination that the onset of the participant’s disability occurred before age 22, that the person is unmarried, and that the participant has a parent who has a disability, is retired, or deceased and who qualifies for Social Security himself/herself.

Supplemental Nutrition Assistance Program (SNAP/Food Stamps) has eligibility guidelines similar to SSI.

Special Needs Trusts (SNTs) have traditionally been used to accumulate resources without affecting eligibility for benefits. The Federal government empowered states with ABLÉ accounts, a savings tool that also enables individuals and their families to set aside funds without endangering important benefits. ABLÉ accounts are limited to the amount that can be deposited into them annually and benefits can be suspended upon reaching a certain dollar amount. Special Needs Trusts do not have limits of deposit. ABLÉ accounts are subject to a Medicaid Clawback Provision and IRS Regulations. Special Needs Trusts can be used to fund ABLÉ accounts, which allows them to work well together.

The Planned Lifetime Assistance Network of Massachusetts and Rhode Island, Inc. (PLAN) is a non-profit, professional trustee organization proudly serving people with all types of disabilities-whether due to illness, injuries, or age. For the past 52 years, our team of licensed social workers, attorneys, and investment experts have helped people with significant challenges make effective use of the financial resources available to them in-order to maintain a comfortable, healthy, and fulfilling life. Feel free to reach out to us anytime.

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