

How to Use a Special Needs Trust to Preserve Benefits Eligibility for Disabled Injury Victims



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The following is adapted from The Art of Settlement.

John Doe was a laborer since age eighteen, but when he was thirty, he was severely injured and became paralyzed. John didn't have health insurance at the time of his accident, and the hospital applied for Medicaid on his behalf after getting injured. He qualified for Medicaid, since he had no real assets and no longer had an income. His family applied for Social Security Disability, since he had worked enough quarters to be insured.

John's personal injury lawyer has settled the case for \$1,000,000, which will help him pay for everything he now needs, but it is far less than what is needed to pay for all his future medical care. The question now is what to do with the settlement? While SSDI isn't income or asset sensitive, Medicaid is most likely the program John has, and it will have an asset cap of \$2,000.

When a client receives personal injury proceeds, it can cause them to become ineligible for means-based-tested government benefit programs. On paper, their settlement makes them look like they've hit a windfall, when in fact, they need that money to pay their medical expenses and to continue receiving the care they need. In John's case, and others like it, a Special Needs Trust is an important planning tool for making sure that your client remains eligible for public assistance while still complying with all federal laws. Here's how they work.

The Requirements of a Special Needs Trusts: 42 U.S.C. §1396p(d)(4)

Trusts commonly referred to as (d)(4)(a) Special Needs Trusts, named after the federal code section that authorizes their creation, are authorized and regulated by federal law. The 1396p provisions in the United States code govern the creation and requirements for such trusts.

There are three primary types of trusts that may be created to hold a personal injury recovery, each with its own requirements and restrictions. First is the (d)(4)(A) Special Needs Trust which can be established only for those who are disabled and are under age sixty-five. This trust is established with the personal injury victim's recovery and is established for the victim's own benefit. It can only be established by a parent, grandparent, guardian, or court order. The injury victim can't create it on his or her own.

Second is a (d)(4)(C) trust, typically called a pooled trust that may be established with the disabled victim's funds regardless of age. A pooled trust can be established by the injury victim unlike a (d)(4)(A).

Third and last is a third-party SNT, which is funded and established by someone other than the personal injury victim (i.e., parent, grandparent, charity, etc.) for the benefit of the personal injury victim. The victim still must meet the definition of disability.

If a client meets those qualifications, an SNT can be created to hold the recovery and preserve public benefit eligibility, since assets held within a Special Needs Trust are not countable resources for purposes of Medicaid or SSI eligibility.

The Limitations of a Special Needs Trust

The major limitation of all types of Special Needs Trusts is that the assets held in trust can only be used for the sole benefit of the trust beneficiary. The disabled injury victim could not withdraw money and gift it to a charity or family.

The purpose of the Special Needs Trust is to retain Medicaid eligibility, and use trust funds to meet the supplemental, or "special" needs of the beneficiary. These can be quite broad, however, and include things that improve health or comfort such as non-Medicaid-covered medical and dental expenses, trained medical assistance staff (twenty-four hours or as needed), independent medical checkups, medical equipment, supplies, programs of cognitive and visual training, respiratory care and rehabilitation (physical, occupational, speech, visual, and

cognitive), eyeglasses, transportation (including vehicle purchase), vehicle maintenance, insurance, essential dietary needs, and private nurses or other qualified caretakers. Also included are nonmedical items, such as electronic equipment, vacations, movies, trips, travel to visit relatives or friends, and other monetary requirements to enhance the client's self-esteem, comfort, or situation.

The trust may generally pay for expenses that are not "food and shelter" which are part of the Supplemental Security Income (SSI) disability benefit payment. However, even these items could be paid for with trust assets, but SSI payments could be reduced or eliminated. This may not be problematic if the disabled injury victim qualifies for Medicaid without SSI eligibility. However, many states grant automatic Medicaid eligibility with SSI so one has to be careful about eliminating the SSI benefit.

Clients Need to Know Their Options

In cases like John Doe's, a personal injury recovery can be placed into a Special Needs Trust so that the victim can continue to qualify for SSI and Medicaid. These trusts allow injury victims to continue to access critical needs-based government benefits after settling their case.

Ethically, a personal injury lawyer must be able to explain these options to the extent that the client is informed sufficiently to make educated decisions. Every case and client is different though and careful consideration of the advantages and disadvantages should be done with an elder law attorney.

For more advice on Special Needs Trusts, you can find [The Art of Settlement](#) on Amazon.

Jason Lazarus is the founder and CEO of Synergy Settlement Services and the managing partner and founder of the Special Needs Law Firm, a boutique firm focused on special needs settlement planning and lien litigation. Jason received his BA from the University of Central Florida and his JD, with honors, from Florida State University. He also earned his LLM in elder law with distinction from Stetson University College of Law. As a Medicare Set-Aside Consultant (MSCC), Jason is certified by the International Commission on Health Care Certification.

To learn more about Jason Lazarus and his book [Art of Settlement](#), visit his [website](#) and if you would like to learn more about Synergy Settlement Services, visit their [website](#).