

## "TO SNT OR NOT TO SNT, THAT IS THE QUESTION" Should You Establish a Special Needs Trust?

By: [Bridget O'Brien Swartz](#)

Shakespeare's well known verse in the play of Hamlet is apropos in the area of public benefits planning. You or a loved one is disabled, and eligible for and receiving public benefits assistance, namely, [Supplemental Security Income](#) (SSI) and [Medicaid](#) benefits. Your client will soon be the recipient of proceeds from a personal injury settlement, inheritance or other source. What should you do? The answer seems obvious. Establish a [special needs trust](#) ("SNT"). Such a trust can be established for an individual who is disabled. Their income and/or assets can be funded, thereby maintaining their eligibility for public benefits and providing a means by which to supplement their needs.

Hold on! Before establishing a SNT, do not forget the requirements under federal law that must be met:

- The individual must be disabled according to Social Security (SSA) criteria;
- The trust must be established before the disabled person reaches age 65;
- The trust must be established by a parent, grandparent, guardian/conservator, or court of law; and
- The trust must provide for reimbursement to Medicaid the cost of medical services it has provided to the beneficiary.
- Determine whether or not there are additional **state** requirements that must be met as well. Each state may have requirements to comply with their statutes.

Establishment of a special needs trust is actually a relatively simple matter once the decision has been made to create one. What is often not so simple or straightforward is evaluating whether or not an individual's circumstances merit establishment of such a trust or whether the individual will be best served by such a trust.

### No One Size Fits All Solution

There is no cookie cutter answer. Each case must be evaluated taking into account individual circumstances. What is the age of the individual, their life expectancy, and nature of their disability? To what extent are the public benefit programs meeting their needs? Are there alternative sources of medical coverage, such as through a parent's employer-sponsored group health plan or the Pre-Existing Condition Health Insurance Plan? What is the gap between what is being provided by the public benefit programs and the individual's level of need? Oftentimes in personal injury matters, a life care plan report is completed detailing anticipated expenses over the individual's life expectancy. This life care plan report can be useful, but frequently must be modified to delineate what the individual will actually need and utilize, as well as the extent to which private and public resources will provide for such needs.

### What Other Benefits Do They Already Receive?

What public benefits is the individual currently eligible for and receiving, as well as what are they potentially eligible for and receiving? If they are eligible/receiving SSI and Title XIX Medicaid, then a special needs trust will preserve such benefits. If they are eligible/receiving benefits other than SSI or Title XIX Medicaid, such as Nutritional Assistance (formerly known as Food Stamps), TANF (Temporary Aid to Needy Families), Section 8 through HUD, then a special needs trust may not preserve such benefits. Maybe the benefits for which the

individual is eligible or may be eligible are not based on financial need, such as Social Security Disability Insurance (SSDI) and Medicare, or they do not consider resources in determining eligibility or benefits. In such instances, the receipt of funds, such as a personal injury settlement, may not affect eligibility and a special needs trust may not be necessary.

### What is the Amount of the Settlement?

How much will the individual receive from the settlement? Although there is no clear benchmark, if nominal, then there may be alternatives to a special needs trust, such as immediately "spending down" the funds on exempt or excluded resources. For example, to determine SSI and Medicaid eligibility, real property that serves as the individual's primary residence, one vehicle, household goods and personal effects, a burial plot, and burial arrangements are excluded and settlement funds could be used. Legitimate debts can be paid. Services can be pre-paid for a limited period of time.

### How Can the Special Needs Trust Be Used?

How can the special needs trust be utilized? For purposes of SSI and Medicaid, as with most other public benefit programs, disbursements of "income," which is typically defined as food, shelter, or cash, may impact the benefit amount or eligibility. A state may have additional restrictions on what may be paid out of the trust for Medicaid eligibility purposes. With the foregoing in mind, a special needs trust can generally be used to pay the following: Other "utilities" such as phone, cable and internet service; the cost of the purchase of a vehicle, its maintenance, registration and insurance; the cost to modify a home for handicap-accessibility or purchase such a home; pre-paid burial/funeral arrangements; educational and recreational expenses; television, computers and other electronic devices; vision and dental; durable medical equipment; therapy, medications, alternative treatments; attendant and respite care, and the list goes on.

The above is merely a glance into the various factors to be taken into account before jumping head first into a special needs trust. This is an arrangement that you do not want your client to go into hastily. You must be informed and know what to anticipate. You, and the professionals assisting in making this decision, will need time to gather the necessary information and evaluate the options. "To SNT or not to SNT, that is the question," and the answer is not readily apparent. When the decision to establish a SNT is made after thorough due diligence, then you can be assured that you or your loved one will benefit from the arrangement.

*About the author:* [Bridget O'Brien Swartz](#) is a partner at the Phoenix law firm of [Jaburg Wilk](#) where she heads the [Special Needs Planning group](#). She is an Arizona State Bar Certified Specialist in Estate and Trust law and is certified by the National Elder Law Foundation as an Elder Law Attorney. Bridget is a Southwest Super Lawyer and was named a 2011 and 2012 "Best Lawyer" in Elder Law and Trusts & Estates. Bridget assists clients with special needs planning to ensure that public benefits are preserved. She is a frequent contributor to elder law journals and NAELA newsletters.

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