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SPECIAL NEEDS TRUSTS

If you have a family member with special needs, you've probably heard of a special needs trust. A special needs trust (also known as an "SNT") is a type of trust which allows the trust's beneficiary to enjoy the benefit of the trust's assets without jeopardizing their eligibility for certain public benefits, such as Medicaid and Supplemental Security Income. A Special Needs Trust is established by a Grantor, who appoints a Trustee to manage the trust's assets and make distributions to the beneficiary. There are different types of special needs trusts, but notable distinctions are First Party SNTs, Third Party SNTs, and Pooled SNTs.

First Party Special Needs Trust

A First Party SNT (also known as a Self-Settled SNT) is usually established because an individual receives an inheritance or proceeds from a personal injury or other lawsuit. A First Party SNT is funded with beneficiary's assets, and can be established by the beneficiary, a parent, grandparent, guardian, or the court. The beneficiary must be under the age of 65 and qualify as "disabled," and the trust must provide that at the beneficiary's death, the State shall be repaid for the Medicaid services provided during the individual's life (the "Medicaid payback provision").

Third Party Special Needs Trust

A Third Party SNT is usually established as part of the estate plan of the beneficiary's parents and/or grandparents. Additionally, a Third Party Special Needs Trust can receive lifetime gifts. Because a Third Party SNT is funded with assets owned by someone other than the beneficiary, it does not contain a Medicaid payback provision.

Pooled Special Needs Trust

A pooled special needs trust (a pooled SNT) is administered by a nonprofit organization. Trust funds are "pooled" together for investment purposes and an accounting is maintained in each beneficiary's sub-account. The nonprofit organization may act as Trustee itself or it may contract with another entity to be the fiduciary. The pooled trust organization makes decisions on trust disbursements, selects the investment manager for the trust funds, and fulfills

reporting requirements to government agencies. Pooled SNT accounts may be either First Party or Third Party SNTs.

Special Needs Trust Comparisons (First Party vs. Third Party)

	First Party SNT	Third Party SNT
Established by	Beneficiary, Parent, Grandparent, Guardian, or Court	Third Party
Funded by Assets of	Beneficiary	Third Party
Beneficiary	Must meet SSA Definition of "Disabled." ¹	Must meet SSA Definition of "Disabled." ¹
Age Limit	Beneficiary must be under 65	None
Revocable?	No	Maybe
Medicaid Payback Provision?	Yes	No
Medicare Claim/Medicaid Lien?	Yes	No
Can be Established Inter Vivos?	Yes	Yes
Can be Established Testamentary?	No	Yes
How must Distributions be made?	Only to Third Parties	Only to Third Parties

¹ An adult is considered disabled if he or she suffers from "the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment(s) which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months."

A child under age 18 is considered disabled if he or she has "a medically determinable physical or mental impairment or combination of impairments that causes marked and severe functional limitations, and 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 12 months."

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