

# Supplemental Needs Trusts

## How They Can Help Your Child with Special Needs

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If your child has a disability and is expected to need government benefits to help support her during her lifetime, then a supplemental needs trust may be appropriate.

### For Starters

A supplemental needs trust (SNT) or special needs trust, is a trust which preserves your child's eligibility for needs-based government benefits such as Medicaid and Supplemental Security Income (SSI). Your child is considered the trust's beneficiary for whose benefit the trust is established. Because your child does not own the assets in the trust, she can remain eligible for government benefit programs that have asset limits. A few examples of what can be paid from the trust include medical expenses not covered by Medicaid, special therapies, recreational and cultural experiences, vehicles, clothing, sometimes food and shelter, and, for the most part, any services or items that enrich your child's life.

### Types of Trusts

Generally, there are two types of supplemental needs trusts: first party and third party.

A first-party supplemental needs trust is funded with assets or income that belong to your child. In order for the assets of this type of trust not to count for Medicaid or SSI purposes, federal law requires that your child must be under the age of 65 when the trust is created and funded; the trust must be irrevocable and provide that Medicaid will be reimbursed upon your child's death or upon termination of the trust, whichever occurs first.

Also, your child must be classified as disabled by the Social Security Administration and the trust must be administered for your child's primary benefit. Typical funding comes from child support, a personal injury settlement, or an outright inheritance from a well-meaning family member who did not understand that such a gift could disqualify your child from benefits.

A third-party supplemental needs trust is funded with assets belonging to a person other than your child. In fact, no assets belonging to your child may ever be used to fund the trust. Third party SNTs are an ideal estate planning vehicle for you as a parent or other family members and friends to leave an inheritance to your child.



One of the greatest worries for parents is how their child with disabilities will fare after they pass away. Not only will a third party SNT shelter an intended inheritance, it can provide for your child's lifelong needs if funded with sufficient assets and managed properly. With third party SNTs, there is no Medicaid pay-back required upon your child's death; rather, the person creating the trust decides how the remaining assets are distributed.

### Other Considerations

With any supplemental needs trust, the trustee must be given absolute control over the distribution of the trust assets. Your child cannot demand distributions from the trust. Nor can your child have the authority to revoke or amend the trust; otherwise, the assets are counted as an available resource to your child and she would lose her government benefits. Further, the trustee should never give cash outright to your child because this also would cause a reduction or loss of benefits.

Thoughtful consideration should also be given to the choice of trustee. In choosing a trustee, consider the potential trustee's ability to be sensitive to your child's disabilities; actively monitor any services provided; aggressively advocate for all benefits; and

prudently invest trust assets. A trustee can be your child's guardian, if your child requires a guardian, family member, close friend, and/or a professional corporate trustee. More than one trustee can serve at any given time. It is common to have both a professional and an individual serving as trustees together.

Supplemental needs trusts are complex. The language used in supplemental needs trusts can vary greatly from one trust agreement to another and from state to state. It is essential for trustees to understand the terms in the written trust agreement. A legal professional experienced in special needs planning can ensure that the trust document meets the needs of your child, the person who is funding the trust, and the trustee who is administering the trust.

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