

Supplemental Needs Trusts

What is a supplemental needs trust?

Supplemental needs trusts (also known as “special needs” trusts) are drafted so that the funds will not be considered to belong to the beneficiary in determining his or her eligibility for public benefits, such as Medicaid, Supplemental Security Income (SSI), or public housing. These trusts are designed not to provide basic support, but instead to pay for comforts and luxuries that could not be paid for by public assistance funds, such as education, recreation, counseling, and medical attention beyond what is required simply to maintain an individual.

Who can create a supplemental needs trust?

Very often supplemental needs trusts are created by a parent or other family member for a disabled child (even though the child may be an adult by the time the trust is created or funded). But the disabled individual can often create the trust himself or herself, depending on the program for which he or she seeks benefits. Medicaid is the most restrictive program in this regard, making it difficult for a beneficiary to create a trust for his or her own benefit. But even Medicaid has a “safe harbor” allowing for the creation of a supplemental needs trust with a beneficiary’s own money if the trust meets certain requirements. This is sometimes called a “(d)(4)(A)” trust, referring to the authorizing statute.

Must the supplemental trust be irrevocable?

Yes, if it is created and funded by the person seeking public benefits himself or herself. No, if it is created and funded by someone else for the benefit of a person receiving or seeking public benefits.

Are there restrictions on how the funds in the supplemental needs trust may be spent?

Yes and no. Yes, each public benefits program has restrictions that must be complied with in order not to jeopardize the beneficiaries’ continued eligibility for public benefits. For instance, the beneficiary would lose a dollar of SSI benefits for every dollar paid to him or her directly. In addition, payments by the trust for food, clothing, or housing for the beneficiary are considered “in kind” income and, again, the SSI benefit will be cut one dollar for every dollar of value of such “in kind” income. Some attorneys draft the trusts to limit the trustee’s discretion to make such payments. Others do not limit the trustee’s discretion, but instead counsel the trustee on how the trust funds may be spent, permitting more flexibility for unforeseen events or changes in circumstances in the future. The difference has to do with philosophy, the situation of the client, and the amount of money in the trust.