

What is a Special Needs Trust?

Planning for someone with special needs requires a myriad of factors to be taken into consideration in order to reach the best and most appropriate outcome. In the majority of cases, the client is doing so to either maintain a government benefit, typically SSI and /or MassHealth. **(Not SSDI.)** This article will explain Supplemental Needs Trusts (SNTs), as well as some alternative planning options.

The sole purpose of a Supplemental Needs Trust is to maintain government benefits, such as Medicaid (MassHealth) and/or Supplemental Security Income ("SSI"). The assets in the Supplemental Needs Trusts are to be used for the benefit of the beneficiary to *"supplement rather than supplant (replace) government benefits."* **The money in the Trust cannot be used for any other family members.**

A Supplemental Needs Trust is available to all individuals who are either disabled or on MassHealth. There are three types, but we will only discuss the one that pertains to you.

1. FIRST PARTY SUPPLEMENTAL NEEDS TRUSTS

These trusts are used in personal injury cases. The trust must be funded with the money of the individual who is on SSI or on MassHealth and under 65 years of age and is created either by him/her, a parent, grandparent, a legal guardian, or a court.

The Supplemental Needs Trust law authorized by Congress in 1993 is exempt from Medicaid and the funding does not affect the Medicaid eligibility. Similarly, Congress exempted these trusts from SSI in 1995. It is important to note that if a

Supplemental Needs Trust is created for an individual who is under the age of 65, that trust will remain exempt if the individual lives beyond the age of 65.

The Supplemental Needs Trust must contain a payback provision to MassHealth. What this means is upon the death of the individual, any balance left in the trust must be paid back to the State in an amount equal to the Medicaid benefits paid on behalf of the individual. Any remaining Trust assets then are distributed according to the Trust (i.e., family members of the beneficiary).

Lastly, These trusts can be created by the person receiving the money, their parent, grandparent, or court appointed guardian. If the person receiving the money is incompetent, the parent, grandparent or guardian can establish the trust. If these persons do not exist or unwilling to help, a Court Order is necessary. This will take a lot more time and increase the cost greatly.

Benefits and Potential Negatives to setting up SNTs

When discussing a client's planning options, it is important to not only highlight the various benefits of an SNT, but also to discuss the potential negatives as well.

Some of the benefits of utilizing an SNT include asset management and maximizing and maintaining government benefits (including Medicaid and Supplemental Security Income). Some possible negatives of utilizing an SNT include lack of control and difficulty or inability to identify an appropriate trustee. Further, if you are on SSI, you are only allowed \$20.00 cash per month. If you are on MassHealth, the factors which determine if you are allowed cash withdrawals are your household income; and whether you are single, married or have children or other dependents.

These trusts are not for you if you want control. But they will enable you to continue to receive SSI and MassHealth.