



**McAndrews Law Offices, P.C.**  
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**What You Need to Know  
 About Special Needs Trusts,  
 Powers of Attorney, and  
 Guardianship**

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**Tonight we will discuss:**

- Overview of Public Benefits
- Three Types of SNTs
- Powers of Attorney
- Guardianship

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**Why Use a Special Needs Trust?**

- A Special Needs Trust allows an individual with disabilities to maintain assets to use throughout his life and remain eligible for Medical Assistance (MA), Supplemental Security Income (SSI), Mental Health/Intellectual Disability services.

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### Overview of Public Benefits for Individuals with Disabilities

- Supplemental Security Income (SSI)
- Social Security Disability Income (SSDI)
- Medical Assistance (MA)
- Medicaid Waiver Programs
- Medicare

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### SSI

- Available for individuals who are over age 18 and blind or disabled, or at least 65 years old
- Financial Eligibility
  - Resources: Less than \$2,000 for an individual & \$3,000 for a couple
  - Income: Typically less than \$950.00 per month; however, SSA permits deductions for earned/unearned income & excludes certain types of income received.
- Maximum Benefit (per month), which is payable in the 1<sup>st</sup> month application is submitted
  - \$710 for an individual & \$1,066 for a couple (2013)

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### SSDI

- Available for workers and certain family members who become disabled (unable to engage in substantial gainful activity) and have accumulated a sufficient number of work credits
- When parents of a child with special needs begins collecting SSDI or retirement benefits, the child may also receive SSDI payments if he or she was determined to be disabled before age 22
- Financial Eligibility
  - Resource Limit: NONE!
  - Income Limit: Cannot earn more than \$1,040.00 per month from employment (\$1,740.00 for individuals who are blind)
- Benefit varies based on work history and average salary
  - Five month waiting period before benefits begin
  - Average is \$1,132.00; Maximum is \$2,533.00

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### Medical Assistance (MA)

- Administered by Dept. of Public Welfare (DPW)
- Children with special needs receive Medical Assistance as secondary coverage without regard to parents' resources
- Children's own income is counted but if it is below the income limit, then the child will qualify
- Adults automatically enrolled upon receiving SSI
- Eligible individuals include those who are blind, disabled, or at least 65 years old and financially eligible
- For adults, income & resource limits are the same as SSI

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### Medicare

- Administered by Center for Medicare & Medicaid Services
- After receiving SSDI for 24 months, the individual is automatically enrolled in Medicare Part A and Part B
  - Part A covers inpatient care in hospitals, including critical access hospitals, and skilled nursing facilities (not custodial or long-term care)
  - Part B covers doctors' services and outpatient care. It also covers some other medical services that Part A doesn't cover, such as some of the services of physical and occupational therapists, and some home health care
  - Will pay a premium for Part B and Part D (prescription drug coverage)

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### MA Waivers

- Provide funding for supports and services to help individuals with disabilities live in their home and communities rather than in an institutional setting.
- Each waiver has its own eligibility requirements, including but not limited to income, resources, age, and level of care requirements, and its own specific set of services it provides.
- There are waiting lists in each county as it is not an entitlement program and funding is limited.

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### MA Waiver Programs

- Aging Waiver
- AIDS Waiver
- Attendant Care
- Autism Waiver
- COMMCARE Waiver
- Consolidated Waiver
- Independence Waiver
- Infants Toddlers & Families Waiver
- LIFE
- OBRA Waiver
- Person/Family Directed Support Waiver

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### Three Types of Special Needs Trusts

- Third-Party Funded Special Needs Trusts
- Self-Funded Special Needs Trusts
- Pooled Trusts

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### Trust Legal Terms

- **Settlor:** Person who creates the Trust
- **Trustee:** Person who manages and invests money that is held in Trust for a beneficiary
- **Beneficiary:** A person who receives assets from a trust
- **Inter vivos:** A trust created during the life of the settlor

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### Third-Party Funded Special Needs Trusts

- Individual with special needs is the beneficiary
- Funded with monies not owned by the individual with disabilities
- Generally created via Will or inter vivos trust of family member
- No payback to Department of Public Welfare

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### Third-Party Funded Special Needs Trusts Elements

- Trust is to supplement and not supplant public benefits
- Public benefits are to be considered prior to any distribution
- Trust to be used for Beneficiary's special needs
- Trustee has discretion to make payments

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### Testamentary vs. Inter Vivos Special Needs Trust

- Inter Vivos SNT allows:
  - Lifetime gifting
  - Persons other than Settlor may name SNT in their wills, etc.
  - Possibility that SNT will be valid if laws change
  - Opportunity for future Trustees to manage

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### Coordinate Estate Plan with TPF Special Needs Trust

- Will must name TPF SNT to receive assets instead of person with special needs
- Assets that pass outside of Will (IRA, 401(k) must designate TPF SNT as the beneficiary
- Accounts already in child's name should be spent down or put into Self-Funded SNT
  - UGMA/UTMA accounts, 529 Plans, Educational IRAs, etc.

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### Estate Plan

- Will
- Trusts
  - Special Needs Trust, Minor's Trust, Tax Planning Trusts
- Power of Attorney
- Advance Medical Directive
  - Attending physician determines and certifies in writing that person is incompetent AND
    - Is Permanently Unconscious OR
    - Has an End-Stage Medical Condition
  - Document sets forth a person's wishes regarding life-sustaining treatment

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### Two Types of Self-Funded Special Needs Trusts

- Self-Funded Special Needs Trusts
- Pooled Trusts

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### Self-Funded SNTs (Payback Trusts)

- Only beneficiary is individual with special needs
- Under 65
- Established by parent, grandparent, guardian or the court
- Funded with monies of the individual with special needs
- Payback to state for Medicaid upon the death of the beneficiary
- Any remaining monies in trust after payback may be distributed to other individuals such as siblings
- Irrevocable

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### Pooled SNTs

- Beneficiary contributes monies into a master trust already established by a non-profit Trustee
- Non-profit company must be the Trustee
- Anyone can create an account in a Pooled Trust, including the beneficiary
- Residue remains in trust for other trust beneficiaries upon death of beneficiary

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### What Can a SNT Purchase?

- Items, goods, and services for the sole benefit of the Beneficiary of the Special Needs Trust
- Purchases must be made directly to vendor
- Examples
  - Clothing
  - Vehicle
  - Computer
  - Vacation
  - Entertainment

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### What Can't a SNT Purchase?

- No large gifts
- No purchases for persons other than the Beneficiary
- No cash
- SNT should not make food and shelter payments for beneficiary

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### Who can be Trustee?

- Corporate Trustee (Bank)
  - Bonded, insured
  - Experience with SNTs, public benefits, and what expenditures may affect benefits
  - Good record keeping
  - Good Trust investments
- Individual Trustee
  - Often preferable when trust funded with limited assets as many banks will not be Trustee of low balance trusts
  - More affordable (may not take fees)
  - DPW may require bond if large amount in Trust

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### How long does a SNT last?

- Generally, until Trust funds exhausted or for the life of the disabled beneficiary
- Trust may be terminated during the Beneficiary's life if no longer meets the needs of the Beneficiary. There will be a payback at that time.

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### Power of Attorney

- Written document whereby Principal gives Agent the authority to act on behalf of the Principal according to the terms and conditions set forth in the POA
- Principal must have adequate intellectual capacity to enter into POA
  - Must have general understanding of what is happening (oriented to time, person, and place)

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### Power of Attorney

- Durable POA -- lasts beyond incapacity
  - Unless stated otherwise in POA, all POAs are presumed Durable
- Financial, Health Care, or both
- Springing or Immediate
  - Springing goes into effect when a doctor certifies the principal's incapacity
  - Interpretation problems may arise
  - Agent cannot act if Principal temporarily unavailable

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### Power of Attorney

- Agent has the duty to:
  - Exercise powers for the benefit of the Principal
  - Keep his assets separate from the Principal's
  - Exercise reasonable caution and prudence
  - Keep full and accurate records of all actions, receipts and disbursements

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### Guardianship

- An adult (over age 18) whose ability to receive and evaluate information effectively and communicate decisions is impaired to an extent where that person is unable to manage his financial resources or to meet essential requirements for his health and safety.

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### Guardianship

- **Guardian of the Person**
  - Makes decisions for the incapacitated person, such as where that person will reside and what medical, social, educational, psychological and vocational services the incapacitated person will receive
- **Guardian of the Estate**
  - Makes decisions regarding the incapacitated person's financial assets

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### Guardianship

- Interested Person files Petition with Orphans' Court
  - Petition must include name, address, nature of disabilities, next of kin, proposed guardians, value of estate, and why guardianship is necessary
  - A citation must be served on alleged incapacitated person (AIP) explaining the contents of the petition and his rights in the process
  - AIP has the right to request independent counsel
  - Next of kin must receive notice of hearing

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### Guardianship

- Hearing held in Orphans' Court
  - In front of Judge
  - Must present medical testimony from a doctor or certified psychologist
  - Proposed guardians must testify
  - AIP does not need to be present at hearing if it would not be in his best interests or his physical or mental condition would be harmed

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### Guardianship

- **Duties of Guardian of Person**
  - Act in incapacitated person's best interests
  - Respect the expressed wishes and preferences of the incapacitated person to greatest extent possible
  - Encourage incapacitated person to participate to maximum extent possible in all decisions that affect him, to act on his own behalf whenever he is able, and to develop or regain his capacity to manage his own affairs
  - General care, maintenance, and custody of incapacitated person
  - Assist in finding place for incapacitated person to live
  - Annual reports must be filed with Court

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### Guardianship

- **Duties of Guardian of Estate**
  - Act in incapacitated person's best interests
  - Safeguarding of assets
  - Management of assets
  - Payment of debts, obligations, expenses
  - Annual Report must be filed with Court
  - Fiduciary Duty owed to incapacitated person
    - Legally obligated to use prudent judgment
  - Estate planning
    - May request Court to authorize if substantial assets
  - Inventory must be filed with Court within 3 months of hearing

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### Power of Attorney vs. Guardianship

- Power of Attorney grants another person (Agent) authority to act on Principal's behalf
  - Principal retains the right to act
- Guardianship is a legal determination that person does not have the capacity to act on his own behalf
- Guardianship necessary if a person is incapacitated and did not previously execute a Power of Attorney

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### Thank you for attending!

- Please contact McAndrews Law Offices with questions at 610-648-9300
- In addition to Special Needs Trusts and Estate Planning, McAndrews Law Offices, P.C., also offers services in the areas of Special Education Law, Estate Administration, Guardianships, Elder Law, and Abuse of Persons with Special Needs/Elders.

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