

FUNDAMENTALS OF SPECIAL NEEDS TRUSTS

Stuart D. Zimring, J.D.
Encino, California

Rebecca C. Morgan, J.D.
Boston Asset Management Faculty Chair in Elder Law
Stetson College of Law

Bradley J. Frigon, J.D.
Englewood, Colorado

Craig C. Reaves, J.D.
Kansas City, Missouri

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Stuart D. Zimring, J.D., Encino, Cal.

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Editorial Office
230 Park Ave., 7th Floor, New York, NY 10169 (800) 543-6862
www.lexisnexus.com

CHAPTER 1

Overview & History of Special Needs Trusts

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§ 1.01 Summary of This Chapter

§ 1.02 Introduction and Overview. Special needs trusts (SNTs) are trusts that protect a fund of money for the beneficiary who is disabled while maintaining eligibility for public benefits.

§ 1.03 Where to Find the Law. The law is found at the federal and state levels and includes the areas of public benefits law and regulations, state trust, probate and family laws, case law at both the federal and state levels, as well as agency regulatory materials, such as the Code of Federal Regulations, and agency instructional materials, such as the national and regional Social Security Program Operations Manual System (POMS), and the Code of Federal Regulations.

§ 1.04 History and Statutory Background. Historically, a trust known as a “supplemental needs trust” or “special needs trust” was a trust created for an individual with a disability. As a result of changes contained in OBRA '93, the Medicaid statute was amended to include two types of first-party SNTs which could be established using assets belonging to the individual with a disability. The federal statute does not cover the third-party SNT (whether testamentary or inter vivos), however, state laws and Social Security regulations may apply.

§ 1.05 Types of SNTs. Six types of trusts may be considered to be special needs trusts: (1) disability or § 1396p(d)(4)(A) special needs trust; (2) pooled or § 1396p(d)(4)(C) special needs trust; (3) *Miller* Trust (sometimes called Qualified Income Trust (QIT) or § 1396p(d)(4)(B) trust); (4) sole benefit trust; (5) third-party inter vivos special needs trust; and (6) testamentary third-party special needs trust.

§ 1.02 Introduction and Overview

Special needs trusts (SNTs) are trusts that protect a fund of money for the beneficiary who is disabled while maintaining eligibility for public benefits.

Special needs trusts (SNTs) are an important planning tool for people who have a disability and who wish to preserve eligibility for public benefits. There are other reasons besides public benefits eligibility to use a SNT, including using a SNT for an individual who is disabled but who may not need public benefits (see Chapter 4A). A special needs trust is a trust that protects a fund of money for the beneficiary while maintaining eligibility for public benefits.

This is a complicated area of law. Special needs trusts are often used in cases where a person with a disability (referred to in this treatise as “beneficiary”) has or may receive a sum of money, such as a settlement through litigation or an inheritance, needs to protect personal savings after a diagnosis of a disabling illness, or in cases where a third party wants to establish a trust for the beneficiary, as part of a testamentary disposition. See Chapter 3. The primary purpose of a SNT is to improve the beneficiary’s quality of life by providing that monies are spent for the benefit of the beneficiary for items and services not covered by public benefits and to assist in managing and expending assets for a beneficiary with special needs. In the more typical context of maintaining public benefits eligibility, it is said that a SNT is used to “supplement, and not supplant,” a beneficiary’s public benefits.¹ There are other reasons beyond public benefits eligibility for the use of a SNT. See Chapter 3.

Generally, “special needs trust” may be used to refer to both first-party and third-party trusts. The terms “first-party” and “third-party” refer to the source of assets used to fund the SNT. First-party trusts are funded with assets legally owned by the beneficiary (or assets to which the beneficiary would have been entitled outright) while third-party trusts are funded with assets legally owned by another. As far as the term “special needs trust” is concerned, it is worth noting that there is not necessarily uniformity in terms of the label for this type of trust. Sometimes, “special needs trust” may be used to refer to a first-party trust and “supplemental needs trust” to refer to a third-party trust. In other instances, some practitioners (and some state statutes) may use only the term “supplemental needs trust.” Still others use both terms.² In this

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¹ See *Ramey v. Rizzuto*, 72 F. Supp. 2d 1202, 1216 (D. Co. 1999) (intention is clear that trust distributions are only to supplement, and not supplant, public assistance benefits).

² See, e.g., Ala. Stat. § 19-3B-1101 (“[n]otwithstanding the provisions of this chapter that may otherwise be applicable to a trust, no provision thereof shall apply to any special needs trust, supplemental needs trust, or other similar trust established for a person with a disability as a beneficiary, including without limitation, any trust established pursuant to the provisions of 42 U.S.C. § 1396p(d)(4)A or C . . . or other similar federal or state statute, to the extent that such provision would disqualify such trust beneficiary at any time from eligibility for public needs-based assistance benefits for which the beneficiary would otherwise qualify.”); Iowa Stat. § 634A.1 (“[s]upplemental needs trust” means an inter vivos or testamentary trust created for the benefit of a person with a disability and funded by a person other than the trust beneficiary or the beneficiary’s spouse, and which is declared to be a supplemental needs trust in the instrument creating the trust . . . [and] include[s], but is not limited to, a trust created for the benefit

treatise, special needs trust will be used to refer to first-party and third-party trusts, unless a distinction needs to be made.³ The reader should consult the applicable statute to determine the appropriate terminology in the state where the SNT is being established.

Practice Note:

Public Law No. 114-255, § 5007, Fairness in Medicaid Supplemental Needs Trusts, amended 42 U.S.C. § 1396p(d)(4)(A) to allow individuals to create their own first party Special Needs Trusts. This change was effective as of December 13, 2016.

Special needs trusts are governed by many areas of the law and work in conjunction with public benefits requirements to maintain the beneficiary's eligibility for public benefits, unless, for planning purposes, the decision is made that a SNT is either inappropriate or unworkable under the circumstances presented. An attorney needs to

of a person with a disability and funded solely with moneys awarded as damages in a personal injury case or moneys received in the settlement of a personal injury case provided that the trust is created within six months of receiving the award or settlement, the trust is irrevocable, the beneficiary is not named a trustee of the trust, and the instrument creating the trust declares the trust to be a supplemental needs trust.”); Minn. Stat. § 501C.1205, subd. 2(b) (“‘supplemental needs trust’ is a trust created for the benefit of a person with a disability and funded by someone other than the trust beneficiary, the beneficiary’s spouse, or anyone obligated to pay any sum for damages or any other purpose to or for the benefit of the trust beneficiary under the terms of a settlement agreement or judgment”). Note that Public Law No. 114-255, § 5007, Fairness in Medicaid Supplemental Needs Trusts, amended 42 U.S.C. § 1396p(d)(4)(A) to allow individuals to create their own Special Needs Trusts. This change was effective as of December 13, 2016. States are expected to amend their statutes to comply with this change.

³ See POMS SI 01120.200; POMS SI 01120.200.B.12.

“A special needs trust, also known as a supplemental needs trust, may be set up to provide for a disabled individual’s extra and supplemental needs other than food, shelter, and health care expenses that may be covered by public assistance benefits that the trust beneficiary may be eligible to receive under various programs. For more information on special needs trusts containing the assets of the individual, see SI 01120.203.”

See also POMS SI 01120.200.H.1.a.

“**Medicaid trusts** are trusts established by an individual (by a means other than a will) on or after 8/11/93, that are made up, in whole or in part, of assets (income and/or resources) of that individual. We consider a trust as established by an individual if it was established by:

the individual;

the individual’s spouse; or

a person, including a court or administrative body with legal authority to act for the individual or spouse or who acts at the direction or request of the individual or spouse.

Medicaid trusts may contain terms such as “OBRA 1993 pay-back trust,” “trust established in accordance with 42 U.S.C. 1396” or may be mislabeled as an “MQT.” Medicaid trusts must be evaluated under SI 01120.201 to determine whether they are a resource for SSI purposes.”

understand the relevant law for trusts, estate planning, tax, gifting, public benefits, family law, and more, in order to effectively draft a special needs trust.

This treatise is designed as a basic introduction to the laws, uses and drafting strategies of SNTs. It is not intended to be a treatise on trust law or an advanced work on special needs trusts. Although some references will be made to trust law and family law, the applicable state and federal laws should be consulted.⁴

⁴ See, e.g., Burke, Friel, Gagliardi, *Modern Estate Planning* (Second Edition Matthew Bender).

§ 1.03 Where to Find the Law

The law is found at the federal and state levels and includes the areas of public benefits law and regulations, state trust, probate and family laws, case law at both the federal and state levels, as well as agency regulatory materials, such as the Code of Federal Regulations, and agency instructional materials, such as the national and regional Social Security Program Operations Manual System (POMS).

Applicable laws are found at the federal and state levels. An attorney needs an understanding of public benefits laws and regulations (federal and state), especially Medicaid, Supplemental Security Income (SSI), Medicare, Social Security Disability, Veterans' Benefits, Section 8 Housing; and tax laws. At the state level, the attorney needs to consult state laws regarding Medicaid, trusts, probate, guardianships, and family law. The attorney should also review case law at both the federal and state levels, as well as agency regulatory materials, such as the Code of Federal Regulations, and agency instructional materials, such as the national and regional Social Security Program Operations Manual System (referred to throughout this publication as the POMS).¹ Attorneys also should be familiar with the Restatement (Third) of Trusts, the Restatement of the Law Governing Lawyers, and their state's Rules of Professional Conduct.

This treatise will mainly focus on federal law, with some references to state-specific matters for illustration, but the reader is cautioned to refer to the applicable state laws, regulations, and cases and, in particular, the POMS. Some applicable federal programs and other relevant resources include:

- Medicaid: 42 U.S.C. § 1396 *et seq.*; 42 C.F.R. Parts 430–456;
- Medicare: 42 U.S.C. § 1395 *et seq.*; 42 C.F.R. Parts 405–489;
- Social Security Disability: 42 U.S.C. § 402 *et seq.*; 20 C.F.R. Part 404;
- SSI: 42 U.S.C. § 1381 *et seq.*; 20 C.F.R. § 416 *et seq.*;
- Veterans' Benefits: 38 U.S.C. § 101 *et seq.*; Title 38 C.F.R.;
- The Restatement (Third) of Trusts;
- The Restatement of the Law Governing Lawyers;
- POMS: <https://secure.ssa.gov/apps10/poms.nsf/partlist!OpenView>; and
- The Internal Revenue Code (IRC).

It is important to understand the significance of the POMS. Although, as noted by Social Security, the POMS are really claims processing instructions for employees of

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¹ It is important to note that the POMS is not law but, as described by Social Security:

“The POMS is a primary source of information used by Social Security employees to process claims for Social Security benefits. The public version of POMS is identical to the version used by Social Security employees except that it does not include internal data entry and sensitive content instructions.”

<https://secure.ssa.gov/apps10/poms.nsf/aboutpoms>. However, courts may rely on the POMS in issuing opinions.

SSA,² it is very important for the practitioner to be familiar with and understand the weight given to the POMS, as courts will cite to the POMS as persuasive authority in opinions.³

Detailed explanations about many of the public benefits programs may be found in Regan, Morgan, English, *Tax, Estate & Financial Planning for the Elderly*, in particular, Chapter 3 (Social Security Disability), Chapter 4 (Veterans' Benefits), Chapter 8 (SSI), Chapter 9 (Medicare) and Chapter 10 (Medicaid).

² <https://secure.ssa.gov/apps10/poms.nsf/aboutpoms>.

³ See *Draper v. Colvin*, 2013 U.S. Dist. LEXIS 96237 (D.S.D. July 10, 2013).

§ 1.04 History and Statutory Background

Historically, a trust known as a “supplemental needs trust” or “special needs trust” was a trust that was created for an individual with a disability. As a result of changes contained in OBRA ‘93, the Medicaid statute was amended to include two types of first-party SNTs which could be established using assets belonging to the individual with a disability. The federal statute does not cover the third-party SNT (whether testamentary or inter vivos), however, state laws and Social Security regulations may apply.

Historically, a special or supplemental needs trust was a trust that was created by or for an individual with a disability.¹ The idea behind a special needs trust was to create a fund that could be used to provide the beneficiary who has a disability with items and services not otherwise covered by public benefits.² Among other things, a special needs trust provides management of the assets for the benefit of the individual who has a disability.³ A special needs trust provides funds for the purchase of allowable items that, in many instances, provide a better quality of life for the beneficiary. A special needs trust is intended to be spent, rather than preserving the principal for a future generation.

Although SNTs had been used on something of an ad hoc basis, for example, as a testamentary trust created with the funds of a third party for a beneficiary who had a disability, as a result of changes made by OBRA ‘93,⁴ the Medicaid statute was amended to include two types of self-settled SNTs which could be established using assets actually belonging to the individual with the disability: the disability or (d)(4)(A) special needs trust⁵ and the pooled or (d)(4)(C) special needs trust.⁶

There is little, if any, legislative history for 42 U.S.C. § 1396p(d)(4).⁷ Since § 1396p(d)(4) was included in a budget bill, one commentator offers that the provision was added to the restrictive Medicaid amendments provided in OBRA ‘93 late in the budget process to safeguard “special-needs-trust protections that prior state laws had

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¹ Wong v. Daines, 582 F. Supp. 2d 475, 477 (S.D.N.Y. 2008), citing *Sullivan v. County of Suffolk*, 174 F.3d 282, 284 (2d Cir. 1999). See also Joseph A. Rosenberg, *Supplemental Needs Trusts For People With Disabilities: The Development Of A Private Trust In The Public Interest*, 10 B.U. Pub. Int. L.J. 91 (Fall 2000).

² Wong v. Daines, 582 F. Supp. 2d 475, 477 (S.D.N.Y. 2008), citing *Sullivan v. County of Suffolk*, 174 F.3d 282, 284 (2d Cir. 1999) and Joseph A. Rosenberg, *Supplemental Needs Trusts for People with Disabilities: The Development of a Private Trust in the Public Interest*, 10 B.U. Pub. Int. L.J. 91, 95–96 (2000).

³ Andrew H. Hook & Thomas D. Begley, Jr., *When is an Irrevocable Special Needs Trust Considered to be Revocable?*, 31 Est. Plan. 205 (April 2004).

⁴ Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66 (Aug. 10, 1993).

⁵ See 42 U.S.C. § 1396p(d)(4)(A), as amended by Pub. L. No. 114-255 § 5007 (Dec. 13, 2016).

⁶ See 42 U.S.C. § 1396p(d)(4)(C).

⁷ See *Hobbs v. Zenderman*, 542 F. Supp. 2d 1220 (D.N.M. 2008), *aff’d*, 579 F.3d 1171 (10th Cir. 2009). The *Hobbs* court searched for legislative history for assistance in construing the statute. *Hobbs*, 542 F. Supp. 2d at 1228.

established for” individuals with disabilities.⁸ Although first-party (a/k/a “self-settled”) special needs trusts did not appear in federal statutes until OBRA ‘93, some states previously had recognized SNTs and had statutes covering their creation and administration.⁹

The two provisions of the statute, 42 U.S.C. § 1396p(d)(4)(A) and (C), do not cover the third-party SNT (whether testamentary or inter vivos). However, state laws and Social Security regulations may apply to treatment of distributions from a third-party SNT. Following OBRA ‘93, the Foster Care Independence Act of 1999¹⁰ amended the SSI laws on SNTs and on transfers of assets and penalty periods.¹¹ It is important to remember that funds in a properly drafted SNT are not counted in determining eligibility for SSI benefits.¹² When dealing with cases where beneficiaries are receiving SSI, the drafting attorney needs to carefully consider the sole benefit requirement (and sometimes consider the “sole benefit” trust). See § 7.04.

Practice Note:

Public Law No. 114-255 § 5007, Fairness in Medicaid Supplemental Needs Trusts, amended 42 U.S.C. § 1396p(d)(4)(A) to allow individuals to create their own Special Needs Trusts. This change was effective as of December 13, 2016.

⁸ See *Hobbs v. Zenderman*, 542 F. Supp. 2d 1220, 1228 (D.N.M. 2008), citing Joseph A. Rosenberg, *Supplemental Needs Trusts for People with Disabilities: The Development of a Private Trust in the Public Interest*, 10 B.U. Pub. Int. L.J. 91, 127-28 (2000).

⁹ See *Hobbs v. Zenderman*, 542 F. Supp. 2d 1220, 1231, n.11 (D.N.M. 2008), *aff’d*, 579 F.3d 1171 (10th Cir. 2009).

¹⁰ Pub. L. No. 106-169, § 206, 113 Stat. 1822 (Dec. 14, 1999), amending 42 U.S.C. § 1382b(e)(5). See also POMS SI 01120.203 and Emergency Message EM-16053 (Dec. 13, 2016).

¹¹ See 42 U.S.C. § 1382b(e)(5); 42 U.S.C. § 1396p(d)(4)(A) and (C).

¹² POMS SI 01120.200, 42 U.S.C. § 1396p. See also Andrew H. Hook & Thomas D. Begley, Jr., *When Is An Irrevocable Special Needs Trust Considered to Be Revocable?*, 31 Est. Plan. 205 (April 2004) for a discussion of the requirements for validity of a SNT, including the need for the SNT to be irrevocable.

§ 1.05 Types of SNTs

Six types of trusts may be considered to be special needs trusts: (1) disability or § 1396p(d)(4)(A) special needs trust; (2) pooled or § 1396(d)(4)(C) special needs trust; (3) *Miller* trust (sometimes called Qualified Income Trust (QIT) or § 1396p(d)(4)(B) trust); (4) sole benefit trust; (5) third-party inter vivos special needs trust; and (6) testamentary third-party special needs trust.

How many types of special needs trusts are there? Depending on a person's view of the purpose of a SNT, there may be as many as six:

- (1) disability or § 1396p(d)(4)(A) special needs trust;¹
- (2) pooled or § 1396p(d)(4)(C) special needs trust;²
- (3) third-party inter vivos special needs trust;
- (4) sole benefit trust;³
- (5) "*Miller*" trust (also known as a Qualified Income Trust (QIT) or § 1396p(d)(4)(B)

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¹ See 42 U.S.C. § 1396p(d)(4)(A), as amended by Pub. L. No. 114-255 § 5007 (Dec. 13, 2016):

"A trust containing the assets of an individual under age 65 who is disabled (as defined in [§] 1382c(a)(3) of this title) and which is established for the benefit of such individual by the individual, a parent, grandparent, legal guardian of the individual, or a court if the State will receive all amounts remaining in the trust upon the death of such individual up to an amount equal to the total medical assistance paid on behalf of the individual under a State plan under this subchapter."

² 42 U.S.C. § 1396p(d)(4)(C):

"A trust containing the assets of an individual who is disabled (as defined in [§] 1382c(a)(3) of this title) that meets the following conditions:

- (i) The trust is established and managed by a nonprofit association.
- (ii) A separate account is maintained for each beneficiary of the trust, but, for purposes of investment and management of funds, the trust pools these accounts.
- (iii) Accounts in the trust are established solely for the benefit of individuals who are disabled (as defined in [§] 1382c(a)(3) of this title) by the parent, grandparent, or legal guardian of such individuals, by such individuals, or by a court.
- (iv) To the extent that amounts remaining in the beneficiary's account upon the death of the beneficiary are not retained by the trust, the trust pays to the State from such remaining amounts in the account an amount equal to the total amount of medical assistance paid on behalf of the beneficiary under the State plan under this subchapter."

³ 42 U.S.C. § 1396p(c)(2)(B):

"(2) An individual shall not be ineligible for medical assistance by reason of paragraph (1) to the extent that . . .

- (B) the assets

. . .

- (iii) were transferred to, or to a trust (including a trust described in subsection (d)(4) of this section) established solely for the benefit of, the individual's child described in subparagraph (A)(ii)(II), or

- (iv) were transferred to a trust (including a trust described in subsection (d)(4) of this section) established solely for the benefit of an individual under 65 years of age who is disabled (as defined in [§] 1382c(a)(3) . . .)."

trust); and⁴

(6) third-party testamentary special needs trust.

Although some may take the position that an income-only trust would also be considered a special needs trust since it creates or maintains eligibility for public benefits, it may be more aptly considered to be a vehicle to establish Medicaid eligibility rather than a special needs trust.⁵

In this chapter the focus will be on the two first-party SNTs (42 U.S.C. § 1396p(d)(4)(A) and (C), and the third-party trusts (inter vivos or testamentary).

Special Needs Trust Attributes⁶

Type	Statutory Authorization	Who Establishes?	Whose Funds?	Payback Provision?	Age Limit	Frequently Used For
d4A Disability Trust Self-settled	42 U.S.C. § 1396p(d)(4)(A)	Individual, Parent, Grandparent, Legal Guardian, Court	Individual with Disability	Yes	Funded by 65	Personal injury settlement or inheritance
			Third-Party (not individual) Can be more than one third party.			Parent planning for child with disability; Inter vivos may be as a result of contributions from many individuals in response to beneficiary's situation; Testamentary gift

⁴ See 42 U.S.C. § 1396p(d)(4)(B); see also Regan, Morgan, English, *Tax, Estate & Financial Planning for the Elderly* § 10.13 (Matthew Bender) for a discussion of the qualified income trust, which allows individuals in income cap states to become eligible for Medicaid nursing home coverage in cases where the individual's income exceeds the state's income cap. *Miller v. Ibarra*, 746 F. Supp. 19 (D. Colo. 1990).

⁵ 42 U.S.C. § 1396p(d)(4)(B):

"A trust established in a State for the benefit of an individual if . . .

- (i) the trust is composed only of pension, Social Security, and other income to the individual (and accumulated income in the trust), (ii) the State will receive all amounts remaining in the trust upon the death of such individual up to an amount equal to the total medical assistance paid on behalf of the individual under a State plan under this subchapter, and (iii) the State makes medical assistance available to individuals described in [§] 1396a(a)(10)(A)(ii)(V) . . . , but does not make such assistance available to individuals for nursing facility services under [§] 1396a(a)(10)(C)"

⁶ Based on a chart by Bradley J. Frigon & W. Eric Kuhn, *Which SNT, When & Why*, 5 NAELA J. 1, 11 (2009), with edits to reflect the amendment from Pub. L. No. 114-255 § 5007, Fairness in Medicaid Supplemental Needs Trusts, which amended 42 U.S.C. § 1396p(d)(4)(A) to allow individuals to create their own Special Needs Trusts. This change is effective as of December 13, 2016.

Type	Statutory Authorization	Who Establishes?	Whose Funds?	Payback Provision?	Age Limit	Frequently Used For
Third-Party SNT	Not Specifically Authorized ⁷	Third-Party (not individual)	but cannot be the individual beneficiary	No	No	to individual with disability; Coordinate testamentary gifts
Pooled Trust Self-settled	42 U.S.C. § 1396p(d)(4)(C)	Individual Parent Grand-parent Legal Guardian Court	Individual with Disability	Each beneficiary has a joinder agreement which will specify whether payback	No, but penalty period if 65 or older in some states	Smaller amounts of personal injury settlements or inheritance

[1] What is a SNT?

A special needs trust is a discretionary trust “that limits the trustee’s discretion as to the purpose of the distributions” and has specific language that restricts distributions so that “distributions . . . supplement, but not supplant, sources of income including SSI or other government benefits.”¹ There are many circumstances when a SNT might be used. A common scenario is when the beneficiary is injured and the settlement funds are used to establish a first-party SNT or the beneficiary is receiving an inheritance, which is used to establish the trust. See Chapter 3 for other scenarios.

Under the federal statute, the beneficiary must have a disability determination.² State statutes may specify that the beneficiary must have a disability in order for the trust to be considered a SNT.³ As noted above and as discussed in detail in Chapter 3, a special

⁷ The rules regarding trust treatment specify that they apply to a trust established by an individual, which means that it was funded with the assets of an individual and was established by the individual or spouse of the individual, “a person, including a court or administrative body, with legal authority to act” on the individual’s behalf, or that same person acting on the direction or request of the individual or individual’s spouse. 42 U.S.C. § 1396p(d)(1)–(2).

§ 1.05[1]

¹ POMS SI 01120.200.B.12; “A special needs trust, also known as a supplemental needs trust, may be set up to provide for a disabled individual’s extra and supplemental needs other than food, shelter, and health care expenses that may be covered by public assistance benefits that the trust beneficiary may be eligible to receive under various programs. For more information on special needs trusts containing the assets of the individual, see SI 01120.203.” See also Bradley J. Frigon & W. Eric Kuhn, *Which SNT, When & Why*, 5 NAELA J. 1 (2009).

² 42 U.S.C. § 1396p(d)(4)(A), (C). 42 U.S.C. § 1396p(d)(4)(A) was amended by Pub. L. No. 114-255 § 5007 (Dec. 13, 2016).

³ See, e.g., Minnesota Stat. § 501C.1205, subd. 2(b) (“‘supplemental needs trust’ is a trust created for the benefit of a person with a disability and funded by someone other than the trust beneficiary, the beneficiary’s spouse, or anyone obligated to pay any sum for damages or any other purpose to or for the benefit of the trust beneficiary under the terms of a settlement agreement or judgment”; North Dakota Stat. § 59-08-01(2), (3) “Self-settled special needs trust” means a trust created by an individual with a disability after August 10, 1993, which qualifies under 42 U.S.C. § 1396p(d)(4)” and “‘Third-party special needs

needs trust is not just about eligibility for public benefits⁴—it is about something more—supplementing what is covered by public benefits so that a beneficiary who has a disability may have a better quality of life.

Note that the various special needs trusts may be categorized either as statutory (federal or state) or common law (such as third-party special needs trusts). For example, the two trusts authorized under 42 U.S.C. § 1396p(d)(4) (the disability special needs trust (d)(4)(a) and the pooled special needs trust (d)(4)(C), are authorized by statute).

How does one avoid confusing the various types of SNTs? One way is to make a distinction based on the source of funds, but it may be easier to think of the SNT as a first-party or a third-party special needs trust. For example, if the money put into the trust is the beneficiary's, then the SNT would be considered a first-party special needs trust, such as a (d)(4)(A) or (C) trust. If the money is that of a third-party (any other person's money, or AOPM), then the SNT is a third-party special needs trust.⁵

It is important that self-settled special needs trusts be irrevocable and that there are limits on the source and use of funds, otherwise the trust principal would be considered available to the beneficiary, and the beneficiary would be disqualified from public benefits.⁶ However, the trust may contain language permitting amendment to certain

trust' means a trust that does not make an individual with a disability ineligible for publicly funded benefits while maintaining assets in that trust and which is created for the benefit of an individual with a disability"; Ohio Stat. § 5163.21(F) "The principal or income from any of the following shall not be a resource available to the applicant or recipient

[t]he trust contains assets of an applicant or recipient under sixty-five years of age and may contain the assets of other individuals . . . (ii) The applicant or recipient is disabled as defined in rules adopted under section 5163.02 of the Revised Code."

⁴ See Robert B. Fleming & Mary Alice Jackson, *The State of the Union: SNTs in 2013 and Beyond*, Stetson University College of Law, Center for Excellence in Elder Law, 15th Annual Special Needs Trusts National Conference (Basics Day) (Oct. 2013).

⁵ The federal law regarding trust treatment specify that it applies to trusts that were: 1) funded with the assets of an individual and 2) were established by the individual, the individual's spouse, a person, including a court or administrative body with legal authority to act on the individual's behalf, or that same person acting on the direction or request of the individual or individual's spouse. 42 U.S.C. § 1396p(d)(1)–(2). Because third-party SNTs are funded with third-party assets and established by third parties they do not meet this definition and are not covered by those trust rules. See, e.g., Katherine N. Barr, Richard E. Davis & Kristen M. Lewis, *Top 15 Tips for Estate Planners When Planning for Special Needs*, 24 Prob. & Prop. 38, 39 (Apr. 2010); David J. Lillesand & Marjorie E. Wolasky, Chapter 17 *Special Needs Trusts*, Administration of Trusts in Florida, AT FI-CLE-17 (Fla. Bar 2009).

⁶ For a discussion of the requirement of irrevocability and how state laws may affect the irrevocable nature of a SNT, see Andrew H. Hook & Thomas D. Begley, Jr., *When is an Irrevocable Special Needs Trust Considered to be Revocable?*, 31 Est. Plan. 205 (April 2004). See also POMS SI 01120.200. See also Minn. Stat. § 501C.1205, subd. 2(d) "A **supplemental needs trust** may allow or require distributions only in ways and for purposes that supplement or complement the benefits available under medical assistance, Minnesota supplemental aid, and other publicly funded benefit programs for disabled persons. A **supplemental needs trust** must contain provisions that prohibit disbursements that would have the effect of replacing, reducing, or substituting for publicly funded benefits otherwise available to the beneficiary or rendering the beneficiary ineligible for publicly funded benefits."

administrative provisions. These and other restrictions are discussed in Chapters 3 and 4.

Another distinction to keep in mind is who can establish the special needs trust. Public Law No. 114-255 § 5007, the Fairness in Medicaid Supplemental Needs Trusts, amended 42 U.S.C. § 1396p(d)(4)(A) to allow beneficiaries to create their own Special Needs Trusts. This change was effective as of December 13, 2016. Prior to that amendment, the beneficiary could not establish the trust.⁷ See §§ 1.05, 1.05[2]. Also remember that unlike a (d)(4)(A) or (C) trust, a third-party trust has no age restrictions or payback.

Special Needs Trust Requirements Summary⁸

Trust	Statute	Established By	Funded By	Payback	Age Limit
d4A Disability Trust	42 U.S.C. § 1396p(d)(4)(A)	Individual, Parent, Grandparent, Legal Guardian, Court	Individual with Disability	Yes	Yes, Funding Complete by 65
Third-Party SNT	No statute (excluded by definition)	Third Parties (not individual with disability)	Third Parties (not individual with disability)	No	No
d4C Pooled Trust	42 U.S.C. § 1396p(d)(4)(C)	Individual, Parent, Grandparent, Legal Guardian, Court	Individual with Disability	Depends on Joinder Agreement	No, Possible Penalty Period if 65 or older

[2] SNTs Under Federal Law

The first-party special needs trusts are addressed in 42 U.S.C. § 1396p(d)(4). The first type of SNT under this statute is referred to by many names, including a “(d)(4)(A) trust,” “under 65 disability trust,” “self-settled trust” or “first-party trust.” The names come from the source of the funds—the funds legally owned by the beneficiary.¹

The criteria for a (d)(4)(A) trust are that:

- the funds used to establish the trust are those of the individual;
- the individual is disabled under the definition provided in the Social Security Act;²

⁷ See 42 U.S.C. § 1396p(d)(1)–(3). See also *Draper v. Colvin*, 2013 U.S. Dist. LEXIS 96237 (D.S.D. July 10, 2013) (discussing whether parents under POA were acting as parents or as agents of beneficiary when establishing SNT for beneficiary); *aff’d*, *Draper v. Colvin*, 779 F.3d 556 (8th Cir. 2015). See also Pub. L. No. 114-255 § 5007, the Fairness in Medicaid Supplemental Needs Trusts, amending 42 U.S.C. § 1396p(d)(4)(A).

⁸ Bradley J. Frigon & W. Eric Kuhn, *Which SNT, When & Why*, 5 NAELA J. 1, 11 (2009), with edits to reflect the amendment from Public Law No. 114-255 § 5007, the Fairness in Medicaid Supplemental Needs Trusts, which amended 42 U.S.C. § 1396p(d)(4)(A) to allow individuals to create their own Special Needs Trusts. This change was effective as of December 13, 2016. See § 8.11 for a discussion of the provisions for payback on early termination.

§ 1.05[2]

¹ 42 U.S.C. § 1396p(d)(4)(A), as amended by Pub. L. No. 114-255 § 5007 (eff. Dec. 13, 2016).

² 42 U.S.C. § 1382c(a)(3). Among other things, this definition provides that the beneficiary is not able to “engage in substantial gainful activity.” For a discussion of disability as it pertains to a first-party SNT, see Bradley J. Frigon & W. Eric Kuhn, *Which SNT, When & Why*, 5 NAELA J. 1, 2–6 (2009).

- the individual is under 65 at the time the trust is funded;³
- the trust is established by the individual or the individual's parent, grandparent, legal guardian of the individual, or a court;⁴
- there is a payback provision for Medicaid benefits⁵ (see § 8.11 for a discussion of the provisions for payback);
- the language "established for the benefit" has been interpreted by SSA to mean for the sole benefit of the beneficiary⁶ (see § 7.03[6]); and
- statutory liens are repaid before funding.⁷

The payback provision is for all Medicaid benefits *paid*, not just since the special needs trust was established or a settlement received.⁸ This is a significant consideration in deciding whether to create a (d)(4)(A) SNT and is particularly important if the beneficiary is a child or young adult who will be on Medicaid for an extended period of time. In addition, liens arising out of treatment for an injury which results in a settlement or verdict must be paid before the special needs trust may be funded.⁹ See Chapter 4.

Note that the trust must be created and funded before the beneficiary turns 65. Additions to the trust may be made prior to the beneficiary turning 65. Additions may be made to the trust after the beneficiary turns 65 if:

the trust contains the irrevocable assignment of the right to receive payments from an annuity or support payments made when the trust beneficiary was less than 65

³ Although the person must be under 65 when the SNT is established, additional funds from certain sources, such as alimony or payments from a structured settlement annuity may be put into the SNT after the beneficiary reaches 65. See POMS SI 01120.203.B.3. See also Bradley J. Frigon & W. Eric Kuhn, *Which SNT, When & Why*, 5 NAELA J. 1, 5–6 (2009). "If the beneficiary's right to receive payments from an annuity, support payments, or Survivor Benefit Plan (SBP) payments (see SI 01120.201J.1.e.), is irrevocably assigned to the trust, and such assignment is made when the trust beneficiary was less than 65 years of age, treat the payments paid to a special needs trust the same as payments made before the individual attained age 65. Do not disqualify the trust from the special needs trust exception."

⁴ See 42 U.S.C. § 1396p(d)(4)(A), as amended by Pub. L. No. 114-255 § 5007 (eff. Dec. 13, 2016). See also POMS SI 01120.203.B.8. for the SSI interpretation of established by the court. ("In the case of a trust established through the actions of a court, the creation of the trust must be required by a court order . . . Court approval of an already created special needs trust is not sufficient for the trust to qualify for the exception.") See emergency message EM-16053 (Dec. 13, 2016) reflecting the amendments to 42 U.S.C. § 1396p(d)(4)(A).

⁵ On the beneficiary's death, repayment is made for the medical assistance received from the balance of the trust.

⁶ POMS SI 01120.203.B.6. See also POMS SI 01120.201.F.

⁷ 42 U.S.C. § 1396p(a)(1); Bradley J. Frigon & W. Eric Kuhn, *Which SNT, When & Why*, 5 NAELA J. 1, 3 (2009). Note as well that a Medicare Set-Aside may be required if Medicare is covering the health care for the beneficiary and part of the settlement is designed for future medical expenses. See § 7.03.

⁸ POMS SI 01120.203.B. Consult the applicable state practice on the payback requirement.

⁹ See Bradley J. Frigon and Eric W. Kuhn, *Special Needs Trusts Basics*, The Basics of Special Needs Trusts X CLE, Stetson University College of Law (Oct. 16, 2008).

years of age, annuity or support payments paid to a special needs trust are treated the same as payments made before the individual attained age 65 and do not disqualify the trust from the special needs trust exception.¹⁰

The second type of SNT contained in 42 U.S.C. § 1396p is the pooled special needs trust (PSNT), under 42 U.S.C. § 1396p(d)(4)(C):

[a] trust containing the assets of an individual who is disabled (as defined in section 1382c(a)(3) of this title) that meets the following conditions:

- (i) The trust is established and managed by a nonprofit association.
- (ii) A separate account is maintained on paper for each beneficiary of the trust, but, for purposes of investment and management of funds, the trust pools these accounts.
- (iii) Accounts in the trust are established solely for the benefit of individuals who are disabled (as defined in section 1382c(a)(3) of this title) by the parent, grandparent, or legal guardian of such individuals, by such individuals, or by a court.
- (iv) To the extent that amounts remaining in the beneficiary's account upon the death of the beneficiary are not retained by the trust, the trust pays to the State from such remaining amounts in the account an amount equal to the total amount of medical assistance paid on behalf of the beneficiary under the State plan under this subchapter.¹¹ See § 8.11 for a discussion of the payback provisions for a pooled SNT on early termination.

A pooled trust is run by a non-profit organization. Participation is through a joinder agreement. A pooled trust joinder arrangement may be executed directly by the beneficiary. Separate accounts are maintained for each beneficiary although the accounts may be "pooled" (thus the name) for management and investment purposes. Although the law contains a payback provision, it depends on the terms of the trust whether there are the funds to do so. If the trust documents provide that the non-profit trustee retains any balance on the beneficiary's death, then there is no payback.¹² Various pooled trusts may treat this provision differently, so the terms of the master trust agreement should be examined to determine those and other provisions.

The statutory provision does not impose an age limit for joining a pooled trust. According to the POMS and a clarification by some CMS regions, if the beneficiary is

¹⁰ POMS SI 01120.203.B.3. "If the beneficiary's right to receive payments from an annuity, support payments, or Survivor Benefit Plan (SBP) payments (see SI 01120.201J.1.e.), is irrevocably assigned to the trust, and such assignment is made when the trust beneficiary was less than 65 years of age, treat the payments paid to a special needs trust the same as payments made before the individual attained age 65. Do not disqualify the trust from the special needs trust exception."

¹¹ 42 U.S.C. § 1396p(d)(4)(C).

¹² See 42 U.S.C. § 1396p(d)(4)(C)(iv); Bradley J. Frigon & W. Eric Kuhn, *Which SNT, When & Why*, 5 NAELA J. 1, 10 (2009). See also POMS SI 01120.203.B.2.

over age 65,¹³ transfers may result in a penalty and those states may treat the funding of the trust for individuals over 65 as a disqualifying transfer.¹⁴ See Chapter 4 for a discussion of the considerations and requirements in drafting a SNT.

Practice Tip:

Ask the Pooled Trust professionals whether their pooled trust adheres to the Best Practices Guide¹⁵ or some other type of best practices guide.

[3] State Statutes

A number of state statutes contain provisions regarding special needs trusts.¹ Arizona defines a special needs trust as:

a trust established for the benefit of one or more persons with disabilities if one of the purposes of the trust, expressed in the trust instrument or implied from the trust instrument, is to allow the person with a disability to qualify or continue to qualify

¹³ See POMS SI 01120.203.B.3. See also Bradley J. Frigon & W. Eric Kuhn, *Which SNT, When & Why*, 5 NAELA J. 1, 9 (2009); Richard R. McGreal, *Medicaid Eligibility-Application of Transfer of Assets Penalty for Pooled Trust*, State Agency Regional Bulletin No. 2008-05, Division of Medicaid & Children's Health Operations/Boston Regional Office (May 12, 2008); Verlon Johnson, Chicago Regional State Letter No. 08-03 (July 2008); Susan H. Levin, *CMS Threatening Transfers Into Pooled Trusts by Those 65+*, 20 The ElderLaw Report 1 (Sept. 2008). See also *Pooled Advocate Trust v. S.D. Dep't of Soc. Servs.*, 2012 SD 24, 813 N.W.2d 130; *Ctr. For Special Needs Trust Admin., Inc. v. Olson*, 676 F.3d 688 (8th Cir. 2012); *Lewis v. Alexander*, 685 F.3d 325 (3d Cir. 2012).

¹⁴ 42 U.S.C. § 1396p(c)(2)(B)(iv); POMS SI 01120.203.B.3, 01150.121; see also Bradley J. Frigon & W. Eric Kuhn, *Which SNT, When & Why*, 5 NAELA J. 1, 9 (2009); Richard R. McGreal, *Medicaid Eligibility-Application of Transfer of Assets Penalty for Pooled Trust*, State Agency Regional Bulletin No. 2008-05, Division of Medicaid & Children's Health Operations/Boston Regional Office (May 12, 2008); Verlon Johnson, Chicago Regional State Letter No. 08-03 (July 2008); *Pooled Advocate Trust v. S.D. Dep't of Soc. Servs.*, 2012 SD 24, 813 N.W.2d 130; *Ctr. For Special Needs Trust Admin., Inc. v. Olson*, 676 F.3d 688 (8th Cir. 2012); *Lewis v. Alexander*, 685 F.3d 325 (3d Cir. 2012); *Pfoser v. Harpstead*, 939 N.W.2d 298 (Minn. App. 2020).

¹⁵ The Best Practices Guide was developed by the Life Passages Planning Project at Stetson College of Law, pursuant to a grant from the May and Stanley Smith Charitable Trust; <https://www.stetson.edu/law/academics/elder/home/life-pass-project.php>).

§ 1.05[3]

¹ See, e.g., Ala. Code § 19-3B-1101; Ariz. Stat. § 14-10103; Ark. Stat. § 20-77-701 *et seq.*; Cal. Prob. Code § 3604; Colo. Rev. Stat. § 15-14-412.8; D.C. Code § 47-802(5)(E); Fla. Stat. § 732.2025 (referring to QSNT or supplemental needs trusts); Idaho Code § 68-1403; 760 Ill. Comp. Stat. §§ 55/7.5, 55/15; Iowa Code § 634A.1 (supplemental needs trust); Minnesota Stat. § 501C.1205 (supplemental needs trust); N.H. Rev. Stat. Ann. § 564-A:1; N.J. Stat. § 3B:11-36 *et seq.*; N.Y. EPTL § 7-1.12; N.D. Cent. Code § 59-08-01 *et seq.*; Ohio Rev. Code Ann. § 5163.21; 60 Okla. Stat. § 175.82 *et seq.*; S.C. Code Ann. § 62-7-503; Tenn. Code Ann. § 35-15-505; Vt. Stat. Ann. tit. 14A, § 505; Wash. Rev. Code § 19.205.010 refers to special needs trusts in the statute dealing with structured settlements, while other state statutes make reference to a special needs trust in the portion of the statute dealing with secured transactions. As a result of the amendment to 42 U.S.C. § 1396p(d)(4)(A) by Public Law No.114-255, expect that state statutes will be revised to conform with the amendment.

for public, charitable or private benefits that might otherwise be available to the person with a disability. The existence of one or more remainder beneficiaries without a disability of the trust shall not disqualify it as a special needs trust for the purposes of this paragraph. For the purposes of this paragraph, “person with a disability” means an individual who has a disability pursuant to 42 United States Code section 1382c.²

New York uses the phrase “supplemental needs trust” and defines a SNT as a trust that complies with statutorily specified requirements:

a discretionary trust established for the benefit of a person with a severe and chronic or persistent disability (the “beneficiary”) which conforms to all of the following criteria:

(i) The trust document clearly evidences the creator’s intent to supplement, not supplant, impair or diminish, government benefits or assistance for which the beneficiary may otherwise be eligible or which the beneficiary may be receiving, except as provided in clause (ii) of this subparagraph;

(ii) The trust document prohibits the trustee from expending or distributing trust assets in any way which may supplant, impair or diminish government benefits or assistance for which the beneficiary may otherwise be eligible or which the beneficiary may be receiving . . . ;

(iii) The beneficiary does not have the power to assign, encumber, direct, distribute or authorize distributions from the trust;

(iv) If an inter vivos trust, the creator of the trust is a person or entity other than the beneficiary or the beneficiary’s spouse; and

(v) Notwithstanding subparagraph (iv) of this paragraph, the beneficiary of a supplemental needs trust may be the creator of the trust if such trust meets the requirements of . . . the social services law and of the regulations³

Remember that a number of state laws govern special needs trusts, especially state trust law. Because of the differences in state law, it is important to check the trust document to see if the trust determines which state law controls.

[4] Third-Party SNTs

In addition to the special needs trusts under federal law and specific state statutory provisions, there are also two types of third-party special needs trusts. One is a third-party testamentary SNT and the other is an inter vivos, stand-alone third-party SNT. It is important to review the applicable state law to check the requirements for a valid third-party special needs trust in order to not adversely impact a beneficiary’s eligibility for public benefits. The point with a third-party SNT is that the funds never

² Ariz. Stat. § 14-10103(17).

³ N.Y. EPTL § 7-1.12(a)(5) (citations omitted).

actually pass to the beneficiary, but instead are directed to the SNT.¹ The inter vivos stand-alone third-party special needs trust is similar. Once an inter vivos third-party special needs trust is established, subsequent testamentary dispositions may be added to the SNT.

Because the third-party special needs trust is not covered by federal law, there is no payback provision nor any age limit for establishing or funding the SNT. The funds are not the beneficiary's and the beneficiary does not establish the SNT. These are significant differences from the § 1396p(d)(4) trusts. The lack of payback provision in particular may make a third-party SNT more attractive than a § 1396p(d)(4) trust, but keep in mind that a third-party trust may not always be an option—particularly when the money to establish the special needs trust is the money of the beneficiary, as under 42 U.S.C. § 1396p(d)(4)(A).

A third-party special needs trust is often used to maintain a beneficiary's eligibility for public benefits, rather than to create such eligibility. A third-party special needs trust is often created by a grandparent or parent for a child, but may also be used by a community spouse to create a testamentary special needs trust for the institutionalized spouse. This option may be affected by state marital and elective share statutes. The applicable trust laws should be reviewed to ensure that such a third-party trust is not considered available to the beneficiary.

Keep in mind the key differences between a first-party SNT (whether under § 1396p(d)(4)(A) or § 1396p(d)(4)(C)) and a third-party SNT, especially the payback provision under the first-party SNT. It is possible for a beneficiary to have both a first-party and a third-party SNT. In the case of the beneficiary with one of each of these special needs trusts, it might make sense to deplete the first-party special needs trust before the third-party SNT, since there is no payback to Medicaid with a third-party special needs trust when the beneficiary dies.

For a discussion of third-party special needs trusts, see § 3.03[2]–[7].

§ 1.05[4]

¹ A testamentary SNT may be a tool for Medicaid planning for an institutionalized spouse, depending on applicable state law. See Bradley J. Frigon & W. Eric Kuhn, *Which SNT, When & Why*, 5 NAELA J. 1, 6–8 (2009).

§ 1.100 Checklists

Checklist 1.101 SNT Checklist

Checklist 1.101 SNT Checklist

Details about the proposed beneficiary:

- How old is the beneficiary? _____
- What is the nature of the proposed beneficiary's disability?

- At what age did the disability begin? _____
- Has the beneficiary ever worked? Y _____ N _____ If so, for how long and where? _____
- Is the beneficiary "disabled" as provided by Social Security law?
Y _____ N _____
- Is the beneficiary an adult under 65? Y _____ N _____
- Is the beneficiary a minor? Y _____ N _____
- Is the beneficiary currently receiving Medicaid? Y _____ N _____
- Is the beneficiary currently receiving SSI? Y _____ N _____ SSD? Y _____ N _____
- If the beneficiary is not currently receiving SSI or Medicaid, is an application pending or is one being considered? Y _____ N _____
- Is the beneficiary receiving any other public benefits? Y _____ N _____ If so, which ones? (SNAP, Section 8 housing, etc.?)

- Does the beneficiary receive income from any source other than SSI, SSD, or CDB? Y _____ N _____ What is the source?

- Is the beneficiary eligible for Veterans benefits? Y _____ N _____
- Is the beneficiary's health care covered under Medicare? Y _____ N _____ Private health insurance? Y _____ N _____
- Where does the beneficiary live? (Home? Long-term care facility?)

- Does the beneficiary have a guardian? Y _____ N _____ If so, relationship (if any)? _____ If not, does the beneficiary need a guardian? Y _____ N _____
- Is the beneficiary (or family) eligible for any HUD housing assistance (or any state housing assistance)? Y _____ N _____
- What is the beneficiary's income (and sources) and resources (and sources)? _____

(Text continued on page 1-21)

- ___ Does anyone help the beneficiary with the costs of food and shelter?
Y _____ N _____

Source of funds for the SNT?

- ___ Whose money will fund the trust?
_____ the beneficiary's or
_____ a third party's?
- ___ Which type of SNT is being considered?
_____ (d)(4)(A)?
_____ (d)(4)(C)?
_____ Third-party inter-vivos?
_____ Third-party testamentary?
_____ Both a third-party and first-party?

SNT Criteria:

- ___ Are the criteria met for the type of SNT under consideration?
Y _____ N _____ (See § 1.05)
- ___ Is the special needs trust irrevocable? Y _____ N _____ (Can be revocable under SI 00120.200)
- ___ Who is establishing the SNT?
- o If a 1396p(d)(4)(A) trust is to be established,
 - is the beneficiary a minor? Y _____ N _____
 - is the beneficiary an adult with a disability?
Y _____ N _____
 - is the beneficiary establishing the SNT?
Y _____ N _____
 - If the SNT is being established by someone other than the beneficiary, does the parent, grandparent, etc. have the legal authority to establish the SNT?
Y _____ N _____
- ___ Who has legal access to the funds being used to fund the trust?
- _____
- o Will the SNT be created by a court? Y _____ N _____
 - o If a 1396p(d)(4)(C) trust is to be established,
 - is the beneficiary a minor? Y _____ N _____
 - is the beneficiary an adult with a disability?
Y _____ N _____ Is the beneficiary under 65? Y _____
_____ N _____ If the beneficiary is not personally signing
the joinder agreement, does the parent, grandparent, guardian

or court have the legal authority to do so? Y _____ N _____

Other Considerations:

- ___ Are there statutory liens or other claims that must be satisfied, including Medicaid liens? Y _____ N _____
- ___ Has the beneficiary received Medicaid benefits of any type in the past? Y _____ N _____
- ___ Are there alternatives to SNTs that would accomplish the grantor's purpose? Y _____ N _____
- ___ Should an ABLÉ account be created in lieu of or in addition to a SNT? Y _____ N _____
- ___ Does the beneficiary have enough money to pay for the beneficiary's care and expenses, so the SNT is not needed? Y _____ N _____
- ___ Will expenditures from the SNT be for the sole benefit of the beneficiary? Y _____ N _____
- ___ Does the family understand that the funds in the SNT are for the sole benefit of the beneficiary? Y _____ N _____
- ___ Is there an experienced or qualified person or entity willing to serve as trustee? Y _____ N _____
- ___ What is the expected balance of the trust? _____
- ___ When will the trust be funded? _____
- ___ Will the trust receive monthly payments from an annuity as part of a structured settlement? Y _____ N _____
- ___ Anything else? _____