

**Jimmy, Age: 19**  
**Disability: Traumatic brain injury and paraplegia.** A couple of years ago, Jimmy was in an automobile accident. With the guidance of his personal injury attorney and a Special Needs Alliance member lawyer, a special needs trust was established for Jimmy, and a corporate trustee was appointed to administer it. Jimmy continues to live with his mother who serves as his primary caregiver. She is compensated by the trust to provide his specialized care.

### How The Special Needs Alliance Helped.

Had the funds not been deposited in this trust, Jimmy would have been disqualified from receiving essential government programs including Supplemental Security Income (SSI) cash benefits and Medicaid. Furthermore, his mother would no longer be able to earn her living as his primary caregiver.

The trust has since paid for Jimmy's therapeutic treatments, the construction of a backyard swimming pool on the recommendation of his physical therapist, the purchase of a handicap-equipped vehicle to transport Jimmy to and from his medical and therapy appointments, as well as other special equipment to meet his needs. Although it may not be enough to last a lifetime, the hope of Jimmy's family is to use the trust to supplement his public benefits – and maximize his rehabilitative potential.

### The Problem

If an award from a personal injury case is paid to a plaintiff receiving certain public benefits – typically SSI, Medicaid and Section 8 Housing – that person will lose those benefits. Frequently, the award will be exhausted quickly to pay for medical expenses that otherwise would have been paid by Medicaid. A personal injury lawyer may be liable for malpractice and may also be guilty of an ethics violation if options to

maximize qualifications for public benefits are not considered.

### The Solution

In 1993, Congress authorized the establishment of self-settled special needs trusts for this situation. The award is placed in the trust and the trustee uses the funds for the disabled plaintiff's special needs, and the plaintiff's public benefits – particularly SSI and Medicaid – are protected.

### Federal and State Law

#### Federal Law

Special needs trusts are authorized at 42 U.S.C. § 1396p(d)(4)(A). The requirements are as follows:

- The trust must be funded with assets of the individual (the award).
- The individual must be under 65 years of age.
- The individual must be disabled.
- The trust must be “for the sole benefit of” the disabled beneficiary.
- The trust must be established by a

parent, grandparent, legal guardian or a court.

- The state that paid medical assistance on behalf of the individual must be reimbursed from the trust upon death.

The Foster Care Independence Act of 1999 spells out additional provision pertaining to the establishment and administration of these trusts. If the plaintiff is receiving SSI, the Social Security Administration must approve the trust.

#### State Law

State Medicaid agencies also regulate the special needs trusts, and those regulations must be consulted and followed. Many states require that the Medicaid agency also approve the trust.



*Special needs require special lawyers.*

**Special Needs Alliance members are available nationwide.**

To contact a member in your area, call **877-572-8472**, or visit us online at **[www.specialneedsalliance.com](http://www.specialneedsalliance.com)**.



## Providing the best quality of life requires informed decisions.

The best way to provide your special needs child with compassionate care and a comfortable life is to support your legal and financial decisions with reliable information and proven expertise. That's why America's finest disability lawyers have combined their talents to create the Special Needs Alliance.

As lawyers in the field of Disability and Public Benefits Law, we help to enhance your child's quality of life. Every member of the alliance has the resources and legal expertise to help you maintain public benefits for your child and develop effective estate plans that protect your assets.

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# Special Needs Trusts

for Litigation Proceeds



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