

Understanding Special Needs Trusts (SNTs): What, When and Why

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B&A at a Glance

Serving AZ since 2004

Practice Exclusively in Estate Planning, Elder Law, and Special Needs Planning including:

- Drafting Estate Planning Documents
- Probate & Trust Administration
- Business Formation
- Long Term Care Planning
- Asset Protection Planning
- Special Needs Trusts
- Guardianships/Conservatorships
- ALTCS Benefits



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What is a SNT?

- A SNT is a trust established for the benefit of a disabled individual
- Either First Party[42 USC 1396p(d)(4)(a) or (d)(4)(c)] or Third Party
- Used to enrich life of disabled beneficiary while at same time preserve important means-based public benefits
- Assets are exempt for means-based public benefits eligibility
- Creditor protection
- Appoint Trustee and/or Trust Protector



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2 Types of SNTs: 1st and 3rd Party

First Party- Single trust agreement funded with the disabled persons' assets (e.g., lawsuit settlement, outright inheritance, personal savings) in accordance with 42 U.S.C. 1396p(d)(4)(a):

- Only available to disabled persons under age 65
- Must be established by disabled individual, parent, grandparent, guardian or Court
- Mandatory payback at beneficiary's death to state(s) for Medicaid benefits paid
- Assets are exempt under public benefits
- Creditor protection
- Trustee absolute discretion for distributions income/principal

This is type of SNT typically used when someone fails to plan for a special needs loved one in their estate plan.

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2 Types of SNTs: 1st and 3rd Party

First Party Pooled Trust- Funded with assets of many disabled persons' (e.g., lawsuit settlement, outright inheritance, personal savings) in accordance with 42 U.S.C. 1396p(d)(4)(c):

- **Master trust agreement**
- Managed by nonprofit organization (Trustee)
- Combines resources of many beneficiaries for administrative cost-effectiveness and investment optimization
- Sub-account for each beneficiary
- At death, funds retained for charitable purposes and/or mandatory payback requirement to state(s) for Medicaid benefits paid during lifetime of beneficiary
- Assets are exempt under public benefits
- Creditor protection
- Trustee has absolute discretion for distributions of income/principal

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2 Types of SNTs: 1st and 3rd Party

Third Party - Trust agreement funded by a third party's assets such as parent or grandparent (aka **Supplemental Care Trust**):

- Established by third party (known as the Trustor) during their lifetime or by Will or Trust upon their death for a disabled beneficiary of any age.
- **NO PAYBACK PROVISION**. At beneficiary's death remaining assets will transfer to person(s) *or charities* designated by Trustor (e.g., other family members-not state Medicaid agency).
- Trust Assets are exempt under public benefits so long as the income or principal are not "available" to the beneficiary.
- Creditor protection
- Trustor selects Trustee(s), and Trust protector, if desired.
- Trustee should have absolute discretion to make distributions; beneficiary cannot have withdrawal authority or termination rights

A third party special needs trust should ALWAYS be used if the intended beneficiary receives means based public benefits, or if there is any possibility they may in the future!

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When is a SNT Useful?

1st Party

- Under age 65 disabled individual either (1) receives means-tested public benefits, and would lose the same without use of 1st Party SNT to shelter newly acquired assets, or (2) needs public benefits but has excess resources

3rd Party

- Beneficiary receives means-tested public benefits, or might need them later; or
- Beneficiary is vulnerable to third parties; or
- Beneficiary not able to handle financial matters



Public Benefits Summary Chart

PROGRAM	TYPE OF BENEFIT	MEDICAL CRITERIA	INCOME CRITERIA	RESOURCE CRITERIA
DDD	Services and supports to persons with developmental disabilities	Y	N	N
SSI ↓ Medicaid/AHCCCS	Cash Income (2018 max benefit of \$750.00/month)	Y	Y	Y
SSD ↓ Medicare	Cash Income (amount depends upon work history)	Y	N	N
Medicare	Federal Health Insurance	N	N	N
AHCCCS Medicaid	AZ's Medicaid health insurance	N	Y	N
ALTCS	AZ's Medicaid long term care services	Y	Y	Y
HUD (Section 8)	Rental and home ownership supports	N	Y	N
SNAP	Supports families to prevent under-nutrition	N	Y	Y

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D(4)(a) and (c) 1st Party SNT Allowed Distributions

- Although SNT assets are exempt, distributions for certain purposes may count as “income” which can reduce or eliminate means-based public benefits
- “Income” = ◇ Food _(SSI ↓ 1/3) ◇ Cash ◇ Shelter _(SSI ↓ 1/3)
- AHCCCS: ARS Sec. 36-2934.01, MA 803.E
- SSI: POMS SI 01120.201.I
- Must be for sole benefit of trust beneficiary
- Pays for goods/services not provided by gov’t
- ABLE accounts



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3rd Party SNT

Impact of Distributions on Public Benefits

- **SSD**- No impact
- **Medicare**- No impact
- **SSI**- Caution: Food ◊ Cash ◊ Shelter
 - CASH** (over \$20/month) reduces SSI benefit dollar for dollar;
 - FOOD or SHELTER** is **In-kind Support and maintenance**. ISM reduces SSI by actual value or maximum of 1/3, whichever is less. Shelter related expenses are mortgage payments, rent, real property taxes, heating and cooling bills, electricity, water, sewage, garbage collection. Food includes groceries or meals.
 - ALL OTHER PURPOSES**: No impact.
- **AHCCCS/ALTCS**- Only distributions paid directly to the beneficiary will be treated as “income”; payments to third party vendors *for any purpose* do not count as income.



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What Can a 3rd Party SNT Pay For?

Examples* include the following:

Home purchase, and home improvements, repairs and maintenance
Furniture (e.g., bed, TV, dresser)
Phone and utilities
Education expenses (e.g., tuition, books, supplies, computer)
Health insurance premiums
Purchase of car and related expenses, bus passes, or other transportation needs
Household goods and personal property
Clothing
Medical expenses not covered by other programs (e.g. dental care, therapy, massages, vision care, care management, and other support services)
Durable medical equipment not covered by other programs
Home care services not covered by other programs
Entertainment (e.g., books and magazines, trips, outings to sporting events, movies, museums, and hobby supplies)
Guardian and Conservator fees
Trust taxes, Trustee fees, and expenses of administration
ABLE account contributions

**Trustee may only make distributions as authorized in the actual Trust document*



Thank you

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