



Navigating Special Needs Trusts

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What Is A Special Needs Trust?

A type of trust specifically for persons with disabilities that provides goods and services while maintaining eligibility for, and the current level of, needs-based public benefits.

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Types of Special Needs Trusts

Self-Settled Special Needs Trust

- Sometimes called a First Party Special Needs Trust

Third Party Special Needs Trust

- Sometimes called a Supplemental Special Needs Trust

Pooled Trust

- Alabama Family Trust – only one in AL
- Florida has 9 trusts available
- Mississippi – has no state trust, must use ones available nationally
- Some pooled trusts operate nationwide
- Visit specialneedsanswers.com/pooled-trusts for a complete list by state



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Public Benefits Available to Persons with Special Needs

Supplemental Security Income and Medicaid

- **Means tested** government benefits
 - You must be blind, at least age 65, or have a disability
 - Must have no more than \$2,000 in countable resources
 - Assets received by inheritance or court settlement are countable resources
 - Countable Income must be less than SSI benefit
 - Must receive \$1 in SSI to qualify for Medicaid

Social Security Disability Insurance and Medicare

- **NOT** means tested
 - Eligibility based on disability and work credits
 - Unearned income and assets do not affect eligibility



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Self-Settled Special Needs Trusts

Federally created under the Omnibus Budget Reconciliation Act of 1993 (OBRA '93) with statutory requirements (41 U.S.C. § 1396p(d)(4)(A))

Qualify as a “grantor trust” for federal income tax purposes

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Requirements:

❖ Trust must be established through a permissible Settlor –

- ❖ An adult beneficiary with sufficient mental capacity despite disability (added in 2016),
- ❖ The Legal Guardian of the Property,
- ❖ A parent or grandparent of the beneficiary, or
- ❖ A Court (must be required not merely approved)

❖ Beneficiary Must be Disabled within the Meaning of the Social Security Act 42 U.S.C. §1382c(a)(3)

- ❖ i.e. unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment or combination of impairments that can be expected to cause death or that has lasted, or can be expected to last, for a continuous period of not less than twelve months. (see 20 C.F.R. §416.906 for disability related to children)
- ❖ If the beneficiary is under the age of 18, the disability must cause marked and severe functional limitations

❖ Trust Must Be Irrevocable

- ❖ *Caution* here to avoid any kind of language that allows the beneficiary to “demand” payment such as Crummey, 5x5 powers, or that entitles them to net income



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Requirements Continued :

❖ Trust Must Be For Beneficiary's Sole Benefit

- ❖ While the federal statute uses only the phrase "for the benefit of" some states and SSA have effectively required the stricter "sole benefit" standard see e.g., *POMS SI 01120.203.B.6*

❖ Beneficiary Must Be Under Age 65 When Trust Is Established and Funded

- ❖ The trust will continue to qualify after the beneficiary turns 65
- ❖ No additional funds may be added after the beneficiary's 65th birthday. However, interest, dividends, and other income on principal including annuity payments are excluded from this rule

❖ Upon Death of the Beneficiary, Medicaid Will Be Reimbursed

- ❖ After death, the only disbursements that may be made before satisfaction of the Medicaid Lien are:
- ❖ Taxes due from the trust to the state or federal government as a result of the beneficiary's death
- ❖ Reasonable fees associated with the "administration of the trust estate"
- ❖ Funeral Expenses are not allowed to be paid prior to Medicaid
- ❖ Must include Medicaid from ANY state in which beneficiary lived and received benefits before or after the creation of the trust



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Third Party Special Needs Trusts

No specific statutory authority

May be testamentary or *inter vivos*

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Provisions:

- No specific statutory authority therefore not subject to the requirements of a First Party SNT
- May be testamentary or *inter vivos*
- **No Medicaid Pay Back Provision**
 - Third party funds should not be added to a First Party SNT thereby subjecting those funds to Medicaid payback
- Should include a valid spendthrift clause to avoid potential access to the funds by beneficiary
- Can have multiple beneficiaries, including those who are not disabled, however, proceed with caution
- Again *Caution* here to avoid any kind of language that allows the beneficiary to “demand” payment such as Crummey, 5x5 powers, or that entitles them to net income



Pooled Special Needs Trusts

First Party sub-account Federally authorized to have multiple beneficiaries or “pooled” trusts that have a sub-account established for a single beneficiary with a disability

Statutory Requirements

- Must be managed by a non-profit association (Ex. Alabama Family Trust)
- First Party sub-account must contain assets of an individual who is disabled within the definition of the statute
- The sub-account must be maintained for the sole benefit of each beneficiary
- Must be established by the same parties as a traditional SNT
- Must have a Medicaid reimbursement clause at termination
- No express age limit, **however**, it is the only option for a beneficiary over the age of 65 at the time it is created or when assets are added



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Pooled Special Needs Trusts

- **Pros**
 - Can be established with as little as \$1,000
 - If beneficiary runs out of funds, they can apply for foundation assets
 - Professional asset manager and trust administrators
- **Cons**
 - Funds must revert to the foundation after Medicaid payback
 - Most will not manage property (beneficiary's home)
 - May have less personal attention



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Choosing a Trustee

Corporate fiduciary (bank or trust company)

- Professional Investment Mangers
- Team approach – A bank never dies
- Regulatory Oversight
- Will you get personal service required?
- Do they have Special Needs Trust experience?

Attorney

- What is their area of expertise?
- Do they have the time to manage the assets and distribution decisions
- Provides emotional separation
- Do they have Special Needs Trust experience?

Family member/trusted individual

- May not have the expertise to manage the money or make appropriate distribution decisions
- Do they have Special Needs Trust experience?
- Do they have the time to devote to management of the trust?



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Asset Management In A Special Needs Trust

The Prudent Investor Rule

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Prudent Investor Rule Adopted in 48 Jurisdictions

- Alabama – Ala. Code § 19-3B-901(2023)
- Mississippi – MS Code § 91-9-601 (2020)
- Georgia – GA Code § 53-12-340 (2023)
- Florida – FL Stat § 660.431 (2023)



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Prudent Investor Rule

A trustee who invests and manages trust assets owes a duty to the beneficiaries of the trust to comply with the prudent investor rule

The prudent investor rule may be expanded, restricted, eliminated, or otherwise altered by the provisions of a trust

A trustee is not liable to a beneficiary to the extent that the trustee acted in reasonable reliance on the provisions of the trust



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To Be A Prudent Investor

- A trustee shall invest and manage trust assets as a prudent investor would by considering the:
 1. Purposes
 2. Terms
 3. Distribution Requirements
 4. And other circumstances of the trust
- In satisfying this standard, the trustee shall exercise reasonable care, skill, and caution



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Investment and Management Decisions

- Decisions respecting individual assets must be evaluated in the context of the trust portfolio as a whole and as part of an overall investment strategy
- Trustee Shall consider:
 - General economic conditions
 - The possible effect of inflation or deflation
 - The expected tax consequences of investment decisions or strategies
 - The role of each investment or course of action with the overall trust portfolio
- All categorical restrictions on types of investments have been abrogated



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Administration of Special Needs Trusts

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Administration of Special Needs Trusts

Know the SSI/Medicaid Restrictions

- Cannot pay for housing (food was removed in September of 2024)
- Rent, Mortgage, Homeowner's insurance, utility payments will reduce the beneficiaries SSI benefits
- Cannot pay for any charitable giving from a First Party SNT (this violates the sole benefit rule)
- Cannot provide assistance to other family members
 - Should execute an expense sharing agreement if others live in the house owned by/paid for by the trust

Understand how cash distributions vs. direct payments for services is treated by SSA/Medicaid

- Cash distributions are a dollar-for-dollar reduction in SSI benefits
 - Remember they need at least \$1 in SSI to qualify for Medicaid
- Direct Payments or In-Kind Support and Maintenance (ISMs) are a 1/3 reduction of SSI benefits –
 - It may make sense to have the beneficiary receive a reduced SSI benefit for the benefit of an ISM payment – i.e. Bene receives \$943 of SSI but rent is \$1,200/month. Having the trust pay rent may make financial sense

TrueLink Card

- A prepaid debit card that allows the trustee to put money on a debit card that can be restricted – can prevent purchases at grocery stores, liquor stores, etc.
- Do not forget to include TrueLink card transactions in any accounting you provide



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ABLE Accounts

- Achieving a **Better Life** Experience Act of 2014 aims to “provide secure funding for disability-related expenses on behalf of designated beneficiaries with disabilities that will supplement, not supplant, benefits” ABLE Act §101(1)
- Requirements:
 - Beneficiary must be disabled or blind prior to their 46th birthday (as of January 1, 2026)
 - Annual Limitation on contributions from all sources, which follows the annual gift exclusion amount (\$20,000 for 2026)
 - Distributions must be limited to Qualified Disability Expenses
 - Must limit beneficiary to two opportunities each year to provide investment direction
 - Must prohibit the assignment of the interest in the account
 - Medicaid must be able to make a claim against the account at beneficiary’s death
- An individual can use the ABLE account of any state (I use the STABLE account out of Ohio)
- Qualified Disability Expenses (QDE)
 - Any expense incurred that “relates to” the beneficiary’s disability that are made “for the benefit of” the bene to maintain or improve his health, independence, or quality of life.
 - Can be used for gifting – Charitable or otherwise
 - Can be used for shelter



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