



THE CORPORATION OF GUARDIANSHIP

Special Needs Trust FAQ

What is a Special Needs Trust?

The primary purpose of a Special Needs Trust is to preserve government benefits for disabled beneficiaries. A trust is a legal document containing instructions directing the management and distribution of the resources placed in the trust. The person creating or funding the trust is the **grantor**. The person who receives the benefit or on whose behalf the trust was created is the **beneficiary**. The **grantor** appoints a **trustee**, which is a person or entity that will manage the trust and distribute the trust's funds for the benefit of the beneficiary. A **Special Needs Trust** is a trust designed for beneficiaries who are disabled, either physically or mentally and are intended to provide "supplemental and extra care" beyond what is provided by the government.

How does the Corporation of Guardianship serve as trustee?

Here is a brief list of the duties and responsibilities that the Corporation of Guardianship fulfills as trustee:

- Avoid any activity that conflicts with the purpose of the trust—which is to enhance the quality of life of the beneficiary.
- Spend money to enhance the beneficiary's life, while making the trust funds last as long as possible.
- Respond to the beneficiary's personal needs for goods and services that aren't covered by SSI or Medicaid.
- Keep up with SSI and Medicaid income and resource rules so that the trustee's spending doesn't affect the beneficiary's eligibility for SSI and Medicaid.
- Invest and manage trust property following the terms of the trust and state law, in the beneficiary's best interests.
- Keep the beneficiary and other interested persons up to date on trust activity.

- Work together with the beneficiary's guardian or conservator, if the court has appointed one.
- Keep accurate records, prepare reports that the SSI and Medicaid programs require, and file necessary federal and state tax returns.
- Go to court, if necessary and financially reasonable, to uphold the trust and require the SSI and Medicaid programs to comply with applicable law.
- Terminate the trust, if circumstances warrant doing so.
- Manage or distribute trust property after the beneficiary dies or the trust is terminated

How can a Special Needs Trust be used?

Special Needs Trusts are designed to supplement, not replace, the kind of basic support provided by government programs like Medicaid and Supplemental Security Income (SSI). Special Needs Trusts pay for comforts and luxuries -- "special needs" -- that could not be paid for by public assistance funds.

When determining how the Special Needs Trust can be used, the Corporation of Guardianship staff consider the following questions:

1. Is the expenditure permitted by the trust terms? Is it prohibited by Medicaid or Social Security regulations?
2. Does the expenditure clearly benefit the trust's beneficiary?
3. Is there enough money in the trust to make the proposed payment without seriously affecting the ability to provide other benefits in coming years?
4. Are there other sources of funds? If public benefits are available to provide the same items, the money ordinarily should not come from the trust.

What are the different types of Special Needs Trusts administered by The Corporation of Guardianship?

The Corporation of Guardianship administers the following types of trusts:

- Third Party Special Needs Trust – A trust established by a third party (usually a parent or relative) for the benefit of a loved one with a disability.
- First Party Special Needs Trust – A trust established with the beneficiary's own funds – a personal injury settlement, inheritance, alimony, sale of property, or the beneficiary's own savings. There are two types of First Party Special Needs Trusts:
 - First Party (d)(4)(A) Special Needs Trust, and
 - First Party (d)(4)(C) Pooled Special Needs Trusts

What is the difference between a First Party (d)(4)(A) Special Needs Trust and a First Party (d)(4)(C) Pooled Special Needs Trust?

The primary differences between the two First Party Special Needs Trusts are

1. Who can serve as Trustee?

- A First Party (d)(4)(A) Special Needs Trust can be administered by a bank, a family member, or anyone the grantor chooses to serve as trustee.
 - A First Party (d)(4)(C) Pooled Special Needs Trust must be administered by a non-profit organization.
2. Who establishes the trust?
 - A First Party (d)(4)(A) Special Needs Trust is established by a parent, grandparent, legal guardian, or the court – NOT the beneficiary him or herself.
 - A First Party (d)(4)(C) Pooled Special Needs Trust is established by a parent, grandparent, legal guardian, the court – OR the beneficiary him or herself.
 - If the beneficiary must establish his or her own trust, the only available choice is a Pooled Trust.
 3. How old is the beneficiary?
 - A First Party (d)(4)(A) Special Needs Trust is funded before the beneficiary is 65-years-old.
 - A First Party (d)(4)(C) Pooled Special Needs Trust is funded before or after the beneficiary turns 65-years-old (in some states, there may be a transfer penalty if established after the age of 65).
 - If the beneficiary is 65 or older, the only available choice is a Pooled Trust.
 4. How are the remainder funds handled after the beneficiary dies?
 - When the First Party (d)(4)(A) Special Needs Trust beneficiary dies, the remainder funds (if any) are paid back to Medicaid. If funds are left over after Medicaid payback, the remainder goes to the beneficiary's heirs.
 - When the First Party (d)(4)(C) Pooled Special Needs Trust beneficiary dies, a percentage of the remainder funds (if any) are paid back to Medicaid (in some states) and the remaining funds are retained by the non-profit trustee to be used for the benefit of other individuals with a disability.

I have a disabled family member. How can I set aside funds to care for him or her when I pass away?

Consider a **Third Party Special Needs Trust**. A Third Party Special Needs Trust helps you provide financial security for a loved one with a disability—*without* jeopardizing important government benefits. In contrast, leaving money directly to loved ones can make it impossible for them to get benefits, including Medicaid. A Third Party Special Needs Trust is funded by someone other than the beneficiary – gifts/inheritances from a parent, grandparent, other family member or friend. Gifts into the trust can be made throughout the beneficiary's life. Friends and family can even name this type of Special Needs Trust in their will, thereby contributing additional funds at their death.

I have a disabled family member who inherited a lump sum of money when a grandparent died. Can these funds be put into a trust?

Consider a **First Party Special Needs Trust**. A First Party Special Needs Trust is funded by the beneficiary's money – a personal injury settlement, inheritance, alimony, etc. If a disabled person receives a lump sum such as this, it disqualifies the person for public benefits (e.g., SSI and Medicaid) now and in the future, since it is an increase in assets. Setting up a First Party Special Needs Trust enables the beneficiary to retain the additional finances without jeopardizing public benefits.

How do I decide between a First Party (d)(4)(A) Special Needs Trust and a First Party (d)(4)(C) Pooled Special Needs Trust?

The type of trust that you select will depend on multiple factors including the source of the funds for the trust and who establishes the trust. An attorney will know best how to tailor the document to your individual circumstances. It is important to discuss your options with an attorney who practices Special Needs Planning and Elder Law. The Corporation of Guardianship does not have an attorney on staff and cannot offer legal advice, but we are happy to talk with you about your situation and assist you in finding an attorney.

Do all Special Needs Trust have the Medicaid payback provision?

Payback refers to paying back the state from money leftover in the trust upon the death of the trust beneficiary, as a reimbursement for having received public benefits. First Party Trusts, in which funding usually comes from a personal injury settlement or inheritance, require payback to the state. With a Pooled Trust, a portion will be retained by the non-profit organization that manages the trust. Third Party Special Needs Trusts do not have a payback provision.

Does the Corporation of Guardianship charge a fee to serve as trustee?

Yes, the Corporation of Guardianship is a fee-for-service nonprofit organization. By charging a small, below-market fee for the services provided for those who are able to pay, CoG is able to serve more clients with limited resources. Our goal is to serve as many people as possible who are in need of our services, including those who are unable to pay a fee-for-service. To discuss your financial circumstances, please contact us at 336.273.5389 or www.corpguard.org.

Where can I learn more about Special Needs Trusts?

National Academy of Elder Law Attorneys

www.naela.org

Special Needs Alliance

www.specialneedsalliance.org

Special Needs Answers

www.specialneedsanswers.com