Special Needs Trust
Glossary of Terms

What is a Trust? A trust is a legal arrangement in which a person or a financial institution, called the *trustee*, holds and manages assets for the *beneficiary* (see definition below). The trust document explains the trustee's authority, how the trust is to benefit the beneficiary, and how and when the trust is to terminate. There are many types of trusts, but this article is focusing on a specific type of trust—a special needs trust.

A **special needs trust (SNT)** is a trust that will preserve the beneficiary's eligibility for needs-based government benefits such as Medicaid and Supplemental Security Income (SSI). Because the beneficiary does not own the assets in the trust, he or she can remain eligible for benefit programs that have an asset limit. As a general rule the trustee will supplement the beneficiary's government benefits but not replace them. Examples of supplemental needs are costs for sitters, companions, and dental or medical expenses not covered by Medicare or Medicaid.

A **first-party SNT**, also referred to as a "self-settled" or "(d)(4)(A) trust," is funded with assets or income that belong to an individual with a disability (see definition below) and who is the beneficiary of the trust. In order for the assets of this type of trust not to count for Medicaid or SSI purposes, federal law requires that the beneficiary must be under the age of 65 when the trust is created and funded; the trust must be irrevocable and provide that Medicaid will be reimbursed upon the beneficiary's death or upon termination of the trust, whichever occurs first; and the trust must be administered for the sole benefit of the beneficiary. Typically the funding comes from a personal injury settlement or inheritance the beneficiary receives directly.

A **third-party SNT**, frequently referred to as a supplemental needs trust, is funded with assets belonging to a person other than the beneficiary. In fact, no funds belonging to the beneficiary may be used to fund the trust. Typical funding comes from gifts, an inheritance from parents or grandparents, and proceeds of life insurance policies. This trust has no provisions to pay back Medicaid upon the trust's termination; rather, the person creating the trust decides how the trust estate is distributed when the beneficiary dies.

The following terms are commonly found in first-party and third-party special needs trust agreements:

Accounting — The accounting is an explanation of the trust activity for a specified time period (usually a year). The accounting is prepared by the trustee, or an accountant or attorney hired by the trustee to prepare the accounting on the trustee's behalf. The accounting can be simple or very detailed. It is important to review the language in the trust agreement to know what the accounting requirements are. For example, in addition to providing the accounting to the beneficiary, the trustee may need to file the accounting with the court, the Social Security Administration or the state Medicaid agency.

Special needs trusts are complex. The language used in special needs trusts can vary greatly from one trust agreement to another and from state to state. It is essential for trustees and trust beneficiaries to understand the terms in the written trust agreement. A legal professional experienced in special needs planning can ensure that the trust document will meet the needs of the trust beneficiary, the person who is funding the trust and the trustee who is administering the trust.

Beneficiary — A beneficiary is the person for whose benefit the trust is established. In first-party SNTs, the beneficiary must be a person who is classified as disabled by the Social Security Administration (SSA). In some states, the beneficiary of a third-party special needs trust must also be a person with a disability.

Bond or Surety — At times, a trustee is required to obtain a bond, which provides protection to the beneficiary against the possibility of fraud, negligence or loss of trust assets by the trustee. A bond is similar to an insurance policy in that if the trustee negligently or fraudulently lost trust assets, the bonding company agrees to pay a specified amount of money to reimburse the trust. Frequently when family members are serving as trustee, courts or Medicaid will require the trustee to obtain a bond.

Compensation — Unless the trust agreement states otherwise, trustees are usually entitled to compensation for their services. Compensation is usually set forth in state law. If a corporate trustee is serving, it usually receives a fixed amount, based upon the value of the trust estate. All compensation is reportable as taxable income to the trustee.

Disability — The beneficiary of a first-party SNT must have a disability recognized by section 1614(a)(3) of the Social Security Act. You can visit http://www.ssa.gov/disability/professionals/bluebook/ for a complete list of SSA-recognized disabilities for adults and children.

Distribution - Disbursement of trust funds for the sole benefit of the beneficiary that will not have a negative impact on public benefits.

Developmental Disabilities - A condition that causes a person to have an impaired ability to under- stand and appreciate the nature and consequences of decisions, which result in such person being incapable of managing himself or herself or his or her affairs and whose condition is permanent or likely to continue indefinitely.

Donor or Grantor or Settlor — A grantor is the person who creates and funds the trust. This person is also commonly referred to as a settlor or trustor. In first-party SNTs, the grantor is actually the beneficiary because the law requires that the trust be funded with the beneficiary's own money, but that it be established by a parent, grandparent, legal guardian or a court. In third-party SNTs, the grantor is anyone other than the beneficiary, usually a parent or other family member.

Executor / Executrix - The person responsible for collecting, maintaining and distributing the assets of an estate in accordance with the terms of the will. A male is referred to as an executor and a female is referred to as an executrix.

Fiduciary Duties - A trustee or co-trustee has a broad range of responsibilities and obligations to the beneficiary as written in the trust agreement, state and federal law. A partial list of general fiduciary duties includes proper and prudent administration of the trust, recordkeeping, duty to inform, safekeeping of assets and loyalty to the interest of the beneficiary.

Guardian - the person legally assigned to care for and be responsible for a child if the child's parents die before the child becomes an adult.

Irrevocable — An irrevocable trust is a trust that cannot be revoked or changed. All first-party SNTs must be irrevocable. A third-party SNT can be either irrevocable or revocable.

Inter vivos — "*Inter vivos*" is a Latin term that means "among the living" or "during life." An *inter vivos* trust is a trust established during the lifetime of the person creating the trust. All first-party SNTs are *inter vivos*. An *inter vivos* third-party SNT can be revocable or irrevocable.

Joinder Agreement - The legal document that is executed by the grantor to establish an account with certain pooled or community-type supplemental needs trusts.

Master Trust - The trust agreement to be used for both First and Third Party Pooled Trusts. The Master Trust is kept current to conform to applicable state and federal laws.

Means Tested Benefits - Benefits provided by the government that are only available to individuals whose income and/or assets fall below a certain qualifying level which will vary from program to program. Examples include Supplemental Security Income (SSI) and Medicaid.

Medicaid - A jointly funded state and federal health insurance program which provides coverage for families and individuals with low income and limited resources.

Medicare - A federal health insurance program that provides coverage for people age 65 and older, people under 65 with certain qualifying disabilities, and people of all ages who suffer from End-Stage Renal Disease.

Medicare Set-Aside (MSA) - A financial agreement that allocates a portion of a workers' compensation or personal injury liability settlement to pay for future medical services related to the individual's injury which resulted in a settlement. These funds must be depleted before Medicare will pay for treatment related to the injury which resulted in the settlement.

Payback Trust - A trust permitted by federal law that enables a beneficiary with a disability, under age 65, to protect his or her own assets by transferring them to a supplemental needs trust and still qualify for governmental benefits, such as SSI or Medicaid. Upon the death of the beneficiary, the state has the right to be reimbursed for the amount of correctly paid Medicaid benefits on behalf of the beneficiary. Any remaining trust assets in excess of the payback amount may be distributed as designated where the trust is set up.

Personal Care Plan - A customized document which describes and prioritizes the services to be delivered to the beneficiary.

Pooled Trust - A pooled trust is a special type of supplemental needs trust that is established and managed by non profit organizations. Separate sub-trust accounts for each beneficiary are maintained, but the funds are pooled for investment purposes.

Power of attorney - the legal right of a person (known as the "agent") to make decisions for an adult who cannot make them for himself or herself due to disability, illness, or distance. The adult who is handing over these powers must agree to this arrangement. Power of attorney rights can be short-term or long-term, and can be taken away at any time. The adult giving over this power still keeps his or her legal rights.

Program Operations Manual System (POMS) - The policies established by the Social Security Administration (SSA). MSNT applies SSA policy to protect the beneficiary's public benefits.

Public Benefits - Assistance to an individual that may include Supplemental Security Income (SSI) from the Social Security Administration; Medicaid coverage as administered by the state agency responsible for the program; food stamps, housing allowances, etc.

Revocable — A revocable trust is a trust in which the grantor can revoke or change the trust terms at any time. Only third-party SNTs can be revocable. Revocable trusts usually become irrevocable no later than the death of the grantor, if not sooner.

Remainder beneficiary — When the trust ends (usually upon the beneficiary's death), the remainder beneficiaries are the individuals who will receive any remaining trust assets. In first-party SNTs, the state's Medicaid division is typically the first remainder beneficiary (note that in some states, Medicaid is not considered a beneficiary but rather a creditor). After Medicaid is reimbursed for the services it provided to the beneficiary, if trust assets still remain, they usually pass to the beneficiary's estate, or in some cases to persons named as remainder beneficiaries in the trust instrument. In third-party SNTs, the grantor of the trust decides who the remainder beneficiaries are. Medicaid should never be named as a remainder beneficiary of a third-party SNT.

Schedule A — Also known as a schedule of assets, Schedule A identifies all of the assets owned by your trust. It is important for the trustee to keep this schedule up to date.

Self-Settled Trust - A type of supplemental needs trust in which the beneficiary's own assets are used to fund the trust. Typically the money used to fund the trust is received by a person with a disability as a result of a court order, inheritance, life insurance payout, a medical malpractice, or personal injury action. This type of trust is established for the benefit of an individual with disabilities and is funded by that person's own assets. This is commonly referred to as a "payback," "self-settled" or "OBRA Trust" having been authorized by the Omnibus Budget Reconciliation Act of 1993.

Social Security Law SECTION 1614(A)(3) [42 USC §1382C(A)(3)] - This is the section of federal law that essentially defines "disabled." To summarize, a person is disabled under this law if, because of an anatomical, physiological or psychological abnormality that will last more than 12 months or will lead to eventual death, prevents that person from holding substantial gainful employment. It covers physical, intellectual, and developmental disabilities.

Social Disability Income (SSDI) – An entitlement program that operates very much like Social Security old age and retirement benefits because eligibility is partially based on paying into the system for an appropriate number of quarters. Assuming that a sufficient number of quarters have been paid, receipt of SSDI benefits is then conditioned on a determination of disability by the Social Security Administration rather than upon reaching retirement age.

Supplemental Security Income (SSI) – A needs-based Federal program that is administered by the Social Security Administration. The determination of disability that the Social Security Administration must make is the same determination that is made for SSDI. Unlike SSDI, however, SSI has income and asset limits that must be satisfied and maintained as a condition to receiving program benefits. The person cannot have more than $2,000 in assets.

Sole Benefit - A trust must be administered only for the benefit of the beneficiary based on criteria established by SSA and outlined in POMS. Other parties cannot benefit from distributions made by the trust as SSA may treat the trust as a disqualifying asset. This can result in reductions in the amount of the monthly cash benefit, ineligibility for public benefits and/or overpayment demands.

Successor Trustee — A successor trustee is nominated in the trust agreement and is the person or entity to take over when the initial trustee is no longer able to serve. The trust agreement usually has specific requirements that the successor trustee must satisfy before assuming the trustee role.

Testator / Testatrix - A person, man or woman, who has died leaving a valid will.

Testamentary — A testamentary trust is a trust created under a last will & testament and is not funded until the death of the person who created the will. A testamentary trust can only be a third-party SNT.

Trustee — A trustee is the person or entity who manages the trust assets and administers the trust provisions. A trustee can be a family member, friend or colleague of the beneficiary, a professional, or a combination of the two. A professional trustee generally is a corporate trust department or an attorney. It is common for more than one person to serve as trustee at the same time.

Trust Administration Fees - Charges to the trust account for trust administrative services provided by MSNT and its contract agents. Included are enrollment fees, asset value fees, transaction fees, closing fees, sole trustee fees, tax preparation fees and banking fees.

Trust Estate — The trust estate consists of assets placed into the trust and managed by the trustee for the benefit of the beneficiary. It also includes income earned from invested trust assets.

Waiver: for people with special needs, a request from their state to the federal government to remove restrictions on the way Medicaid money is spent.