

Financial Planning for Special Needs: Removing the Complexity From the Complex



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Key Takeaways:

- A Special Needs Trust is structured to ensure assets are not deemed assets of the disabled beneficiary, allowing for distributions to be made for his or her benefit
- A disabled person can fund a first-party trust with his or her own assets and still be eligible for Medicaid benefits and SSI
- Structured settlements earned by a disabled person can be paid directly to the Special Needs Fund to prevent the individual from losing government benefits

Introduction

While financial planning and estate planning are challenging exercises in the best of circumstances, the complexity of designing an effective plan increases significantly for families where one or more members have special needs. A family seeking to qualify for public benefits encounters additional government regulations that influence providing support for and transferring assets to family members with special needs. The solution may be a Special Needs Trust (SNT), which provides supplemental resources to a beneficiary.

Proper financial planning for individuals with special needs can enable a comfortable lifestyle for loved ones without compromising their eligibility for government benefits.

What are “Special Needs?”

“Special needs” is an estate planning term that can apply to various learning disabilities and cognitive, physical or behavioral issues. An individual may be born with a disability or become disabled later in life due to an illness, medical complication, or a debilitating injury or accident. The “special needs” designation is often used to ascertain an individual’s eligibility for special services, programs and government benefits. Some individuals with special needs may qualify for government assistance, such as the Social Security Administration’s Supplemental Security Income (SSI) program or Medicaid health services, while others may not.

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Public Benefit Eligibility

Public benefits may be available to disabled individuals. The federal government considers a child to be disabled for purposes of SSI benefits when the child has a medically determinable physical or mental impairment (including an emotional or learning problem) that results in marked and severe functional limitations that are expected to be long-lasting or fatal¹. In order to qualify for certain public benefits, household income may not exceed a certain threshold, which is based in part on the number of other children in the household, the number of parents, and whether the household income is earned or unearned².

Adult Eligibility

Similarly, the federal government considers an adult to be disabled when the adult has a medically determinable physical or cognitive impairment that makes him or her unable to engage in any “substantially gainful activity” and that is expected to be long-lasting or fatal³. In addition to qualifying for certain benefits, adults must meet income and asset tests.

The income limit test for adults can be very complex, depending on the mix of earned, unearned, in-kind and deemed income. The asset test is more straightforward. An individual seeking SSI or Medicaid cannot own assets in excess of \$2,000 (\$3,000 for a married couple)⁴. Certain assets such as a home, household possessions and a car are excluded from the definition of assets⁵. Those who enroll and later lose SSI or Medicaid eligibility may face tough legal battles to regain access.

Preservation of Public Benefits

The Omnibus Budget Reconciliation Act of 1993 explicitly authorized the use of a Special Needs Trust to address the goal of some families to provide additional resources for their disabled family members without disqualifying them for government benefits⁶. An SNT is specifically structured so that the trust assets are not deemed to be assets of the disabled beneficiary and allow for distributions to be made for his or her benefit.

The SNT is meant to provide for the extra needs that are not covered by government benefits. An SNT should expressly state that the trust is intended to provide “supplemental and extra care” beyond that which the government provides and is not intended as a basic support trust.

An SNT can provide for the disabled person’s comfort and happiness, including necessary or desirable equipment (e.g., a specially equipped vehicle), training and education, insurance, transportation, essential dietary needs, electronic equipment, computers, vacations, entertainment, payments for a companion and other types of “quality of life” enhancements. It can hold everything from cash and investments to real property.

The Two Most Common Types of SNTs are First-Party Trusts and Third-Party Trusts:

First-Party Trust (self-funded)

A first-party trust is funded using the disabled individual's own assets. These may be assets that were gifted, inherited or awarded as damages from the settlement of a lawsuit. A disabled person can fund the trust with his or her own assets (or a court appointed conservator or guardian may do it on his or her behalf) and still be eligible for Medicaid benefits and SSI. However, upon the disabled person's death, the self-funded SNT is subject to a "payback provision," which requires any remaining trust assets be repaid to the state agency which administered the Medical Assistance Program.

In December 2016, President Barack Obama signed a new provision into law allowing a disabled person to create a self-funded SNT⁷. Prior to enactment of the law, only the individual's parent, grandparent, guardian, or a court could create such a trust, even though the disabled person's own assets would be used to fund the trust.

Third-Party Trust

A third-party trust is created by a family member to ensure the beneficiary receives the present and future care he or she would want and expect. Again, the assets in the trust will not be regarded as owned by the disabled person, thus allowing him or her to continue to qualify for government benefits.

These trusts are ideal for gifts and/or inheritances from parents, other family members and friends who want to support the disabled individual. The SNT can even be named as the beneficiary under a will, revocable trust, life insurance policy or retirement account. Laws regarding third-party-funded SNTs may vary from state to state. It is important to consult with legal counsel to determine an appropriate trust for the relevant circumstances.

Structured Settlements

People typically win structured settlements because of a personal injury or medical malpractice lawsuit, and they often receive periodic payments over time in lieu of a lump-sum settlement. If the insurance company or payor makes the payment directly to the special need's individual, such payments will count against the public benefit qualification limits unless the funds are contributed to a self-funded trust.

Alternatively, if a third-party-funded trust is established, the settlement can be paid directly to the trust rather than to the individual. In most states, any funds remaining in the third-party trust after the disabled person dies could be left to designated beneficiaries (e.g., children, siblings or other family members) rather than be subject to the payback provision of the self-settled trust.

Long-Term Financial Needs

The cost of care for a disabled person can be staggering. While medical expenses may be covered by Medicaid, there are often other financial expenses, such as physical therapy, custodial care or special assistance (e.g., assistance with daily living activities such as bathing, dressing or eating) that will not be covered and can be substantial.

Parents who wish to leave a bequest to their disabled child should set up an SNT so that it receives the inheritance for the continued care of their child. This same trust can be used to receive gifts and/or inheritances from other family members or friends.

Another common means of ensuring adequate funding of long-term care requirements is through life insurance. The trustee of the SNT — rather than the disabled individual — should be designated as beneficiary of the life insurance policy to avoid jeopardizing government benefits eligibility.

Your Comerica Trust Advisor can also work with you to determine if funding an ABLÉ account may be in the beneficiary's best interest. Generally speaking, funds in an ABLÉ account are disregarded when determining eligibility for certain means-tested benefits programs, such as Medicaid and SSI. However, they can be a useful tool when beneficiaries require assistance with shelter related expenses.

Special Needs Trust Solutions

Comerica understands the complexity of SNT administration and the importance of supporting the care of the beneficiary and their family. The Special Needs Solutions team at Comerica advocates for the beneficiary and partners with the beneficiary's trusted advisors to ensure the best possible care and living conditions. The Comerica team provides ongoing service to the beneficiary to adjust care or housing as the beneficiary's disabilities dictate.

Additionally, as a professional fiduciary, Comerica works with other professionals to avoid jeopardizing a beneficiary's eligibility for needs-based government assistance such as Medicaid and Supplemental Security Income.

You can rely on Comerica for any of the following special needs trust responsibilities:

- Coordinating appropriate benefits.
- Filing annual financial reports as required by the courts and benefit providers.
- Preparing annual budgets for approval.
- Paying bills for approved services and expenses.
- Evaluating insurance and maintaining or assessing appropriate coverage.
- Facilitating professional services, including legal and tax preparation.
- Working closely with the guardian and caregivers to balance physical needs with financial needs.
- Establishing care for the physical and personal needs of an individual and/or family under various circumstances.

Comerica can help

Proper planning can enable a comfortable lifestyle for loved ones without compromising government benefits eligibility. It can also help to ensure appropriate arrangements for the continued care, companionship and financial support of a disabled family member. The knowledge and expertise that Comerica provides in administering special needs trusts provides you with peace of mind knowing your family member is cared for properly.

Want to know more?

For more information about this topic or any other, Comerica welcomes the opportunity to help. Contact your Comerica Relationship Manager or [Contact Comerica](#) to request to speak with a Comerica Professional.

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