
SPECIAL NEEDS TRUSTS & PUBLIC BENEFITS

*Presentation by Janice
Sternfeld, Attorney at Law*



What is a Special Needs Trust?

Special Needs trusts are trusts created for the benefit of disabled individuals.



Primary purposes of Special Needs Trusts

- To protect the corpus of the trust for the beneficiary.
- To preserve needs-based public benefits for the beneficiary.



Protecting the corpus of the trust

For a disabled beneficiary who is incapable of managing inherited or gifted assets safely and prudently.

Preserving needs- based benefits



SNT's Can be either 3rd Party Trusts or 1st Party Trusts

Third-Party trusts are with assets belonging to a third party for the benefit of the disabled person.

First-Party Trusts are created with the assets of the disabled person.



Needs-Based Public Benefits:

INCOME: Supplemental Security Income (SSI) and other income programs

HEALTHCARE: Medi-Cal (Medicaid in other states)

FOOD: Cal-Fresh (Supplemental Nutrition Assistance Program (SNAP))

HOUSING: HUD, Section 8, Housing Assistance Programs

Not to be confused with Public Benefits that are **ENTITLEMENTS**

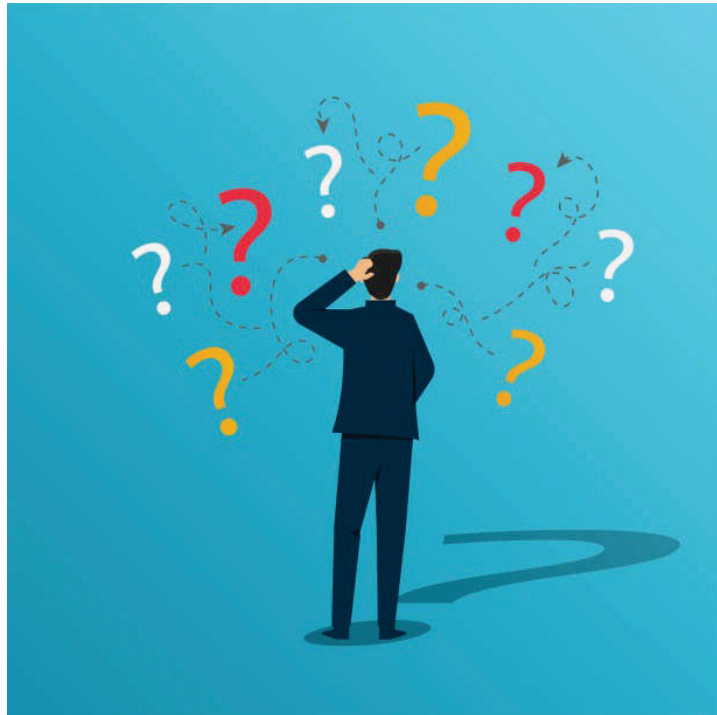
**Social Security
Retirement.**

**Social Security
Disability Benefits**

**State Disability
Benefits.**

SOCIAL SECURITY CONFUSION

What benefits does the person really have???



MANY FORMS OF SOCIAL SECURITY (And sub-types)

Social Security Retirement (SSA)

- Spouse
- Dependent Child
- Death Benefits for spouse and dependent child

Supplemental Security Income (SSI)

- Supplements income to bring the individual or family up to (*but not over*) the Federal Poverty Limit Plus a State Supplement

Social Security Disability Income (SSDI)

- For the disabled individual who worked and earned the benefit
- For a Disabled Adult Child (DAC)

Social Security Disability Income (SSDI)

- This is a benefit for an individual who, due to a physical or mental impairment, is unable to perform “Substantial Gainful Activity” (“SGA”).
 - SGA means significant physical or mental work for pay or profit earning over \$1,690/month for non-blind individuals, or \$2,830/month for blind individuals in 2026.
- The physical or mental impairment must be expected to last at least one year or until death.
- The disabled beneficiary must have paid into Social Security for at least 40 credits (quarters) to be eligible for SSDI.



DISABLED ADULT CHILD BENEFIT

- Available to an individual over the age of 18 who became physically or mentally disabled before age 22
- Unable to perform Substantial Gainful Activity as a result of the disability.
- Has at least one parent who is getting Social Security Benefits or died and was entitled to benefits.
- Unmarried.



Supplemental Security Income (SSI)



Income assistance for individuals who are over the age of 65, blind, or otherwise disabled.

Earn below the federal poverty limit (with a state subsidy based on the cost of living in each state).

- The SSI federal poverty limit without the state supplement is \$994 per month!
- In 2026 in California the income limit is \$1,293.44 for an individual or \$2098.83 for a married couple.

Strict asset (resource) limits:

- Personal Residence
- One vehicle
- \$2000 for an individual, \$3000 for a married couple.

Or some combination thereof

- Individuals on SSI often have a combination of SSI and other benefits to bring them up to the state subsidized federal poverty limit



But they are getting less than that!

- When a beneficiary receives “In Kind Support and Maintenance” or “ISM” (primarily free rent) the monthly SSI amount is reduced dollar for dollar up to a “Presumed Maximum Value” of \$331.33 (representing 1/3 reduction in the Federal Benefit Rate of \$994 per month).
- Generally when I see individuals getting around \$960 per month I can guess that their benefit is SSI and they have a reduction for ISM
- Some people get a reduction of up to 10% of the regular rate because they owe SSI money for overpayment.



MARIA'S STORY



- Maria came to me in a panic, certain that she was going to lose her benefits from a \$30K inheritance.
- She told me she had \$631 monthly from SSI. This could be SSI because she was married, and SSI may “deem income” from the spouse.
- But she was only 56 and she had Medicare. That tipped me off that she might have some or all of her income from SSDI. I asked her to show me her benefit letters and a bank statement.
- She only had SSDI with Medi-Cal. The \$30K would not impact her benefits at all.

First-Party SNT's Protect SSI Eligibility

Because of strict Asset and Income Limits, a First-Party SNT can establish or protect SSI eligibility because assets in a First-Party SNT do NOT count as the individual's assets under SSI regulations.

Certain income-producing assets in an SNT do not count as the individual's income for SSI purposes, either.

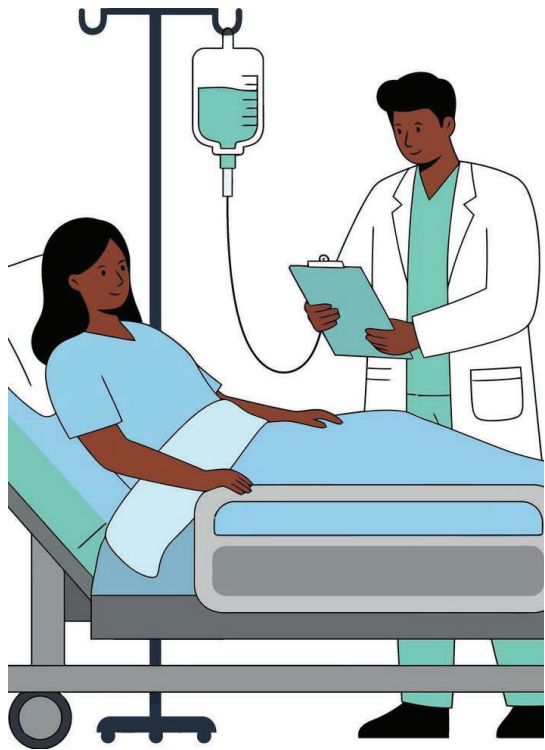
Individuals may need a First Party SNT when certain circumstances will put them over the \$2000 asset limit. Gifting is penalized for SSI

Individuals who receive SSI are automatically eligible for Medi-Cal

Sometimes this is more valuable than the monthly income in order to:

- Cover medical expenses
- Provide In Home Support or Waivers.





Where does Medicare fit in?

- Medicare is an **ENTITLEMENT** program for:
 - People aged 65 or older who have paid into the Social Security System for at least 40 quarters (10 years).
 - People who have been eligible for SSDI or DAC for at least two years, regardless of age.

Just for fun, which person in the picture is getting the IV???

Medicare does NOT cover Long-Term Care

Medicare covers limited **Skilled Care** in a Skilled Nursing Facility

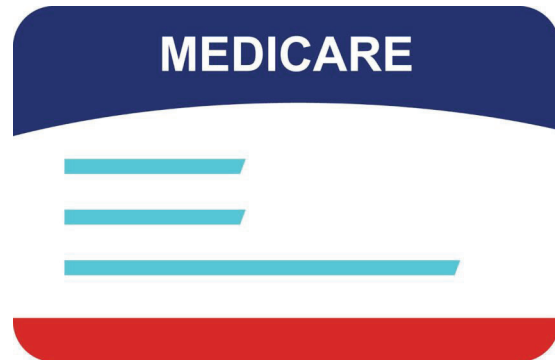
- **Up to** 100 days of skilled care: daily Physical Therapy, Occupational Therapy, Speech Therapy, specialized Nursing care.
- Medicare covers Skilled Care with a daily co-insurance payment beginning day 21.

Skilled Nursing Facilities have a dual license: Skilled Nursing Care and Long-Term Care.

- Long-Term care is **not covered** by Medicare, and costs, on average about \$15,000 per month.
- This is where petitions under Probate Code § 3100 et seq or for substituted judgment to create a SNT may come in to help individuals qualify for Medi-Cal to pay for Long-term care.

MEDICARE ISN'T “FREE”

- **Part A for hospital care and skilled nursing:**
 - Hospital Deductible
 - SNF Co-insurance Payment for days 21 – 100
- **Part B (outpatient services, doctors, labs, X-ray, DME)**
 - Monthly premium and annual deductible
 - Medicare only pays 80% of allowable costs under Part B
- **Part D Drug plans**
 - Monthly premium
 - Various deductibles and co-insurance
- **Part C Advantage and PPO Plans**
 - Monthly premium
 - Variable deductibles and co-pays



MEDI-CAL California's Version of Medicaid

Like an insurance program, Medi-Cal provides basic medical care.

But there's more . . .

- Nursing Home Care (SNF & LTC)
- In Home Supportive Services (IHSS)
- Waiver Programs cover additional needs
 - Home and Community Based Alternative (HCBA)
 - Assisted Living Waiver (ALW)
 - Home and community Based Services (HCBS)
 - Program for All Inclusive Care for the Elderly (PACE)
 - Home and Community Based Services for Developmental Disability (HCBS-DD)
 - Multipurpose Senior Services (MSSP)
- AND EVEN MORE . . .

Medicare and Medi-Cal Can Work Together



MEDICARE

**MEDI-CAL
PAYS ALL OUT-OF-POCKET COSTS
AFTER MEDICARE**

- Premiums
- Deductibles
- Co-Insurance Payments

**“The best coverage a person can have
is ‘Medi-Medi’”**

MEDI-CAL ELIGIBILITY (2026)

INCOME

- **SINGLE: \$1,836 PER MONTH**
- **COUPLE: \$2,490 PER MONTH**

NON-EXEMPT ASSETS

- SINGLE: \$130,000**
- COUPLE: \$195,000**

**SPECIAL NEEDS TRUSTS CAN HOLD ASSETS TO ESTABLISH OR MAINTAIN MEDI-CAL ELIGIBILITY
INCOME EARNED IN A SPECIAL NEEDS TRUST ISN'T COUNTED AS THE BENEFICIARY'S INCOME
UNLESS TRUST CORPUS IS USED TO PAY 100% OF SUPPORT COSTS.**

Exempt vs. Non-Exempt Assets

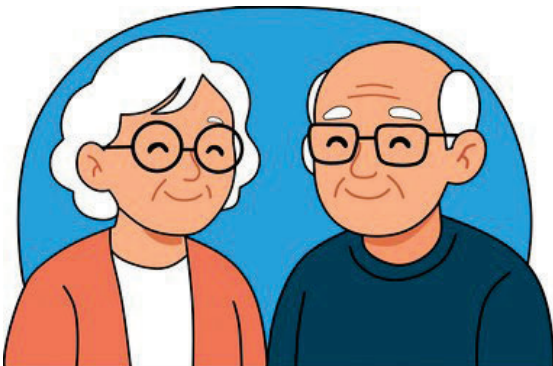
Exempt

- The personal residence
 - If not living in personal residence, there must be a subjective intent to return home
- One Vehicle
- Up to the Asset limit in cash, investments, etc.
- An irrevocable burial/cremation policy
- Term Life Insurance
- Annuitized retirement accounts (until distributed)

Non-Exempt

- Other real property (exception: Business property)
- Other vehicles and boats
- Cash and money in Bank Accounts
- Investments
- Cash value of whole life policies
- Assets in excess of asset limits
- Retirement accounts that are not annuitized

Avoiding Spousal Impoverishment



shutterstock.com · 2668223181

- Married and Registered Domestic Partners can use special rules to avoid spousal impoverishment under Medi-Cal.
- This can increase the Community Spouse Resource Allowance and/or increase spousal support—a.k.a. shifting of income to the community spouse.
- To avail themselves of these protections when the ill spouse is incapacitated, the community spouse may petition the court to permit “Particular Transactions” under Probate Code §3100 that may increase the spousal allowance, transmute property, or use Substituted Judgment to create and fund a revocable trust.

Why aren't SNT's common for Spousal Impoverishment

- The disabled individual can have a First Party SNT for separate property assets like an inheritance.
- But the spouse can only create an SNT for a disabled spouse **by WILL**. 42 U.S.C. Section 1382b(e)(2)
 - “ For purposes of this subsection, an individual shall be considered to have established a trust if any assets of the individual (or of the individual's spouse) are transferred to the trust other than by will.”
- Remember that First Party SNT's are payback trusts. So if the spouse creates an inter vivos trust for the disabled individual, it is a first party trust, and the trust will have to payback if the disabled individual dies first.



When income exceeds Income limits

- **An Individual may *still* qualify for Medi-Cal:**
- With a “Share of Cost” (Shared Monthly Cost)
 - In the community, an individual with a Share of Cost must pay all but **\$600** of their income for covered Medi-Cal services before Medi-Cal kicks in any money toward care.
 - In a nursing home, there is **ALWAYS** a share of cost equal to all of the individual's income except **\$35**, unless spousal impoverishment applies.





Special Needs Trusts for Establishing and Maintaining Medi-Cal

- First-Party Special Needs Trusts can Protect Assets when the Individual's resources exceed the Medi-Cal asset limit.
- While First-Party Special Needs Trusts are "Grantor Trusts" (meaning the income in the trust is treated by the IRS as the beneficiary's income), the income in the trust is **not** treated as the beneficiary's for Medi-Cal purposes *unless* it is distributed for **100%** of In Kind Support and Maintenance (ISM) for each of housing, utilities, food, clothing. CCR §50509. Different rules for SSI & HUD!



CalFresh Food Assistance

- CalFresh is food assistance formerly known as "Food Stamps". It is also called SNAP.
- CalFresh eligibility is based on income, assets, household size.
- Income and assets in a Special Needs Trust are not counted for eligibility for CalFresh
- Distributions from a SNT for ISM (food, housing, utilities, clothing) might impact CalFresh benefits.

MAGI-MEDI-CAL



- Full-Scope Medi-Cal for individuals aged 18 – 65 who earn less than 138% of the Federal Poverty Limit.
 - In 2026 that's \$1,798 per month for a single individual, \$2,429 for a couple.
- **NO Asset limit!**
- But if the individual under 65 receives Medicare (under DAC or SSDI) they are **NOT** eligible for MAGI Medi-Cal and asset limits apply. They might have traditional Medi-Cal, though.

Housing Assistance

Federal Housing Assistance underlies most housing assistance, but in different ways

- Housing and Urban Development (HUD)
 - Project-Based Housing
 - Section 8 Rental Vouchers
- State Housing Programs
- County Housing Programs
- Non-Profit Agencies that provide housing

RULES VARY!!!!



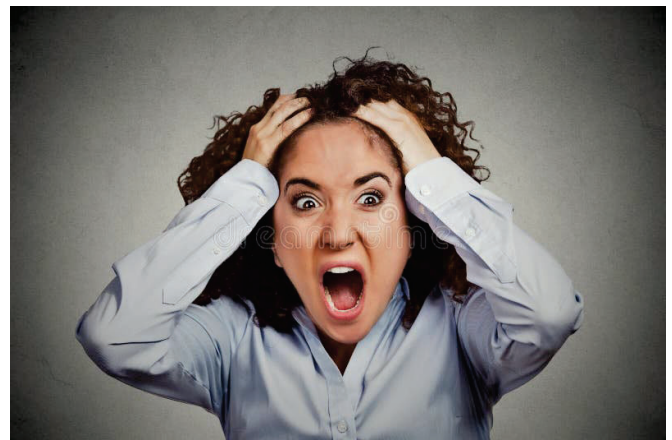


PUBLIC HOUSING AUTHORITIES (PHA'S) ARE LOCAL AGENCIES THAT ADMINISTER HOUSING ASSISTANCE PROGRAMS

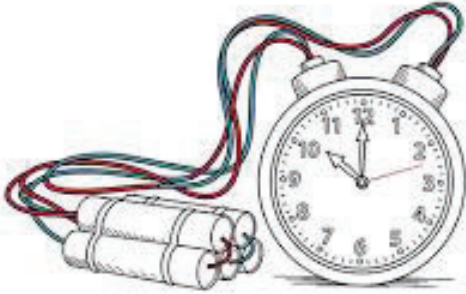
- They administer Federal, State, County, and Local Housing Programs (varies by PHA)
- May develop local low-income housing
- Manage and Operate housing programs
- There may be several PHA's in a particular county, not all of them cover the same programs.
- Almost all follow federal guidelines, but with variations.

Each PHA sets their own rules and guidelines

- For the most part, PHA's follow Federal HUD guidelines, but there are interpretations and variations.
- If you know the rules for one PHA, you know the rules for one PHA.
- And "times, they are a'changing!"



Historically, HUD has not had asset limits but . . .

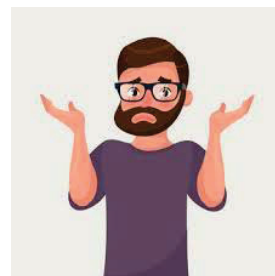


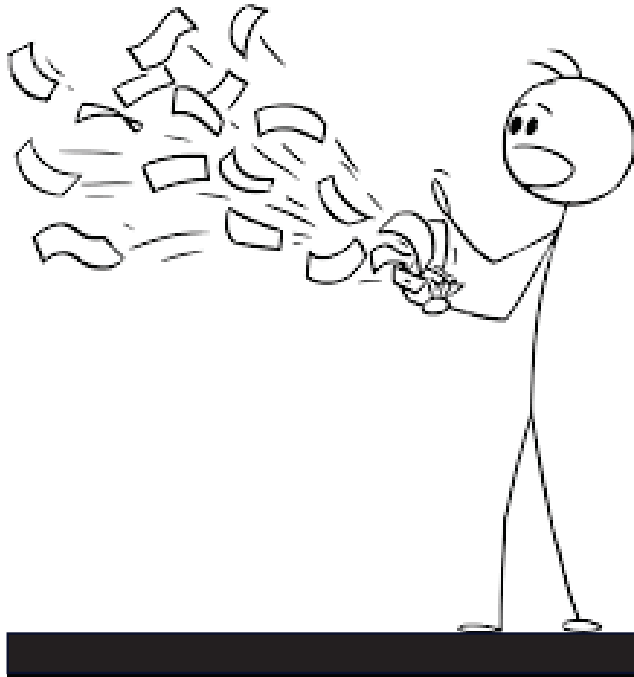
- The Housing Opportunity Through Modernization Act (HOTMA) was passed in 2016.
- Among other things, it sets asset limits for federal housing assistance.
- Asset limits were supposed to be implemented in 2024. But they have been put off again and again. Last year it was definitely going to start 1/1/26, but on 12/15/25 it was put off for another year.
- Asset limits \$100K per household indexed for inflation (if implemented in 2027, ~\$105K)

How will HOTMA be implemented?

- PHA's have THREE options for existing residents
 - Do nothing
 - Give residents 6 months to “cure” excess assets
 - Evict as redeterminations come up.

New Residents will be subject to HOTMA limits on assets on application.

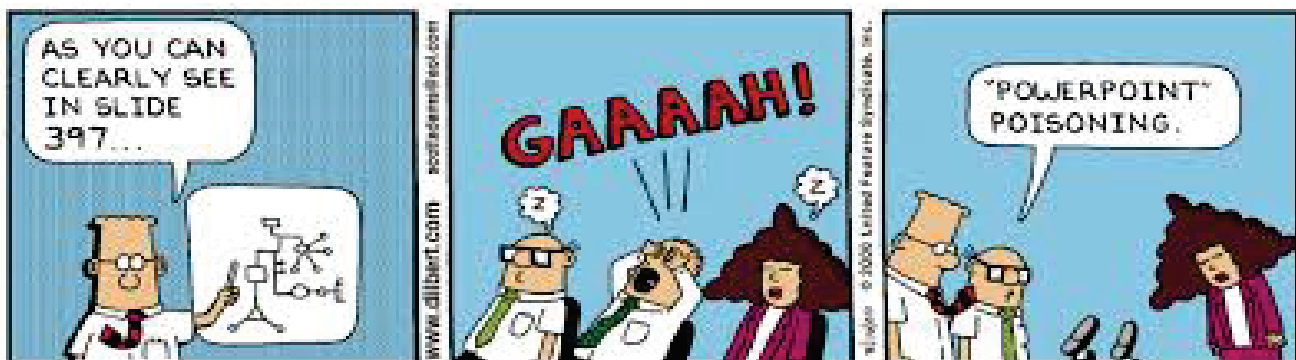




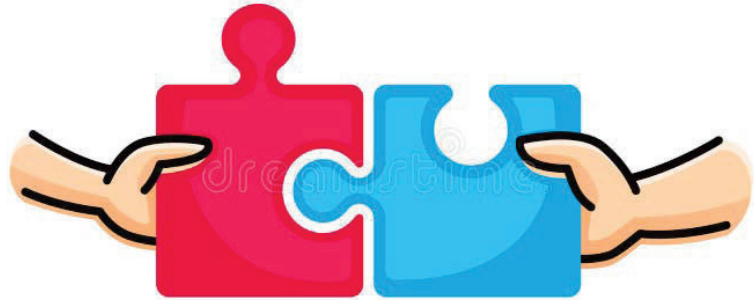
SNT's and HOTMA

- **Assets** in a SNT are not counted as the resident's assets, even when distributed.
- But SNT **income** counts when distributed
 - *DeCambre v. Brookline Housing Authority* 826 F.3d 1 (1st Cir. 2016) Federal Appeals Court case determined that distributions of SNT trust *investment income* are considered income of the individual for purposes of determining rent.

Hang in there!



Putting SNT's together with Public Benefits



SPECIAL NEEDS TRUSTS PROTECT NEEDS-BASED PUBLIC BENEFITS

- Public Benefits Agencies consider who has the ability to **CONTROL** the assets.
- As long as the trustee has control of the assets, and provided the beneficiary is forbidden by the trust terms to act as the trustee, the assets of the trust are disregarded for purposes of eligibility.



First-Party Special Needs Trusts



- For the most part, Court Investigators will see First-Party Special Needs Trusts
 - To protect Needs-Based Benefits for a conservatee (Probate Code §2580) receiving a windfall like an inheritance a gift, or when they need more care.
 - To protect needs-based benefits for an incapacitated individual receiving an inheritance or legal settlement ((Probate Code §3600)
- Conservatorship estates, alone, do not protect needs-based benefits because they are still “**available**” to the conservatee. EVEN in a blocked account.

First-Party Special Needs Trust 42 U.S.C. §1396p(d)(4)(A)

Congress passed this statute in 1993 under the Omnibus Reconciliation Act to provide a “safe harbor,” permitting a person receiving SSI or Medicaid to transfer their own assets into a first party trust without losing eligibility for these needs-based benefits on account of the transfer, and deeming assets in these trusts as “unavailable” so they will not be disqualifying.

You may hear it referred to as a “(d)(4)(A) Trust”.



42 U.S.C. §1396p(d)(4)(A)



A trust containing the assets of an **individual under age 65** who is **disabled** (as defined in 42 USC §1382c(a)(3)) 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 title.

Elements of (d)(4)(A) Special Needs Trusts

Established by an authorized person

- The individual themselves
- A parent
- A grandparent
- **THE COURT**

For a person under age 65,

For the “sole benefit” of that person,

The beneficiary must be disabled,

Must be irrevocable, AND

- It’s a **“Payback Trust”**
- Trustees must notify state agencies that provided Medicaid services on termination or death.
- Must pay back state agencies up to the entire amount for services the beneficiary received.





For individuals over 65

- **42 U.S.C. 1396p(d)(4)(C)—Pooled Special Needs Trusts**
- **Pooled Trusts are established and managed by non-profit organizations.**
- **This is the only kind of first party special needs trust available to a disabled adult over the age of 65.**
- **BUT, while (d)(4)(c) does not specify an age limit, SSI could always impose one . . .**

Pros and Cons of Pooled Trusts

PROS

- Can be established very quickly since all the joinder documents and trust documents are standardized.
- No need to find a professional trustee or train lay trustees to manage the trust.
- Pooled Trust companies have expertise in producing court documents and accountings.
- Sometimes having a distant trustee is an advantage.

CONS

- Can be expensive to establish and maintain.
- Some of them tend to “nickel and dime” fees.
- Limited provision of “hands on” care to assess and manage beneficiary’s needs.
- Contact can be difficult because beneficiaries may not be comfortable with email and online procedures, using True Link, etc.
- Individuals over age 65 may only make ONE deposit and may end up with multiple Pooled trusts with compounded expenses.

CAUTION!

- The SSI statute provides a “safe harbor” for transfers to a Pooled Trust only for individuals under the age of 65.
- That means that the Social Security Administration **could** impose a penalty for transfers to a Pooled First Party SNT by individuals over age 65 for up to 36 months.
- However, my experience, and that of other practitioners, this penalty has never been imposed.
- Remember the ONE TRANSFER ONLY rule for individuals over age 65.



Extrajudicial First Party SNTs

- Most First Party SNTs don't require Court involvement. They may be established by:
 - A parent.
 - A grandparent.
 - The individual with capacity
 - This is new, since Obama signed the 21st Century Cures Act which permits individuals to create their own First Party SNT's.

Two Required Elements to Establish a First Party Special Needs Trust

AUTHORITY TO ESTABLISH THE TRUST

- A Parent,
- A Grandparent,
- The Disabled Individual with Capacity, OR
- A Court

AUTHORITY TO FUND THE TRUST

The disabled individual must have capacity to fund the trust themselves.

- Not a Minor
- Not Conserved
- Not adjudicated to lack capacity

OTHERWISE THE COURT MUST FUND THE TRUST



The Court's Role in Establishing First Party Special Needs Trusts

- Substituted Judgment for a conserved individual under Probate Code §2580
- Particular Transactions under Probate Code §3100 (this is uncommon for SNT's)
- Litigation Special Needs Trust for a Disabled Person under Probate Code §3600

The Court must **ESTABLISH** the First-Party Special Needs Trust

- **(POMS SI 01120.203(B)(8))**
- **The court must specifically either establish the trust or order the establishment of the trust.**
- If the Court is presented with an already executed (thus established) trust, the “Court Establishment” provision is not met and the trust will not prevent the assets from being counted as the beneficiary’s assets.



Trusts funded by court order **MUST** comply with CRC §7.903

- Establishes continuing Court jurisdiction over these trusts. May require Court Supervision.
- Imposes required provisions in the terms of the trust, including:
 - Court approval for modification or revocation
 - Limits investments
 - Bond must be posted unless Court dispenses it for good cause.
 - Requires accounts and reports under Probate Code §1060 and Probate Code §2620
 - Compensation for trustee and attorney must be fixed by the court.

Two Distribution Standards



The Supplemental Distribution Standard (Strict)

The Supplemental Distribution standard prohibits the trustee from making any distribution that causes any reduction or loss of public benefits.

- Distributing cash to the beneficiary (\$20 per month disregard)
- Payment of In Kind Support and Maintenance since it causes reduction in benefits

EXAMPLE

“The trustee shall not make any distribution that will reduce or eliminate eligibility for public benefits.”



shutterstock.com - 179149040

The Discretionary Standard

Permits distribution of trust assets to the beneficiary, even when the distribution results in a loss or reduction of benefits, provided it is in the best interests of the beneficiary.



EXAMPLE

“The trustee may distribute to or apply for the benefit of Beneficiary such amounts from the principal and income, up to the whole thereof, as the trustee, in the trustee’s sole discretion, considers necessary or advisable in the best interests of the beneficiary.”

SSI In Kind Support and Maintenance (ISM)

- Shelter Costs including:
 - Rent
 - Utilities
 - Electricity and Gas
 - Water and Sewer
 - Garbage
 - Property Taxes
 - Insurance when required for a mortgage
- Food, but ONLY if beneficiary never pays for even one meal.
- Covered Medical costs (needs written denial)
- When a trust or another person provides ISM, the maximum amount that the SSI benefit can be reduced dollar for dollar up to what is known as the Presumed Maximum Value (PMV).
 - In 2026 it’s **\$331.33** .
- Cash, on the other hand, reduces the benefit dollar for dollar, up to the entire monthly SSI amount.



Medi-Cal ISM is different

- Includes:
 - Food
 - Shelter
 - Utilities including telephone (landline?)
 - Covered Medical costs
- NONE of the above count **unless the trust pays 100% of the cost.**

And Counted Differently! See CCR §50511
Values have been “updated” by ACWDL 89-58

Described as “anachronistic”
Added to income to determine if person still qualifies.

	One Person	Two Persons
Housing	\$153	\$206
Food	\$86	\$102
Utilities	\$35	\$38

MEDI-CAL EXAMPLE

**John’s income is \$1,800 per month, but his rent is \$2000 per month.
He relies on In Home Supportive Services**

SNT PAYS \$2000 MONTH RENT

- 22 CCR § 50511 provides that the value of 100% rental assistance is added to the individual’s countable income.
- In this case, All County Welfare Director’s Letter 89-58 sets the value of housing paid for by anyone but the Medi-Cal recipient is \$153.
- $\$1,800 + \$153 = \$1953$. This puts him over the \$1,836 per month income limit.
- He keeps Medi-Cal but now has a Share of Cost!

SNT PAYS \$1800, JOHN PAYS \$200 RENT

- Because John is paying **some** amount toward his rent, the assistance provided by the trust does **not** count against him.



What's the Big Deal with a Share of Cost?

- When an individual in the community has a “Share of Cost” for Medi-Cal, it means that the individual must use his or her income pay for all of the costs for Medical coverage, IHSS, Durable Medical equipment like a wheelchair or hospital bed, Pharmaceuticals, Medical Nutrition, etc., **except** \$600.
- In the example of John, that means he must spend \$1200 of his own money on all of the above costs **before** Medi-Cal pays anything toward his care needs.

**CAN YOU LIVE ON \$600 A MONTH,
EVEN IF SOMEONE ELSE PAYS YOUR RENT???**

Avoiding a Share of Cost (Medi-Cal)

- **True Link Cards**
 - Instead of giving cash to the beneficiary that puts them over the income limit
- **250% Working disabled Program**
 - Increases the *countable* income limit for a single person from \$1,836 per month to \$3,300.
- **ABLE accounts**
 - ABLE Accounts can be used to pay for things that would otherwise count as ISM
 - ABLE Account disbursements are not income
- **Using Spousal Impoverishment Provisions for Married Couples and RDP's.**
 - Spousal Impoverishment Provisions can shift income to the “community spouse”
- **Purchasing additional Health Insurance**

USING A TRUELINK® CARD

- A Truelink card is a VISA branded prepaid card. The SNT Trustee can load the card with money for the beneficiary to use.
- Money loaded on the card does NOT count as the beneficiary's asset because:
 - The trustee controls the amount loaded onto the card and the beneficiary cannot override that amount.
 - The trustee can limit where the card can be used (i.e. no liquor stores)
 - The beneficiary cannot obtain any cash from the card.
- This offers the beneficiary a degree of financial autonomy. The beneficiary doesn't have to ask the trustee to pay for sanitary supplies or condoms, for example.
- **NOTE: using the TrueLink card for ISM can still incur a penalty as if it was cash for SSI and Medi-Cal purposes.**

250% Working Disabled Program

- **ANY** form of work in any amount counts.
- I have clients who:
 - Fold Towels for elderly mom
 - Take out the garbage
 - Walk a neighbor's dog
 - Tutor a grandchild
 - Help a friend with their computer tasks



Different Share of Cost Rules for Nursing Homes

- Share of Cost for a Nursing home is **ALL** of the individual's Income *except* **\$35**.
- Nursing Home Share of Cost can only be reduced or avoided by:
 - Spousal Impoverishment Allocations of Income to Community Spouse
 - *Hunt v. Kaiser* permits the Share of Cost to be reduced in order to pay for unpaid medical bills incurred before eligibility for Medi-Cal.
 - Note *Craig v. Bonta (SSI)*



Purchasing Additional Health Insurance

- A more expensive Medicare Supplement (Medigap) or Part D plan.
 - Dental Insurance
 - Vision Insurance
- Medi-Cal will cover the cost of additional health insurance but still credit it!

COMBINING ABLE AND AN SNT

The SNT can contribute money to the beneficiary's ABLE account.

Money in the ABLE account can be used for Shelter, Utilities, food, clothing, and covered medical costs without being penalized as ISM

- Money withdrawn from an ABLE account does not count as income as long as it's for a "disability related expense".
- Works for SSI too!

The SNT might need to contribute even more to the ISM

Example Using ABLE, Trust, True Link

Carol is disabled and has no income, but she's not eligible for SSI because her father pays about \$2200 each month for her rent and utilities, gives her about \$1800 in cash each month for food and other expenses, and provides her with a vehicle, insurance, maintenance and repairs, and a gasoline credit card.

Carol has Medi-Cal.

Solution

- Dad deposited \$19K in an ABLE account for Carol in 2025 and another \$20K in January of 2026.
 - She can pay around \$331 for rent, food, and incidentals from the ABLE account
- He created a 3rd Party SNT for Carol's other expenses.
- He established a TrueLink card for her to use for those expenses.
- She will qualify for the full \$1,233.94 monthly SSI benefit.

Fire Victims Trust Fund In Sonoma County, many people on benefits got fire settlements

- We could use ABLE accounts for small settlements when a person became disabled before age 22.
 - Now the age of disability is 46, but most settlements have already been disbursed.
 - First party SNT's when ABLE accounts weren't practical
- For Limited conservatorships, we used 3600 petitions to create and fund SNT's, but the Fire Victim's Trust Fund often mandated SNT's with blocked accounts.
- We have gradually moved amounts to unblocked ABLE accounts when we can to reduce SNT administration expenses.
- Adults with capacity could create their own 1st Party SNT's



Sam is 73 years old, he is reliant on IHSS and he just inherited \$500,000.

IF SAM HAS CAPACITY

- He can fund his own revocable trust up to \$130,000 and put the rest in a pooled trust.
- He can give away \$130,000 without penalty because that amount is exempt, and establish a pooled trust with the rest on Medi-Cal.
- On SSI, he has to fund a pooled trust with all but **\$2000. Gifting is penalized!**

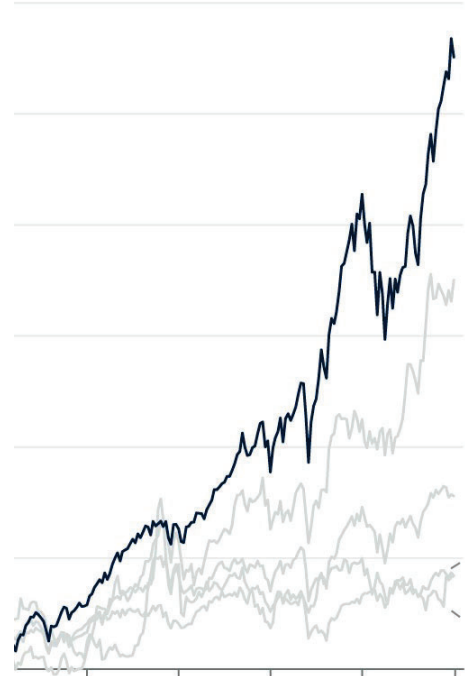
IF SAM LACKS CAPACITY

- Family can use a conservatorship to petition for substituted judgment under Probate Code §2580 to:
 - Establish a revocable trust for the exempt portion. (Medi-Cal only)
 - Establish a pooled 1st Party SNT for the non-exempt portion (**all but \$2000 if on SSI**)

EXAMPLE

Ed, age 63, has income from his Investment

- Ed is applying for the **Assisted living waiver**.
- His Social Security is **\$1800** a month.
- He has about **\$120,000** in an investment account, but that account did really well and made about **\$13,000** last year.
- The investment earnings put him over the asset limit which would impact Medi-Cal eligibility and counted as his income, which would impose a Share of Cost.
- The investment account was put in a Special Needs Trust. Now he is eligible for the Assisted Living Waiver without excessive income or assets.



Non-Medical Out of Home Care for SSI Recipients

“NOMHC”

- When an individual **on SSI** is in Residential Care, the law does not allow facilities to charge more than the SSI facility rate set by the state. [California Code of Regulations, Title 22, section 87464(e)]. The 2026 SSI facility rate is **\$1,444.07** for an individual. In addition, the person gets personal needs allowance of **\$182** a month.
- This does not stop the RCFE from collecting additional rent from other sources such as family or the individual’s SNT. But the augmentation must be **VOLUNTARY**.
 - The trust cannot be *obligated* to pay more, but the Trustee may decide to supplement the public benefit.
- This is not ISM, because the room and board are paid with the NMOHC rate.



EXAMPLE

After a severe illness, Doris was placed on Hospice and her Advantage plan recommended 24 hour care at home.

- The trust could not pay **\$20,000** or more each month for 24-hour care for an indeterminate period of time.
- Doris refused to go to a nursing home.
- The trust was able to negotiate with a very nice RCFE for Doris to be admitted on NMOHC. This cost the trust around **\$5,500** per month instead of **\$20,000**.
- Doris died peacefully, surrounded by her artwork in a quiet homey atmosphere.

My Hope

My hope is that what you take away from this presentation is:

1. A better understanding of how needs-based benefits work with SNT's and alternatives.
2. You may, as Court Investigators, come across petitions for some creative solutions for the needs-based beneficiary. Sometimes these can look like a spouse or another person is taking advantage of that individual—especially in spousal petitions, in requests to do gifting or use SNT alternatives. But if you understand how the public benefits work, you can evaluate the merits of the plan to see how it will benefit the conservatee or otherwise incapacitated person.



**Janice Sternfeld,
Attorney**

Email: JSLaw@Sonic.Net

Phone: (707)284-8698

Location: Santa Rosa, California

SPECIAL NEEDS TRUSTS AND PUBLIC BENEFITS RESOURCES

- **Special Needs Trusts Administration**
 - *Special Needs Trusts: Planning, Drafting, and Administration* (Cal CEB)
 - *Administering the California Special Needs Trust: A Guide for Trustees and Those that Advise Them* (Fourth Edition January 21, 2026) ISBN-13 : 979-8245452715

- **Federal Laws and Regulations**
 - <https://www.govinfo.gov/> (U.S. Government Publishing Office; access to portions of Federal Register, congressional bills, the United States Code, a Congressional Record Index, and the Code of Federal Regulations);
 - Needs-Based Programs:
 - Supplemental Security Income (SSI) (Title XVI; 42 USC §§1381–1385)
 - Medicaid (Medi-Cal in California) (Title XIX; 42 USC §§1396—1396w–8)
 - Entitlement Programs:
 - Social Security Retirement (Title II; 42 USC §§401–418)
 - Social Security Disability Insurance (SSDI, sometimes referred to as SSD) (Title II; 42 USC §§401(b), 420–425)
 - Social Security Family Member and Survivor’s Benefits (Title II; 42 USC §402(b)–(i))
 - Medicare (Title XVIII; 42 USC §§1395–1395III)
 - <https://www.ssa.gov/regulations/> (Social Security Administration’s compilation of Social Security-related law and regulations);
 - <https://policy.ssa.gov> (Social Security Administration (SSA); access to SSI Program Operations Manual System (POMS), the manual used by SSA employees to process claims for Social Security benefits);
 - <https://www.cms.gov> (Centers for Medicare and Medicaid Services (CMS); Medicare and Medicaid policies, manuals, and letters).

- **State Laws and Regulations**
 - <https://www.dhcs.ca.gov> (Department of Health Care Services; access to Medi-Cal All County Welfare Directors (ACWD) Letters; for online access to ACWD Letters, see also DHCS’s website at <https://www.dhcs.ca.gov/services/medi-cal/eligibility/letters>);

Special Needs Trusts and Public Benefits Resources

- ●<https://www.medi-cal.ca.gov> (Department of Health Care Services; access to Medi-Cal program information, publications such as provider manuals, and updates).
- **Organizations**
 - <https://www.canhr.org> (**California Advocates for Nursing Home Reform** (CANHR); current analysis and advice on Medi-Cal benefit strategies);
 - See especially: <https://canhr.org/fact-sheets-english/> 84 Free fact sheets on various issues with respect to Medi-Cal, Care options and more.
 - Legal Network News, published by CANHR, San Francisco; see <https://www.canhr.org>.
 - ●<https://www.justiceinaging.org> (**Justice in Aging**, formerly the National Senior Citizens Law Center; current analyses and memorandums on Medicaid, Medicare, SSI, and other federal benefits);
 - <https://www.nosscr.org> (**National Organization of Social Security Claimants' Representatives**; provides direct access to law, regulations, and memorandums regarding Social Security Disability benefits, SSI, and Medicare, with extensive links to all related agencies and programs); and
 - <https://ca.db101.org> (**Disability Benefits 101**; collaboration between several nonprofit organizations serving the disability community, with excellent summaries of the public benefits available to the working disabled community).
 - Academy of Special Needs Planners (ASNP) provides online legal answers to many special needs planning topics to the consumer; see <https://specialneedsanswers.com/>
 - **Disability Rights California** (formerly Protection and Advocacy, Inc.) has excellent publications addressing many facets of public benefits; see <https://www.disabilityrightscalifornia.org>.
 - **ABLE National Resource Center** (Education, and support for the positive impact ABLE can make on the lives of millions of Americans with disabilities and their families. See <https://www.ablenrc.org/>
 - **CalABLE** Official website for the CalABLE program. ABLE resources, eligibility, and sign up for CalABLE accounts here: See <https://calable.ca.gov/>