National Structured Settlements Trade Association

Protect your government benefits with a special needs trust

With as little as $2,000 in assets, you can be disqualified from Supplemental Security Income and also Medicaid depending on where you reside. But a special needs trust funded with a structured settlement can help keep your eligibility and protect your long-term financial security.

A special needs trust can protect your financial future by funding costs beyond what Medicaid typically covers including:

- **Extra therapies and rehabilitation**
- **Medical & dental expenses**
- **Dietary needs**
- **Nursing & attendant care**
- **A home or vehicle**

When irrevocably funded by a structured settlement, you gain all those benefits PLUS *an ongoing source of guaranteed tax-free income and asset protection.*

	Settlement goes to a special needs trust funded with a structured settlement	Lump sum settlement without a special needs trust
Remain eligible for Medicaid	✓	NO
Remain eligible for State Medicaid Waiver Program	✓	NO
Remain eligible for Supplemental Security Income	✓	NO
Remain eligible for private care programs based on Medicaid eligibility	✓	NO

Q&A

Q: What is a special needs trust?

A: If you've been injured and have a resulting disability, federal and state laws let you direct your settlement into a special needs trust for your benefit. This special needs trust gives your trustee an easy, secure way to pay your future bills while also protecting your eligibility for Supplemental Security Income (SSI) and Medicaid.

Q: What's the benefit?

A: With as little as $2,000 in assets, you can be disqualified from Medicaid, Supplemental Security Income and other asset- or means-tested government programs that support your financial security. But you can maintain eligibility and continue receiving your government benefits if you create a special needs trust. If you irrevocably fund the trust through a structured settlement, your payments are completely exempt from all federal and state income taxes. This gives you a guaranteed source of funds in addition to Medicaid, while still allowing you to remain eligible for SSI. A 2009 New York Times article called special needs trusts "a common and effective way" to supplement government benefits.

Q: How does it work?

A: Often, a trust is funded with an initial cash payment with additional funds added through a structured settlement that makes guaranteed payments irrevocably into the trust. You must agree to this prior to settling your case. After your case settles, the trustee takes responsibility for paying costs not provided by Medicaid such as attendant care or a vehicle. Depending on your state's laws, the trust can pay many other normal costs of living such as housing, food and clothing.

A special needs trust established with funds from an accident settlement is commonly called a First-Party SNT. This trust must be created by a parent, grandparent, legal guardian or court and is managed by a trustee for your benefit. These trusts are particularly valuable if you are receiving SSI and receive a large personal injury settlement because these trusts allow you to continue to receive benefits and have funds in the trust available as needed.

FEDERAL RULES THAT CLARIFY YOUR RIGHTS

- **The Omnibus Budget Reconciliation Act of 1993** authorizes special needs trusts. See 42 U.S.C.A. § 1396p(d)(4).
- **The Foster Care Independence Act of 1999** codifies trust rules for Supplemental Security Income.
- **Internal Revenue Code Section 104(a)(2)** provides that income from a structured settlement is exempt from federal and state taxation.
- **Social Security Program Operations Manual Systems (POMS) Rule SI 01120.203** clarifies that annuity or support payments irrevocably paid to a special needs trust do not disqualify the trust or the beneficiary from the special needs trust exception.

A pooled trust is an alternative to the first-party SNT and is managed by a nonprofit organization that oversees multiple sub-accounts within the trust. A pooled trust is the only type of special needs trust available for persons 65 and older at the time the trust is created and funded

The most important reason to consider a special needs trust (SNT) irrevocably funded by a structured settlement is the potential to improve your quality of life after an accident. Without eligibility and access to Medicaid, settlements can be depleted early by ongoing medical and personal needs. After depletion, you could be wholly dependent on government services without having the additional source of lifetime funding that the structure and special needs trust can provide.

Funding a special needs trust irrevocably with a structured settlement annuity and cash helps avoid this problem while offering additional benefits. First, there is ease of settlement. If the defendant's liability is in question or if his insurance limits are low, a special needs trust can help move negotiation towards a settlement since it usually allows the plaintiff to **maintain eligibility for needs-based benefits and remain covered by Medicaid, which may be the only health insurance available.**

Moreover, structured settlement payments are regulated by multiple consumer protection laws and **guaranteed against reductions** due to economic changes. Section 104(a) of the federal tax code provides that payments are exempt from federal and state taxes on income, interest, dividends and capital gains.

Additionally, a structured annuity may provide the beneficiary additional protection in case of a bankruptcy proceeding, depending on the specific circumstances.

If your injuries require years of treatment, your trust must be able to make steady payments. **You can tailor your structured settlement payments to cover large expenses** such as wheelchair replacement. You can also **set up lifetime payments that include inflation adjustments and occasional lump sum payments** for an operation that Medicaid may not adequately cover.

"A special needs trust *funded with a structured settlement* offers flexibility, financial security and the potential to stay eligible for Supplemental Security Income and Medicaid."

The special needs trust must provide that Medicaid will be paid back from the assets remaining in the trust after the beneficiary passes away. If the trust assets are not sufficient, there is no personal liability from the beneficiary's estate.

Also, the use of a structured settlement can lower your trust's management fee – leaving more money for you.

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