

Special Needs Trusts

FREQUENTLY ASKED QUESTIONS

1-What is a Special Needs Trust?

A Special Needs Trust (SNT), as it is referred to by the New Jersey Medicaid program, is a trust established in accordance with 42 U.S.C. 1396p(d)(4)(A) containing the assets of a disabled individual which is established and funded prior to the time the disabled individual reaches the age of 65, which is established for the sole benefit of the disabled individual by a parent, grandparent, legal guardian of the disabled individual or a court, and which may be excluded from the Medicaid rules regarding the treatment of a trust as long as it is written, managed and used in compliance with all applicable Federal and State laws and regulations.

2-What can SNT funds be used for?

SNT funds can be used for the special needs of the trust beneficiary. The funds may only be used for the sole benefit of the trust beneficiary.

3-What regulations and laws apply to SNTs?

The Federal statute is at 42 U.S.C. 1396p(d)(4)(A). State statutes are at N.J.S.A. 3B:11-36 and N.J.S.A. 3B:11-37. State regulations are found at N.J.A.C. 10:71-4.11(g)1. These regulations set forth language that must be included in a SNT for New Jersey Medicaid purposes. These regulations can be found at the SNT website of the Division of Medical Assistance and Health Services (DMAHS).

4-What are some of the special conditions a SNT must meet?

- Must contain the assets of an individual. This can include assets gifted to the individual, however all deposits to the trust must occur prior to the individual reaching age 65.
- Trust Beneficiary must be disabled under 42 U.S.C. 1382c(a)(3).
- Must be irrevocable.
- Must be for the sole benefit of the trust beneficiary.
- Upon the death of the trust beneficiary, the New Jersey Medicaid program must be reimbursed up to the total amount of Medicaid benefits paid on behalf of the trust beneficiary during his/her lifetime. (See the regulations at N.J.A.C. 10:71-4.11(g)1 for the other special conditions for a SNT in New Jersey.)

5-What can be deposited into a SNT?

Assets of a disabled individual under age 65. If the assets are the result of a personal injury settlement or law suit, any Medicaid payments related to the personal injury must be reimbursed immediately and prior to the establishment of the trust. See N.J.A.C. 10:71-4.11(g)1.v.

6-Who can establish a SNT?

A parent, grandparent or legal guardian of the disabled individual, or a court, can establish a SNT.

7-Can legal and administrative fees be paid from a SNT?

Appropriate and reasonable trust fees may be paid consistent with New Jersey law and the terms of the trust.

8-How does a SNT get reviewed by the Medicaid agency?

Upon application to the Medicaid program, the SNT and its completed Schedule A listing the assets funding the trust are submitted to the eligibility determination agency, such as the County Welfare Agency (CWA), DMAHS's Institutional Services Section (ISS), or the federal Social Security Administration (SSA) District Office ((for Supplemental Security Income (SSI) beneficiaries)) for review as part of the Medicaid or SSI application process. If a person is already eligible as a Medicaid beneficiary at the time the SNT is established, the individual must report any change in income or resources, including newly acquired assets funding the trust, to the eligibility determination agency.

9-Who gets a copy of the SNT?

The trustee must provide a copy of the SNT document to the eligibility determination agency, such as the CWA, ISS, or the federal SSA District Office (for SSI beneficiaries). These agencies need a copy as part of the application or redetermination process. The trustee must also provide a copy of the SNT document to the Division of Medical Assistance and Health Services, Beneficiary Administrative Action Unit (Mail Code 5, P.O. Box 712, Trenton, NJ 08625-0712), which monitors SNTs and is the trust remainderman.

10-Who gets the annual accountings for a SNT?

The eligibility determination agency (the CWA, the ISS or SSA), and the Division of Medical Assistance and Health Services, Beneficiary Administrative Action Unit (Mail Code 5, P.O. Box 712, Trenton, NJ 08625-0712) must receive copies of the annual accountings from the trustee.

11-What happens upon the death of the SNT beneficiary?

Upon the death of the SNT beneficiary, the trustee shall notify the Division of Medical Assistance and Health Services, Beneficiary Administrative Action Unit (Mail Code 5, P.O. Box 712, Trenton, NJ 08625-0712) of the death, and obtain DMAHS's total claim.

All assets remaining in the trust must be liquidated and a check up to the amount of DMAHS's total claim must be paid to the "Treasurer State of New Jersey" (checks sent by regular mail should be sent to Division of Revenue, Lockbox 656, 200 Woolverton Ave., Bldg. 20, Trenton, NJ 08646; checks sent by certified mail, courier or overnight should be sent to Division of Revenue, Attn: Processing Bureau, 200 Woolverton Ave., Bldg. 20, Lockbox 656, Trenton, NJ 08646). No expenditure other than allowable trustee administrative costs may be paid before DMAHS's claim is paid. DMAHS's claim must be paid prior to the payment of any funeral costs. N.J.A.C. 10:71-4.11(g)1.xv. A final accounting must also be provided to the Beneficiary Administrative Action Unit.

12-How are SNTs monitored?

The eligibility determination agency monitors the SNT on an ongoing basis by reviewing the trust and its accountings at the time of application and redetermination. The DMAHS Beneficiary Administrative Action Unit also monitors SNTs on an ongoing basis through review of the trust, review of annual accountings, and review of proposed expenditures required to be reported to DMAHS in advance of the expenditure.

13-When are accountings for SNT due?

Accountings are due annually to the Division of Medical Assistance and Health Services, Beneficiary Administrative Action Unit (Mail Code 5, P.O. Box 712, Trenton, NJ 08625-0712), and are due at the time of eligibility determination or redetermination to the eligibility determination agency.

14-What is required for a SNT annual and final accounting?

A listing of the details of trust assets, receipts and expenditures for the accounting period, including the date, amount, payee and purpose of each expenditure, is needed for an accounting, as well as the balance that remains in the trust. DMAHS has a form on its SNT website that may be used for an accounting. Additional explanations or documentation of expenditures may be required if the sole-benefit or special-need purpose of an expenditure is not clear.

15-What advance notice of expenditures is needed?

The trustee is required to provide DMAHS with advance notice of any expenditure in excess of \$5,000, and of any amount which would substantially deplete the principal of the trust. Notice shall be given to the Division of Medical Assistance and Health Services, Beneficiary Administrative Action Unit, Mail Code 5, PO Box 712, Trenton, New Jersey 08625-0712, **45 days prior to the expenditure**. Any payment by the trust to an individual or entity, that is expected to be greater than \$5,000, either per expenditure or in the aggregate in any 12-month period, shall be considered an expenditure requiring such advance notice. If DMAHS finds that any such expenditure is inconsistent with the trust and/or not for the sole benefit of the trust beneficiary, it will notify the trustee and the eligibility determination agency in writing.

16-Can the SNT be used to pay for medical expenses and other care services?

The purpose of a SNT is to permit the use of trust assets to supplement, and not to supplant, impair or diminish, any benefits or assistance of any Federal, State or other governmental entity for which the beneficiary may otherwise be eligible or which the beneficiary may be receiving. Medicaid beneficiaries in New Jersey should consult their managed care plan to find out what services are available through the managed care plan and through the New Jersey Medicaid program before paying for medical care that may be covered, and therefore causing inappropriate trust disbursements or income to the beneficiary. Any other health insurance should also be exhausted because Medicaid can only pay for services after other liable third parties have provided coverage.