

Special Needs Trusts

What is a special needs trust?

A special needs trust is a trust—set up by an attorney to be in compliance with state and federal laws—funded by an individual with disabilities with their own personal assets. Using this trust allows them to retain their eligibility for government assistance benefits that require a limit on personal assets. The trust is irrevocable and established for the sole benefit of a person with disabilities to preserve their personal funds for expenses other than the basics provided for by Medical Assistance and Social Security. This is a legal instrument that, if managed properly, allows savings for the future without those savings jeopardizing eligibility for the services an individual is currently receiving. The catch, however, and the reason why this method of preserving personal assets is allowed, is that at the end of the individual’s life the assets remaining in the trust are subject to a claim from the State as reimbursement for the funds that Medical Assistance spent on services for the individual during their lifetime.

What are the reasons to have a special needs trust?

Social Security and state Medicaid programs require individuals to have limited assets. When an individual is capable of employment, even a part-time job can produce enough earnings to put them over the limits set by these programs and result in the loss of benefits. There may also be circumstances where an individual who is reliant on benefits receives a singular windfall from, for example, an inheritance or legal award in a court case. A special needs trust is an option to receive and preserve excess earnings, direct inheritances, court settlements, and other windfalls from being counted as personal assets. An alternative is to quickly spend the money to decrease the personal asset amount, in order for the individual to continue to qualify financially for programs like Medical Assistance and Social Security.

How does one qualify for a special needs trust?

A special needs trust can be established by a parent, grandparent, guardian, or by petition to the district court for an individual who has a verified disability and is under 65 years of age at the time the trust is established. It can also be established by the individual themselves if they have the legal capacity to do so. While federal law describes the legal requirements for the trust, guidelines for managing the assets may vary by each state’s Medicaid (Medical Assistance) programs. It is best to have an attorney familiar with the specifics of a special needs trust and Medical Assistance eligibility rules to ensure that all legal aspects are addressed and the trust is valid for its purpose.

How is a special needs trust funded?

A special needs trust is funded by the personal assets of the individual for whom the trust is set up.

How can the money in a special needs trust be spent?

Trust funds are managed by an appointed Trustee and can be spent on any “comfort and luxury” items that are for the benefit of the individual, but not on things that are provided for by Social Security or Medical Assistance.

The trust can pay for uncovered medical and dental expenses, insurance, therapy or rehab, medications, and equipment. It can also cover vehicle modification and transportation expenses, including purchase of a vehicle, gas, maintenance, and insurance. These items must be purchased directly by the trust, not by the individual.

Recreation activities and entertainment, such as vacations that include companion costs, can also be funded by the trust. Other individuals who perform services for the beneficiary can be paid from the trust, such as accountants, lawyers, and guardians, at a market rate considered reasonable. Training and education are also legitimate expenses.

Other allowable expenses include clothing, computers, internet connection, cable or satellite TV, telephone service, and household furnishings including furniture and magazine subscriptions.

What expenditures are not allowed from a special needs trust?

Basic needs such as rent and groceries are generally covered by SSI and use of funds from a special needs trust to fund these expenses may result in a reduction of SSI. Services provided by Medical Assistance should also not be paid by the trust. The trustee should also not distribute cash to the beneficiary, as such distributions will be counted as income to the individual and may reduce Social Security or Medical Assistance benefits.

Who is the beneficiary of the trust?

When the trust is created, it is for the sole benefit of the person who has a certified disability at the time of the trust’s creation. At the end of the individual’s life, Medicaid must be designated as the trust’s primary beneficiary in order to enforce their claim for reimbursement. This means that any funds remaining in the trust must be used to pay back the funds from Medical Assistance spent on the individual during their lifetime first before anything leftover may be distributed to residual beneficiaries identified in the trust agreement.

Trust verification and annual reporting requirement

In order to be considered a valid special needs trust, the trust must meet the requirements of federal and state law and be administered during the beneficiary’s lifetime according to the regulations of Medical Assistance and Social Security (if the beneficiary is receiving assistance from those programs). The trustee is required to provide the state’s Department of Human Services (DHS) with a copy of the trust agreement and must report the trust balance annually to the DHS Special Recovery Unit. At the death of the beneficiary, the trustee must notify the Special Recovery Unit and provide a final accounting so that DHS has an opportunity to assert their claim against the remaining assets.