



Attorneys for special needs planning.

Special Needs Trusts FOR LITIGATION PROCEEDS



Jimmy, Age 19 Disability: Traumatic brain injury and paraplegia.

Several years ago, Jimmy was in an automobile accident. With the guidance of his personal injury attorney and a Special Needs Alliance® member attorney, a special needs trust was established for Jimmy, and a corporate trustee was appointed to administer the trust. Jimmy continues to live with his mother, who serves as his primary caregiver. She is compensated by the trustee from trust assets to provide his specialized care.

How the Special Needs Alliance helped

Jimmy was able to receive benefits because of the funds that were deposited in this trust, including Supplemental Security Income (SSI) and Medicaid. The trust has since paid for Jimmy's therapeutic treatments, the adaption of his home for accessibility, the purchase of a handicap-equipped vehicle to transport Jimmy to and from his medical and therapy appointments, as well as other special equipment to meet his needs. His mother has been able to earn her living as his primary caregiver, and although the trust funds may not be enough to last a lifetime, the hope of Jimmy's family is to use the trust to supplement his public benefits and to maximize his rehabilitative potential.

» THE PROBLEM

If an award from a personal injury case is paid directly to a plaintiff who is receiving public benefits — typically SSI, Medicaid, and subsidized housing — that person could either lose those benefits or have them reduced. Frequently, the award will be exhausted quickly to pay for needed medical expenses that otherwise could have been paid by Medicaid. A personal injury attorney may be liable for malpractice and may also be guilty of an ethics violation if options to maximize qualifications for public benefits are not considered.

» THE SOLUTION

Congress has authorized the establishment of self-settled special needs trusts to be coordinated with public benefit support. The award is placed in the trust, and the trustee uses the funds for the plaintiff's needs without jeopardizing the plaintiff's eligibility to receive certain public benefits — particularly SSI and Medicaid.

» FEDERAL AND STATE LAW

Special needs trusts are authorized by federal law under 42 U.S.C. § 1396p(d)(4)(A). Some states also have specific laws controlling the creation and administration of these trusts. The federal law requirements to establish a conforming trust are as follows:

- The trust must be funded with assets of the individual (the award), and be irrevocable.
- The individual must be under 65 years of age.
- The individual must meet the Social Security definition of disability.
- The trust must be “established for the sole benefit of” the individual.
- The trust must be “established” by an individual, parent, grandparent, legal guardian or a by a court order; and
- Upon the death of the individual, the state Medicaid agency must be reimbursed from any remaining trust assets for payment of medical assistance on behalf of the individual. These requirements apply to all individuals receiving Supplemental Security Income (SSI), individuals receiving Medicaid in an institution, and individuals receiving Medicaid in a community setting only in some states. Subsidized housing agencies have varying rules involving distributions from a trust. The government agency providing benefits must approve the trust.

The best way to provide compassionate care and a comfortable life to your family member with special needs is to support your legal and financial decisions with reliable information and proven expertise. That’s why America’s finest disability attorneys are members of the Special Needs Alliance® (SNA).

As attorneys in the field of disability and public benefits law, we help to enhance your family member’s quality of life. Every SNA member has the resources and legal expertise to help you maintain public benefits for your family member and develop effective estate plans and protect your assets.



This brochure is provided as a service the Special Needs Alliance® and is informational only. It is not intended to serve as legal advice or replace the advice of a legal professional.

