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## Special Needs Trust Basic Information

Special Needs Trusts (SNT) can benefit recipients of SSI, SSI-E, SSDI, Medicaid, Medicare, and many home and community-based waivers. Assets in a SNT are not counted as resources under the rules that apply to Medicaid, and the assets in a SNT will not affect the beneficiary's ability to receive public benefits.

Beneficiaries can be people of any age with a Social Security-defined disability. Assets in a SNT can be later used to pay for certain expenses which will improve the quality of the Beneficiary's life (see handout from WISPact for more info).



### Basic Facts

- SNT can be established by anyone with a disability.
- There is no limit on how many trusts a person has.
- If the beneficiary is receiving Medicaid (and is subject to estate recovery), there is no repayment after the beneficiary dies, unless it is a first-party trust.
- Funds in a SNT are not counted for SSI and Medicaid programs.
- SNT require financial and legal professionals to establish.
- There are no limits on the amount of contributions to a SNT.
- Trust fund earnings are taxable and require annual tax returns.

### Special Needs Trusts



### Fairness Act - Effective December 13th 2016

- Previously, under federal law, if a person with a disability wanted to place their own money into a special needs trust they needed a parent, grandparent, guardian or court to create the trust for them. The individual could not create the trust themselves. This caused unnecessary delay and expense to many individuals and was inconsistent with the requirements for pooled SNTs, such as WISPACT, which have always allowed people with disabilities to use their own money to establish a trust for themselves.
- The Special Needs Trust Fairness Act corrects the previous oversight in federal law. Yes, it was a typo! Congress forgot to include the words "the individual" in the original law. Twenty-three years later, the error has been corrected, giving individuals with disabilities equality and autonomy. Effective December 13, 2016, adults with disabilities may establish and fund their own first-party SNT.



### 5 General Restrictions

1. The SNT must be an irrevocable trust (i.e., the funds cannot be returned).
2. The funds can only be spent for the sole benefit of the Beneficiary.
3. Depending on the type of means-tested public benefits received, there may be restrictions on what expenses the SNT can pay for.
4. The funds may not be paid directly to the Beneficiary (i.e., the Beneficiary cannot receive cash).
5. The Beneficiary must be disabled as defined by the Social Security Administration.

*Information courtesy of ADRC of Dane County. The ADRC does not endorse or recommend specific agencies. This list is provided with the best available information as of March 2024.*



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## Set up

Special Needs Trusts need to be set up through a licensed Wisconsin attorney. There are typically fees associated with this as well as ongoing fees to maintain the trust by the Trustee.

- <https://www.wispact.org/faq/>

Special Needs Trusts can be set up through a bank or financial institution with the assistance of an attorney. Two organizations in Wisconsin administer Special Needs Trusts for people with disabilities.

- WisPACT is a private, nonprofit organization that administers pooled and community Special Needs Trusts (SNT) for people with disabilities. WisPACT maintains a list of attorneys by county that specialize in setting up these trusts. That list can be found at <http://www.wispact.org/content/attorneys>
- Life Navigators is also a private, non-profit that administers Special Needs Trusts statewide. They can be reached at 414-774-6255.

## “Pooled” or “Community” Trusts (i.e. WisPACT):

Each Beneficiary has his or her own separate trust sub-account. However, for purposes of investment, the assets of these accounts are combined into a large “pooled” or “community” account. This enables the Trustee to charge lower fees and can result in a higher rate of return than separately managed trusts. Special Needs Trusts listed as “pooled” trusts are under d4c.



## Types of SNTs

- WisPACT Self-Funded Special Needs Trusts (aka Beneficiary Trust)-Authorized by Federal law 42 U.S.C. § 1396p(d)(4)(C). This trust may be created by a parent, grandparent, guardian, the court or by the disabled individual. The beneficiary can be older than 65 years old. The Trust is funded with assets that belonged to the disabled person when it was created and often requires court orders to create the trust account or transfer funds to it. Sources of funds might include personal injury proceeds, divorce proceeds, the sale of a home or inheritance directly paid to the beneficiary.
- First-Party Special Needs Trusts- Similar to the WisPACT Self-funded SNT; a first-party special needs trust is established for a “disabled” individual’s benefit with his or her own funds under 42 U.S.C. §1396p(d)(4)(A) and any relevant state law. This kind of trust must be established before the beneficiary turns 65. Any funds remaining in the trust upon the death of the beneficiary will be used to reimburse the state for benefits it paid out (aka estate recovery).
- Third-Party Trust (sometimes called a Disabled Individual’s Trust): This is a Special Needs Trust authorized by state law; Wisconsin law HFS § 103.06(7)(a)3. Beneficiaries can be people of any age with a Social Security-defined disability. The disbursement of funds must be for the sole benefit of the disabled person but are generally not restricted. The Third-Party Trust can be created by anyone but the Beneficiary (e.g., parents, grandparents, friends, guardians, courts, etc.). The statute does not allow the disabled individual to create his or her own trust. The Trust is funded from assets that are not/have not been assets of the disabled beneficiary. Typical funding is gifts from parents, other family members and friends. Sources of funds may also include inheritances through a testimonial trust.



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## Examples of Distributions under WisPACT Trusts

*\*Note: Certain distribution requests may require a "denial" by Medicaid or insurance providers to be considered a supplemental need. This is a partial, not exhaustive, list of possible use of trust fund assets.\**



### Recreation & Leisure:

- Participation in sports, hobbies, recreational events, cultural events
- Vacations and travel
- Club memberships
- Movies (No refreshments, including sodas are allowed)
- Television and cable, computer and Internet, telephone
- Visiting friends, companionship
- Musical instruments
- Life coach
- Special Occasions



### Maintenance:

- Clothing
- Home improvements and repairs
- Household equipment (e.g. lawn mower, garden tractor)
- Furniture and appliances
- Housekeeping services
- Lawn care, snow removal
- Storage
- Income taxes
- Grooming (e.g. manicure; haircut)



### Transportation:

- Purchase of a car
- Car repair, maintenance, and insurance
- Accessibility-related equipment and modifications
- Bus, rail, and cab fare



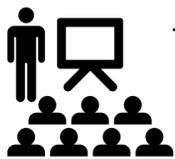
### Medical care:

- Therapies
- Prescription drugs and medications
- Medical supplies & equipment
- Assistive technology/devices (not covered by Medicaid)
- Dental treatment, devices
- Eyeglasses not otherwise covered
- Medical treatments not medically necessary
- Co-pays, deductibles, etc.
- Housing modifications for accessibility
- Ambulance or other medical transportation



### Insurance:

- Term life or supplemental health



### Education & Training:

- Conferences and seminars
- Publication subscriptions
- Class tuition, books and supplies
- Software
- Music class



### Community supports:

- Advocacy, oversight, monitoring or private case management, legal services
- Respite, day care
- Some crisis intervention, guardianship
- Some vocational rehabilitation or habilitation
- Room and board incidental to long term care or medical care (i.e., a portion of charges for nursing home, CBRF, residential care, Etc.)
- Personal care attendant
- Support & service coordination
- Social Services, including supervision and reporting

### **The following expenses cannot be paid for SSI recipients:**

Supplementary food and shelter:

- Rent
- Groceries
- Cost difference between shared and private room
- Property Taxes
- Basic Utilities (e.g. Heat, Gas, Electric, Water, Sewer & Garbage Removal)

*Although the Disability Benefit Specialist Program does not counsel on special needs trusts, they do provide referrals. Please contact the ADRC for our list of local attorneys.*

Resources: [www.wispact.org](http://www.wispact.org) and other DBS training materials,  
<http://wislawjournal.com/2009/03/16/special-needs-trusts-101-a-look-at-the-basics/>