



## **Special Needs Trusts Do More than Protect Benefits**

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Too often, families planning to create a [third party special needs trust](#) (SNT) think of it as a standardized document, drafted for the sole purpose of protecting public benefits for an individual with disabilities. And certainly, the role of means-based programs, such as Medicaid and [Supplemental Security Income](#) (SSI), is an important consideration. But a well written SNT can do much more, significantly affecting the individual's quality of life. Protecting eligibility for public benefits is only one component of a well-constructed plan for achieving that, and boilerplate approaches will not serve the beneficiary as well as a trust agreement tailored for him or her.

### **Envisioning a Life**

All parents of a child with special needs have views about the life they'd like to make possible for their loved one. Perhaps they hope their child will attend trade school or college in order to have a career. They may picture their child living, at some point, in a small group home or in an apartment, with support services. They may envision them having a happy social life, with friends who share their interests.

An SNT can be crucial in facilitating such dreams, but unless the trustee understands the creators', or *grantors*', intentions, counter-productive decisions may be made. To avoid that, guidance may be included in the trust document itself, [as well as in a companion letter of intent \(LOI\)](#). Guidance included in the trust agreement is legally binding and so it should be carefully written to help your trustee exercise her discretion about what is appropriate for the beneficiary without unduly restricting her ability to do so. Since most states don't recognize LOIs as legal documents, you may wish to consider referencing a separate, more in-depth, document.

### **SNTs and Public Benefits**

It's important to understand how SNTs and public benefits affect one another. Means-based benefits require that individuals have limited income and assets in order to qualify for them. Supplemental Security Income (SSI), for instance, requires that beneficiaries have no more than \$2,000 in countable resources. In most cases, it's difficult to have a decent standard of living under such circumstances. Since assets held by an SNT on the

beneficiary's behalf are not counted when determining someone's eligibility, they can play a big role in ensuring quality of life.

But while government benefits often provide a foundation for the beneficiary's economic security, sometimes the restrictions they impose aren't worth it. A well drafted SNT makes it clear that the trustee should use good judgment in determining what would be in the beneficiary's *overall* best interest.

Sometimes, for instance, it might be worth giving up some SSI dollars. Theoretically, SSI is meant to cover all food and housing expenses. Using SNT funds to help pay rent would reduce the individual's monthly SSI payments, but if it meant living in a nicer home, it might be worth it. The trustee would need to run the numbers and make a value judgment.

Or, take the situation in which an individual receives [Childhood Disability Benefits](#) (CDB) and Medicare, neither of which imposes income/resource limits. Depending on the beneficiary's health needs, there might be no need for Medicaid and its financial constraints.

Or, perhaps the beneficiary hopes to be self-supporting someday. In that case, the SNT could facilitate access to public benefits while the individual builds career skills. There are various programs designed to protect benefits while an individual is testing work options, but eventually the beneficiary might make too much money to be eligible for means-tested programs. Yet the SNT would have "done its job," acting as a bridge to self-reliance.

### **Flexibility**

Over time, a beneficiary's needs will evolve, sometimes dramatically. Changing health may mean that Medicaid becomes increasingly important or that they need additional support services. If they move to a different state, their residential options may differ. For this reason, SNTs shouldn't be treated as static documents.

This may surprise individuals who are under the impression that, to protect the beneficiary's benefits, the SNT must be *irrevocable*. In fact, the trust agreement can—and should—be written to enable the trustee, or in some cases, the grantor during life, or a [trust protector](#) or [advisory committee](#) to amend the trust agreement if the beneficiary's circumstances change or in response to new regulations. They should also have the right to replace a trustee who isn't performing to their satisfaction.

A carefully considered SNT, written for optimal flexibility, can make a huge difference to the life of someone with disabilities, giving them options that foster security and independence. But it should be tailored—and revised—in response to their individual

needs. A special needs attorney can be instrumental in creating a document that builds a foundation for personal fulfillment.

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