



# Special needs trusts

## Caring for a loved one with a disability

*The following information and opinions are provided courtesy of Wells Fargo Bank, N.A.*

Special needs trusts — also referred to as supplemental needs trusts — were granted official status by the federal government in 1993 with the passage of the Omnibus Budget Reconciliation Act (OBRA).<sup>2</sup> A special needs trust (SNT) is an irrevocable trust that is drafted by an attorney and is used to set aside money or property for the benefit of an individual living with a disability. This individual is referred to as the beneficiary of the trust. The SNT preserves eligibility for federal and state government benefits, which may have asset and income limitations as the assets in the trust are considered an exempt resource. The trust structure serves to protect and preserve the assets for a beneficiary that may not have the ability or legal capacity to manage the assets and keep detailed records.

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According to the U.S. Census Bureau, over one in four Americans are living with a disability and about one-half of these individuals are living with a severe disability.<sup>1</sup> For some individuals, the disability may be caused by a sudden, life-altering accident. For others, the condition may arise at birth or result from a chronic illness. Whatever the origin, severe disabilities almost always create a significant financial burden due to curtailed earning power and ongoing expenses.

<sup>1</sup> U.S. Census Bureau News Release, Americans with Disabilities: 2014 P70-152 dated November 29, 2018.

<sup>2</sup> H.R. 2264 — 103rd Congress: Omnibus Budget Reconciliation Act of 1993. <https://www.govtrack.us/congress/bills/103/hr2264>; August 29, 2022.

These trusts may cover needs of persons living with physical, mental, or developmental disabilities, including those with:

- Traumatic brain injury
- Spinal cord injury
- Multiple sclerosis
- Cerebral palsy
- Down syndrome
- Autism and autism spectrum disorder
- Mental health conditions

## Is a special needs trust a good fit for your loved one's needs?

- Do you have an adult child living with a disability who will need personal and financial care beyond your lifetime?
- Are you receiving a personal injury settlement?
- Do you need to protect eligibility to means-tested public benefits?
- Are you considering making provisions in your estate plan for a loved one living with a disability?

## Types of special needs trusts

The type of trust depends on the source of funding:

- **First-party SNT.** Funded with money that the beneficiary owns or is awarded as a result of a settlement arising from compensation for medical malpractice, personal injury, or other types of legal settlement. Typically, these trusts are created by the beneficiary's parents, grandparent, legal guardian, or a court, and for beneficiaries under 65 years old. When the trust terminates, Medicaid is entitled to reimbursement of any funds expended on the beneficiary.
- **Third-party SNT.** Established and funded by a third party who wishes to provide for a person with special needs (the beneficiary). Typically, a family member such as a parent or close friend will establish a third-party SNT to benefit a disabled minor or adult with special needs. This can be done at any time, including

as part of an estate plan. Unlike a first-party trust, it may be created by anyone, and there is no age restriction on the beneficiary. The terms of the trust may be modified, and there is no reimbursement requirement to Medicaid or other government program. As such, a third-party SNT may be more advantageous, but requires proper planning.

The complexity of these trusts often requires the assistance of a corporate trustee with professional asset management capabilities and an understanding of the rules governing these types of trusts.

## Flexibility to meet your needs

Items potentially covered by a SNT:\*

- Medical, dental, and eye-care expenses
- Prescriptions and over-the-counter medical items
- Durable medical equipment
- Private health insurance premiums
- Case management services, home health aides, and companions
- Accessible vehicles
- Personal residence and renovations for accessibility
- Service and support animals
- Training, education, and equipment
- Treatment and rehabilitation programs
- Athletic training and competition support
- Entertainment and travel
- Education
- Vacations

## Benefits of a special needs trust

A SNT can help you or a loved one meet needs now and tomorrow in three primary ways:

- **Meet current cash flow needs and plan for the future.** Assets in a SNT are managed by a trustee or by professional investment advisors, whom the trustee selects. Investment decisions should take into account the beneficiary's unique needs and be flexible

\* This list is not exhaustive, and disbursements still depend on the needs of the beneficiary and their reasonableness.

enough to accommodate changes in his or her situation and changes in the market.

- **Preserve eligibility for means-tested state and federal benefits.** People living with disabilities may become ineligible for state and federal benefits if their income and resources (such as savings or checking accounts) exceed certain thresholds. The general purpose of means-tested government programs such as Supplemental Security Income (SSI) and Medicaid is to cover the beneficiary's basic needs, including food, shelter, and medical care. Under federal law and regulations, a SNT can help ensure a beneficiary remains eligible for these programs.
- **Enhance quality of life.** A SNT can provide financial support for a wide range of quality-of-life activities and services not covered by, or inadequately covered by, public benefits programs. Appropriate purchases may include an accessible vehicle, customized wheelchair, computer, gym membership, therapy animals, music lessons, art therapy sessions, or supplemental caregiving services. The goal is to increase the beneficiary's ability to enjoy life and participate in the community around them.

## Other considerations

If a disability results from an accident, any court award or out-of-court settlement funds must be allocated and managed carefully so that the person living with a disability can use the funds over the course of their lifetime. If family wealth, inheritance, or a life insurance policy will be used to fund the ongoing care of a person living with a disability, these resources must also be handled carefully to help achieve the donor's intent.

## How it works

Under federal law and regulations, a SNT can preserve the beneficiary's eligibility for needs-based public benefits programs such as SSI and Medicaid. In order to maintain eligibility for means-tested public benefits currently or enable to qualify the disabled beneficiary in the future for these benefits, the settlement proceeds or assets left to a beneficiary by family members should be placed in a SNT. If an individual owns funds outside of a SNT, the beneficiary may be disqualified from receiving means-tested public benefits.

## Discover more

To learn more about the benefit and advantages of establishing a special needs trust, please contact your advisor or special needs specialist.

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