

Special or supplemental needs trusts (SNT) preserve assets from litigation

recovery, support funds provided by family, or probate proceeds for the disabled, incompetent, or minor individual. A properly drafted SNT will allow the recipient to continue to receive Supplemental Security Income (SSI) and Medicaid benefits. As the basic eligibility requirements for both SSI and Medicaid are similar by state, special needs trusts can usually be written to conform with both programs in any state.

There are two varieties of SNTs: those “self-funded” by the recipient or spouse, and those funded by a third party, such as a parent or other relative.

In order to allow or maintain SSI eligibility, the self-funded SNT must:

1. Be irrevocable
2. Be created or established by a grandparent, parent, court, or guardian
3. Be for the sole benefit of the recipient under a Social Security-defined disability
4. Not allow the recipient to have any control over the trustee or distributions
5. Be funded by the recipient or spouse before age 65
6. Limit distributions to supplemental needs
7. Pay back the state Medicaid agency for benefits received upon the death of the recipient, and if any assets remain, then to a successor beneficiary named by the trust creator

There is also a type of self-funded trust for SSI recipients that is administered by a charitable organization and is called a “pooled trust”. Charitable organizations approved by the Social Security

Administration have been created to administer these trusts in most states. The requirements for a pooled trust differ somewhat from the former type of self-funded trust described above because it can be “created” by the recipient beneficiary, and can be self-funded after age 65 and older if the recipient accepts a disqualification period for SSI benefits of up to three years.

In contrast, the third party funded SNT for the SSI recipient only needs to be independently administered and limit distributions to the recipient’s supplemental needs. It can be funded at any age of the recipient, and there is no Medicaid pay back requirement when the recipient dies.

Many minor children cannot receive SSI because their parent’s income and assets are “deemed” or considered available to them for eligibility purposes. However, once the child reaches age 18, parental income and

assets are no longer counted even though the child may continue to live in the parental household. It is important to plan ahead with a SNT when a minor child receives a settlement, inheritance, or parental funds. Many states also provide Medicaid eligibility as a benefit of SSI eligibility, which often makes SSI a secondary benefit, but of critical importance.

Distributions from a SNT are always used to directly pay a provider for goods and services because the SSI benefit would be reduced dollar for dollar for any cash received by the recipient. If the distribution is for shelter or food costs, the individual’s monthly SSI benefit could be reduced.



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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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SSI Eligibility and Special Needs Trusts



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