

SPECIAL NEEDS TRUSTS

Providing for a family member with a disability or special needs

Caring for a family member or friend with a disability or special needs can be worrisome, costly and difficult to navigate without expert help and a plan. Whether due to an accident or mental disability, a special needs trust can help you better manage caring for that individual in a way that enriches his or her life while not jeopardizing benefits that can be a significant source of income and health insurance.

WHAT IS A SPECIAL NEEDS TRUST?

A special needs trust, sometimes called a supplemental needs trust, is a legal arrangement and fiduciary relationship which means one person or entity – the trustee – is charged with protecting the interest and assets for the benefit of another – the beneficiary. The trust essentially allows an individual with a disability or special needs to benefit from the income and principal of the trust without reducing their eligibility for government assistance such as Supplemental Security Income (SSI) or Medicaid. Basically, any assets held in the trust do not count for the purposes of qualifying for government assistance. However, the trustee must ensure that trust distributions are within the guidelines of the particular government benefits the beneficiary is receiving. Otherwise, the distribution could have a negative impact on the benefit. For example, a beneficiary receiving SSI should not receive trust distributions for food or shelter-related expenses.



KEY TAKEAWAYS

A special needs trust is designed to preserve a beneficiary's eligibility for needs-based government benefits while being able to benefit from and enjoy trust assets.

There are two types of special needs trusts – first party and third party – that are distinguished by the source of assets used to fund the trusts.

Given the complexity and longevity of administering a special needs trust, it's important to consider the best-qualified person or a corporate trust company to serve as trustee.

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The use of a special needs trust can be an important strategy for loved ones in such a situation. It protects against the reach of creditors, and provides protection for a beneficiary who may be vulnerable, susceptible to undue influence or unable to manage money if the assets were given outright. But most importantly, the special needs trust stretches each dollar contributed to the trust and allows the beneficiary to be cared for at a higher level of care than is available from government-sponsored benefit programs, and ensures the wealth transfer to a disabled individual can occur without jeopardizing the beneficiary's benefits.



There are two types of special needs trusts – first party and third party – that are distinguished by the source of assets used to fund the trusts. With a first party trust, also referred to as a “self-settled” special needs trust, it must contain the assets of an individual under the age of 65 who is disabled. The trust, which often results from a medical malpractice or personal injury situation, can only be established by a parent, grandparent, guardian or court. The trust must also be irrevocable and can only be for the sole benefit of the beneficiary. Upon the death of the beneficiary, any remaining assets in the trust are repaid to the state up to an amount equal to any medical assistance benefits that were paid to the beneficiary while alive. Third party special needs trusts are funded with other's assets (a third party) like a gift or inheritance. Unlike a first party trust, a third party trust does not require any state payback at the beneficiary's death, and any remaining assets pass according to the grantor's wishes.



First Party Special Needs Trusts

- Contains assets of a disabled individual
- Established by parent, grandparent, guardian or court
- Irrevocable
- State payback required



Third Party Special Needs Trusts

- Funded by assets of a third party
- Typically a gift or inheritance
- No state payback

THE HISTORY

In 1993, with the passage of the Omnibus Budget and Reconciliation Act (OBRA '93), Congress created an exception to the general rule that money held in trust is considered countable assets for SSI and Medicaid eligibility. It specifically authorized the use of special needs trusts for the benefit of individuals who are under the age of 65 years and disabled according to Social Security standards. Third party special needs trusts are largely created by case law.

WHAT CAN THE TRUST BE USED FOR

A special needs trust should not provide money directly to the beneficiary as it could interfere with eligibility for Supplemental Security Income and Medicaid. The trustee can however spend trust assets to buy a wide variety of goods and services to assist the loved one with special needs. Special needs trust funds are commonly used to pay for personal care attendants, vacations, home furnishings, out-of-pocket medical and dental expenses, education, recreation, vehicles and physical rehabilitation. Most important, a special needs trust helps to enrich the beneficiary's life and make it more enjoyable.

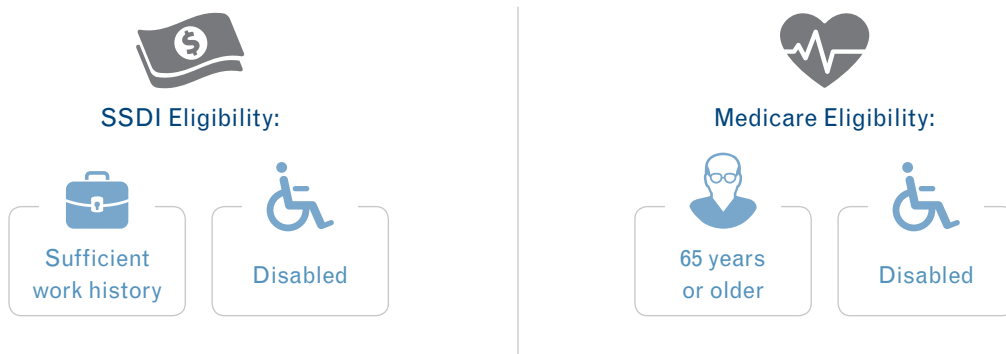


Government benefits available to individuals with disabilities or special needs to use alongside a special needs trust:

Social Security Disability Income (SSDI) / Medicare

SSDI is a cash assistance program for people who have sufficient work history and are disabled as determined by the Social Security Administration.

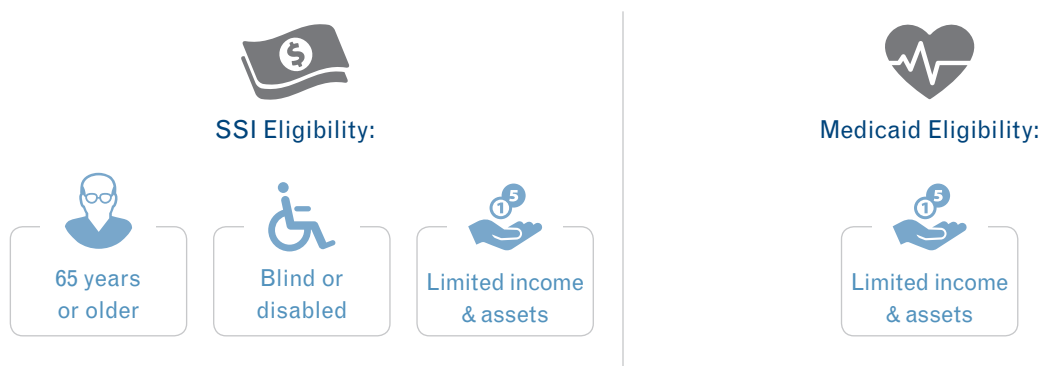
Medicare is a federal health insurance program for individuals 65 years or older with a sufficient work history or who are under 65 and have received SSDI for 24 months, have end stage renal disease or ALS. Neither are “means-tested” programs, which simply means the government does not look at the assets or income of the individual to determine eligibility for SSDI or Medicare.



Supplemental Security Income (SSI) / Medicaid

SSI is a cash assistance program for financially eligible individuals who are 65 years or older, blind or disabled. Eligibility is tied to asset and income limitations.

Medicaid is a federal/state insurance program for certain individuals/families with limited income and resources. In most states, if someone is eligible for SSI they are automatically eligible for Medicaid.



While SSDI/Medicare and SSI/Medicaid provide income and health insurance, there are several other programs, such as food stamps, Section 8/HUD housing, veterans benefits, etc., that a beneficiary may also receive concurrently, which a trustee must also be mindful of.

MANAGING A SPECIAL NEEDS TRUST

Given the complexity and longevity of administering a special needs trust, it's important to consider the best-qualified person or a corporate trust company to serve as trustee. Properly managing a special needs trust means understanding the disabilities of the loved one and being able to effectively communicate with a parent, caregiver or guardian, which can require a significant time commitment on the part of the trustee.

They must be able to prudently manage the assets held for the loved one's benefit and understand the governmental regulations and how to work about them. The trustee, whether an individual or corporate institution, should be knowledgeable about what can be paid from the trust and what shouldn't, as well as be able to prepare and retain records of earnings and disbursements for tax purposes. A corporate trustee is often better positioned than an individual trustee to effectively administer a special needs trust in a way that is compliant with state and federal laws.

In summary, a special needs trust established for the benefit of a disabled individual can help fund a lifetime of care even if the family is unable to. Governmental support is designed to only provide for the very basic necessities, such as food and shelter. The funds in a special needs trust supplement government benefits and can be used for those many extras that will make the life of an individual with a disability or special needs more rewarding and fulfilling.



You may find it helpful to consult a special needs attorney as well as talk with your financial advisor about working with Raymond James Trust to help you and your family provide the best care for your loved one with a disability or special needs.

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