

were paid for by Medicaid, because upon the disabled individual's death, these expenses will be paid back to Medicaid from the SNT pursuant to the Omnibus Budget Reconciliation Act of 1993 (OBRA'93). If there are any funds leftover, then these monies would be paid to the designated residual beneficiaries.

For example, if there was an SNT which had a remaining balance of \$50,000 at the beneficiary's death, and medical expenses paid for by Medicaid totaled \$30,000, then upon the disabled individual's death the SNT would reimburse Medicaid its \$30,000 expense, and the rest would be distributed to the residual beneficiaries.

Special Needs Pooled Trust (SNPTs)

42 U.S.C. §1396p(d)(4)(C)

The process followed in an SNPT is as follows:

SNTs are created and maintained by a non-profit organization. If a beneficiary of a SNPT runs out of money prior to his/her death, the beneficiary may be able to obtain supplemental funds from other disabled persons that have previously died and turned over their residual funds to the pool.

Consequently, the remainder in the SNPT, after the death of the beneficiary, goes to other disabled individuals and NOT to the State.

Additional Information & Resources

42 U.S.C. §1382
42 U.S.C. §1396p(d)(4)(A)
42 U.S.C. §1396p(d)(4)(C)

20 C.F.R. § 416.1336(b)

MCL 700.7505
MCL 700.7103

A Practical Guide To Estate Planning For A Family With A Special Needs Child, Sebastian V. Grassi, Jr.
Published By American Law Institute--
American Bar Association, 2009,
<http://www.Ali-Aba.Org/Aliaba/Bk68>

U.S. Dept. of Social Security
Administration

<http://www.ssa.gov/policy/docs/statcomps/supplement/2010/glossary.html>



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INGHAM COUNTY PROBATE COURT SPECIAL NEEDS TRUSTS



Why are there Special Needs Trusts?

What is considered a "disability" as it relates to Supplemental Security Income standards?

How are Special Needs Trusts created?

What types of Special Needs Trusts are there?

SPECIAL NEEDS TRUSTS

WHY ARE THERE SPECIAL NEEDS TRUSTS?

Special Needs Trusts (SNTs), also known as Supplemental Trusts, are set up in order to protect a disabled individual's ability to qualify for governmental/public benefits.

These benefits include Supplemental Security Income (SSI), which exists to provide food, clothing, and shelter to the physically and/or mentally disabled, and Medicaid, which exists to provide coverage for medical expenses.

If an otherwise eligible disabled person exceeds the limits set by the government to receive public benefits – countable assets of \$2,000 or less or, if married, not exceeding \$3,000 – then the disabled person cannot avail him/herself of these governmental benefits. 42 U.S.C. §1382.

There are a couple of options the disabled person can look at in order to keep his/her public benefits, if the countable assets exceed the limit set by law:

1. The disabled individual can spend down and divest the money in order to fall within the acceptable category to qualify; or

2. The disabled person can become the sole beneficiary for a Special Needs Trust, a separate legal entity created where the person doesn't own the assets, the trust does, for the benefit of the disabled person.

DEFINING "DISABILITY"

The U.S. Social Security Administration defines "disability" for purposes of SSI as:

The inability to engage in substantial gainful activity (SGA) by reason of any medically determinable physical or mental impairment that can be expected to result in death or can be expected to last for a continuous period of not less than 12 months. This 12-month requirement does not apply to the blind.

The SGA criterion does not apply to children under age 18. The standard for them is a medically determinable physical or mental impairment which results in marked and severe functional limitations. <http://www.ssa.gov/policy/docs/statcomps/supplement/2010/glossary.html>

HOW ARE SNTS CREATED?

SNTs can be either inter vivos or testamentary. When a Special Needs Trust is set up inter vivos, it is funded using the grantor's assets during the grantor's life.

When a SNT is testamentary, it is funded by operation of the grantor's Will, or trust at the grantor's death. Most commonly, SNTs are inter vivos.

An inter vivos trust is set up during the the grantor's lifetime using a checking account. The SNT account is set up to:

1. deposit funds monthly;
2. pay current supplemental expenses and to save for the future; and,
3. utilize tax-deductible options.

SNTs are managed by trustees, which are usually the disabled person's parents. The advantage of the Living Trust is that it assists immediately with supplemental expenses and continues without interruption when the parents pass away. Also, it ensures that there will be no interference with the disabled person's qualification for governmental benefits.

WHAT TYPES OF SNTS ARE THERE?

Individual SNTs (Payback Trust)

42 U.S.C. §1396p(d)(4)(A)

An Individual SNT uses the disabled person's own money to fund the trust. Some examples are: awards and settlements, assets, or inheritances received. In an Individual SNT, it is important to keep track of the medical expenses that