

How a Special Needs Trust Works to Protect Seniors or Special Needs Beneficiaries

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Elderly, special needs, and disabled persons may depend on public benefits programs such as Medicaid, Special Assistance, or Supplemental Security Income (SSI) to assist with healthcare, assisted living, skilled nursing care, support, and other needs. These programs are “means tested,” meaning that they have strict asset and/or income limits for applicants, and ongoing limits for beneficiaries supported by these programs.

A Spike in Assets May Endanger an Applicant’s or Beneficiary’s Medicaid or SSI Status

If Medicaid or SSI applicants or beneficiaries experience a spike in assets from sources such as a personal injury award or other legal award, a child support award, monetary gifts or support donations from relatives or others, or inheritance bequests, their Medicaid or SSI status may be threatened. An applicant may be denied access to Medicaid or SSI until the windfall is spent down. Beneficiaries already in the programs may have their benefits terminated until the windfall is spent down, or a penalty has been paid (if the assets are gifted elsewhere).

Special Needs Trusts

Special Needs Trusts (SNTs), or “Supplemental Needs Trusts,” are designed to protect trust assets of Medicaid or SSI recipients, making them non-countable to Medicaid or SSI. SNTs were specifically created by federal law, which provides classifications of trusts that can benefit applicants and beneficiaries without triggering asset restriction limits or penalties.

Federal statute 42 U.S.C. § 1396p(d) provides for two types of SNTs: “Third Party SNTs” and “Testamentary SNTs.” Federal statute 42 U.S.C. 1396p(d)(4) carves out three additional types of SNTs: “Self-Settled D4A SNTs,” “D4C Pooled SNTs,” and “Sole Benefit SNTs.”

SNTs represent a federally protected “safe harbor” for keeping assets directed to elderly, special needs, or disabled persons from disrupting their Medicaid or SSI benefits.

Supplemental Needs

Special needs trusts are set up to supplement, not replace, government benefits. Funds placed in special needs trusts may be used to provide for supplemental needs, such as the following:

- Medical, psychological, or dental treatment;
- Private rehabilitation;
- Educational training;
- Pharmaceuticals/drugs;
- Home care;
- Personal care and living expenses;
- Medical equipment;
- Nutrition, and food supplements;
- Automobile or van expenses; adaptive modification expenses;
- Adaptive equipment;
- Enrichment items and activities;

- Electronic devices, radios, televisions, audio, video, and computer equipment;
- Recreational opportunities, trips, visits to family or friends;
- Health insurance premiums and deductibles;
- Life insurance premiums;
- Purchase and maintenance of a primary residence for the elderly, special needs, or disabled individual.

TESTAMENTARY SNTs

1. Special Needs Child: A parent of a special needs child commonly wants to provide for that child in a will or trust. But if the special needs child is using Medicaid or SSI, or may potentially need Medicaid, SSI, or other means-tested benefits later in life, assets left by the parent for the child in a standard will or trust could disqualify the child from future public benefits.

A testamentary SNT allows a parent (or anyone else) to create a special needs trust which is a part of the parent’s will, or part of a parent’s trust, to benefit the special needs child while protecting that child’s access to public benefits. The word “testamentary” means that the SNT for the child does not go into effect until the parent passes away.

2. Senior Spouse: A senior’s spouse who has been diagnosed with a progressive, disabling illness (such as a dementia) may more likely need future institutional or home care supported by Medicaid or Special Assistance, or may already be receiving benefits from such means-tested programs. In these cases, a senior should leave any asset bequests to his or her ill spouse within a testamentary SNT (part of the senior’s will) for that ill spouse. This ensures that assets left behind for the ill spouse will not disrupt the public benefits that the ill spouse may require for his or her ongoing care.

When deciding whether or not to add an SNT to a will in order to benefit an ill senior spouse, it is best to err on the side of caution. If the SNT is later not needed, the trustee can use discretionary language (which can be inserted into the SNT) to benefit the senior just like a normal trust, so that the trustee will not be limited by the supplemental benefit language of the SNT.

Testamentary SNT Characteristics:

- Used for estate planning; becomes active at the death of the grantor;
- Revocable prior to the death of the grantor; irrevocable after the death of the grantor;
- SNTs for children or other non-spouse beneficiaries may be placed into either a will or another trust;
- An SNT for a spouse must be placed within a will;
- No government payback provision; successor beneficiaries can be any persons or entities.

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SELF-SETTLED (FIRST-PARTY) D4A SNTs

A "self-settled" (first-party) D4A SNT becomes active during the lifetime of the grantor who sets up the SNT. The D4A trust is designed to hold funds legally titled in the disabled person's name (although third party funds may be also added to the trust), or to be received by the disabled person.

D4A SNT Characteristics:

- May be set up by the disabled individual, a parent, grandparent, guardian, or court;
- Irrevocable;
- May hold personal injury or lawsuit awards, child support, inheritance, the disabled individual's personal funds, or other funds;
- Beneficiary must be under age 65 when the trust is created;
- New funds which flow into the trust are not shielded from Medicaid or SSI beyond the beneficiary's age of 65;
- A disabled person applying for Medicaid or SSI may spend down assets by placing them in a D4A SNT;
- After the beneficiary dies, the state agency that benefitted the disabled individual must be paid back with any remaining assets, to reimburse for that individual's care;
 - a. If funds remain after agency payback, they may be distributed to successor beneficiaries.

D4C POOLED SNTs

A D4C Pooled SNT is set up by a non-profit organization, which serves as trustee. The funds of all collected beneficiaries are pooled together, but separate accounting is provided for each individual beneficiary. D4C Pooled SNTs are important because they may be used by a special needs or disabled person of any age.

Non-profit organizations in North Carolina that operate D4C Pooled SNTs for disabled individuals and who serve as professional trustees for SNTs include:

- Life Plan Trust
- Corporation of Guardianship

D4C Pooled SNT Characteristics:

- May be set up by the disabled individual, a parent, grandparent, guardian, or court;
- Irrevocable;
- May be used by a disabled person of any age, except that the beneficiary must be disabled as defined by the Social Security Administration before reaching age 65;
- The pooled trust agreement language is provided by the non-profit trustee organization;
- At the death of the beneficiary, the non-profit trustee organization may retain up to 50% of the

remaining trust principal;

- a. The state agency that benefitted the disabled individual then receives the other remaining percentage of the trust principal, if needed, to reimburse for the beneficiary's care;
- b. Any funds remaining after the state care reimbursement has been paid may be distributed to the beneficiary's relatives, depending on the language within the non-profit trustee organization's trust agreement.

THIRD-PARTY SNTs

Third-party SNTs are formed with the funds of a third party (such as a parent or grandparent) to provide for a beneficiary's supplemental needs, without a state payback provision.

Third-Party SNT Characteristics:

- Set up by a third party, such as a parent or grandparent, to benefit a special needs, disabled, or elderly individual either using or potentially needing Medicaid or SSI;
- SNT may be either revocable or irrevocable during the lifetime of the grantor, and is irrevocable after the death of the grantor;
- No beneficiary age requirements;
- No state agency payback requirements; successor beneficiaries can be anyone, or any entity.

SOLE BENEFIT SNTs

A sole benefit SNT is normally used by a third party who himself (or herself) wants to spend down to qualify for Medicaid or SSI. The trust must provide its "sole benefit" to another person who is disabled. As an example, an elder wishing to spend down to qualify for Medicaid coverage of nursing home costs could place his or her assets into a sole benefit trust in order to benefit a disabled child or grandchild. Assets placed into this type of trust by the grantor become non-countable with respect to the grantor for Medicaid, but still benefit the disabled beneficiary.

Sole Benefit SNT Characteristics:

- Set up by a grantor wanting to spend down to qualify for Medicaid or SSI;
- Trust benefits the grantor's blind or disabled child of any age, or another disabled person under age 65;
- Grantor is not penalized by Medicaid or SSI for the trust transfer to the disabled person;
- After the beneficiary dies, the state agency that benefitted the disabled individual must be paid back with any remaining assets for that individual's care;
 - a. If funds remain after agency payback, they may be distributed to successor beneficiaries.

Setting up a special needs trust may be the best way to financially protect an elderly, special needs, or disabled individual. Because the law in this area is complex, it is best to consult an elder law or special needs attorney for advice.



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