

Financial planning and estate planning are complex exercises in the best of circumstances, and the challenges of designing an effective plan are significantly more complex for those with special needs. This financial planning often involves a Special Needs Trust which preserves financial eligibility for government benefits to preserve assets. Experienced professional trustees are often appointed to add further protection.

What Are "Special Needs?"

In financial planning, "special needs" is a broad term that refers to an individual with various physical or mental limitations that requires additional support to be provided by loved ones and/or government benefits. This additional support required for someone with special needs can include a wide variety of services ranging from minor assistance with managing household expenses to 24/7 caregiving. For many, the additional support required increases over time as the individual ages. Due to the cost of these services, eligibility for government benefits should be considered to ensure financial resources last his or her lifetime.

Government Benefit Eligibility

When a family is drafting their estate plan, or the individual receives a legal settlement, government benefits can often help maintain a higher quality of life long-term for their loved one. These government benefits typically include, but are not limited to:

- Medicaid (i.e., Medi-Cal, MassHealth, etc.) health insurance which can also provide skilled-nursing and caregiving
- Monthly Supplemental Security Income (SSI) from the Social Security Administration
- Federally-subsidized or HUD housing

The most financially valuable government benefit is usually Medicaid health insurance, or specifically needs-based Medicaid health insurance for those who are disabled. Though Medicaid eligibility criteria varies by state and circumstance, most states agree to allow the Social Security Administration to determine eligibility (See SI 01715.010 Medicaid and the Supplemental Security Income (SSI) Program). This provides some consistency nationally which allows this article to outline simplified guidelines to help evaluate if an individual with special needs may qualify for Medicaid and Supplemental Security Income.

For adults, the Social Security Administration requires the individual to have limited financial resources and meet their definition of "disabled", aged (over 65), or blind. Like special needs, "disabled" is defined as a physical or mental impairment that prevents gainful employment long-term (DI 00115.015 Definitions of Disability). Minors typically would not earn gainful employment, and as a result, are not required to have limited financial resources to qualify. In other words, if a loved one has special needs, the main hurdle is qualifying under strict financial limitations.

Financial Limitations

Congress recognized the financial hardship placed on those living with special needs by passing the Omnibus Budget Reconciliation Act of 1993. This created the first modern Special Needs Trust (SNT) that allows people with disabilities to have financial resources AND qualify for the government benefits mentioned above. These trusts have specific requirements and must administer the funds in alignment to government benefit rules to maintain eligibility. However, this provided a way for families planning for their loved one's financial future, and for individuals with special needs receiving a settlement, to maintain a higher quality of life.

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 many forms of assets including real property. However, an SNT must be for the primary benefit of someone with a disability. In other words, it cannot benefit other people.

The Two Most Common Types of SNTs

1. First-Party Special Needs Trust (Self-Funded)

A first-party trust is funded using the disabled individual's own assets. These assets are most commonly from a lawsuit but can also be gifted or inherited. A disabled person (or a court appointed conservator or guardian on his or her behalf) can fund the trust with his or her own assets and still be eligible for Medicaid, SSI and HUD housing. In effort to quell potential concerns from taxpayers, upon the disabled person's death, the self-funded SNT is subject to a "payback provision." The payback provision requires the trust's remaining assets to repay the state(s) Medicaid programs for medical assistance provided to the individual first, before distributing to the remainder beneficiaries. Due to this, families planning for the future of an individual with special needs should consider a Third-Party Special Needs Trust

When an individual receives a legal settlement because of a physical injury, they may be given the option of using a tax-free structured settlement annuity. In lieu of a lump-sum settlement being invested traditionally, this product provides periodic payments over time with a set internal rate of return. This internal rate of return is typically lower than the historical performance of traditional investments, but

is not taxed and provides consistent payments. If the insurance company or payor makes the payment directly to the special need's individual it can negatively impact financial eligibility for government benefits. However, if these payments are irrevocably assigned to a First-Party Special Needs trust, financial eligibility can be preserved.

2. Third-Party Special Needs Trust

These trusts are ideal for gifts and/or inheritances from parents, family members and friends who want to support a loved one with special needs. The SNT can be named as the beneficiary under a will, revocable trust, life insurance policy or retirement account. The biggest advantage to using a Third-Party SNT is that in most states, Medicaid has no right to recovery, which allows unused assets to pass unhindered to remainder beneficiaries and/or remain in the family.

Selecting a Trustee

When drafting a trust, one of the most important decisions is selecting and appointing a trustee. A trustee is responsible for ensuring that the administration aligns with the terms of the trust, governing laws and that the needs of the beneficiary are met. For Special Needs Trusts, the standards are held higher. This includes but is not limited to experience, compassion, continuity, networks of support, and a deep understanding of the rapidly evolving government benefit rules.

Comerica's Special Needs Solutions team is dedicated solely to the administration of relationships serving people with special needs and minors. This includes experienced and compassionate trust advisors, low client-to-advisor ratios, and a customer experience focused raising expectations across the industry. [Contact Comerica](#) to learn more about we apply this to practice.