

THE SPECIAL NEEDS TRUST

The special needs trust is a planning tool that allows people to provide for the extra costs of a disability or to supplement the public benefit lifestyle of a person with a disability without disrupting his or her eligibility for public benefits. The special needs trust may be funded with the person's assets (self-settled trust) or with someone else's assets, such as yours (third-party trust). Both are discussed in this section.

- *The Self-Settled Special Needs Trust*
- *The Third-Party Special Needs Trust*

THE SPECIAL NEEDS TRUST

To the degree that they are able, family members and others often provide support for the person with a disability. Support may be food, clothing, shelter and medical care. When able, those providing support supplement these basics. A special needs trust (SNT) is a way to manage ongoing support to meet the needs of a person with a disability. It is a way to manage assets and oversee matters as basic as providing food, clothing and shelter to meeting the unique needs of a disability. Family members or others may establish and implement the trust during their lifetime as a financial planning mechanism or as a management tool. Importantly, a SNT may provide for a person even after the death of the person providing support.

Not all family members or others are able to provide for all of the basic costs of food, clothing, shelter and medical needs for the person with a disability. As a result, many people with a disability must rely on public benefit programs that provide for these basic needs. Fortunately, many family members and others are able to assist the person by providing items and services that are not covered under the public programs. This type of assistance enhances the person's quality of life. Unfortunately, those who assist a person with a disability will not always be able to oversee this assistance themselves.

A SNT, structured so that it is not deemed an asset in the public benefit eligibility determination, is a tool that allows assistance to a person with a disability without disturbing public benefits. A SNT is a trust that provides for the supplemental needs of the person, those needs that are not basic needs and those needs that are not met by public benefit programs. For many parents the SNT does for the person what you have done all along. Through a SNT, you may direct the spending for the person that is similar to the spending that you have done for him or her. The trust, however, will continue to provide for this person in the event that you become incapacitated or after your death. Importantly, a properly structured SNT is not regarded as a financial resource under public benefit programs and therefore does not effect public benefit eligibility. Through the SNT, you may enhance the quality of the person's life as much as you are able.

As someone who supports a person with a disability, you should understand what a SNT is. This section first looks at some basics— what a trust is and why to use a trust. This is followed by a look at the SNT, a particular type of trust, and the differences between a SNT that is established with the assets of the person with a disability versus a SNT established with your assets or the assets of others. The concentration here is on preservation of public benefits, although a SNT is certainly a very beneficial tool for the person not dependent upon public benefits. When public benefits are not a concern, some of the cautions presented here are not necessary.

A word of advice— This is not intended to be an instruction manual for you to create a trust by yourself. The creation of a valid trust takes legal expertise. A special needs trust must be carefully structured to meet many requirements under law. Hire an attorney to do this for you. Importantly, hire an attorney knowledgeable in special needs trusts and public benefit law.

WHAT IS A TRUST?

A trust is a legal arrangement in which one person (*settlor* or *grantor*) transfers property that he owns to a second person (*trustee*) to invest and spend for the benefit of a third person (*beneficiary*).

Example: Alice gives Ben \$30,000 to hold and invest for the benefit of Alice's daughter, Carol.

The *settlor*, Alice, creates the trust. The *trustee*, Ben, manages the trust. The *beneficiary*, Carol, enjoys the trust.

There are two main parts to a trust—the *principal* and the *income*. The principal is the capital or the property of the trust. The income is the gain or the return from investing the principal.

Example: The \$30,000 that Alice gives to Ben is the principal of the trust. The interest earned on the principal is the income of the trust.

WHY CREATE A TRUST?

A trust is a practical way to transfer property for the benefit of someone else. Property may be cash, stocks, or a home. A trustee takes over management of the property, perhaps relieving others of that responsibility. With a trust, a settlor may provide funds to support family members, provide funds for a college education, obtain professional financial management of property, or create a mechanism to avoid probate.

When you support a person with a disability who relies on public benefits, a particular type of trust, a SNT, is a way to provide for him or her without disrupting public benefit eligibility. If the person receives means-tested public benefits, such as Medicaid or SSI, the person cannot keep those benefits if his or her income or resources are more than the program eligibility rules allow.

Example: Carol has a disability and receives Medicaid and SSI. While her mother was alive, she helped Carol buy extras that public benefits did not pay for and made Carol's life a little more comfortable. In her will, Alice leaves \$30,000 to Carol to continue to help Carol live a little more comfortably.

To be eligible for Medicaid, Carol cannot have more than \$2,500 in resources. To be eligible for SSI, Carol cannot have more than \$2,000 in resources. When Carol receives the \$30,000 from her mother she loses her Medicaid and SSI benefits. In order to regain Medicaid eligibility, Carol must spend down the \$30,000 until all that is left is \$2,500. Carol must spend down to \$2,000 to regain SSI eligibility. As Carol's medical expenses are high, this does not take long. However, Carol then has only \$2,000, instead of \$30,000, to make the rest of her life a little more comfortable.

A trust, and more specifically a SNT, is a way to help the person with a disability without disturbing necessary public benefits.

Example: In her will, Alice leaves \$30,000 to Carol in a trust that is a SNT. The trustee, Ben, will manage and invest the trust principal (the \$30,000) and continue to provide for Carol as Alice did when she was alive. Carol never loses her Medicaid or SSI benefits. Carol will live a “little more comfortably” for a long time.

WHAT IS A SPECIAL NEEDS TRUST (SNT)?

The SNT, sometimes called a supplemental needs trust, is a critical planning tool for the person with a disability who is dependent upon public benefits. Public benefits provide for basic food, clothing and shelter needs, as well as basic medical care. The SNT is a way to enable the person with a disability to access items and services that public benefits do not cover. The SNT may also provide for recreational and social activities that are important to the person’s quality of life. Most importantly, the properly created SNT will not disrupt public benefit eligibility.

To be classified as a SNT that is not considered an asset in the public benefit eligibility determination, the trust document must be carefully structured. The *key* to preserving public benefits is to clearly make the principal and income of the trust assets that are not *available* to the beneficiary, the person with a disability. The trust terms must only allow the trustee to spend money from the trust to *supplement* and *not* to provide for the basic food, clothing, and shelter needs of the person.

The assets for the principal of the SNT can come from any person, including the person with a disability. When the assets are the person’s, it is a *self-settled* trust. When the assets come from someone other than the person with a disability, it is a *third-party* trust.

Example: Alice establishes a SNT for Carol and puts Carol’s savings account money into the trust. This is a self-settled SNT.

Example: Alice puts \$30,000 of her own money into a SNT for her daughter, Carol. This is a third-party SNT.

There are different rules for the self-settled SNT as compared to the third-party SNT.

THE SELF-SETTLED SPECIAL NEEDS TRUST

Federal law allows a person with a disability to create a trust. This self-settled SNT is not counted as a resource in the Medicaid or SSI eligibility determination. (This exemption does not apply to the New Hampshire Financial Assistance or Food Stamp programs.) Also, this law applies to two types of self-settled trusts: (1) a trust for a person under age 65; and (2) a pooled trust for a group of people of any age. Remember, the law applies only to the self-settled trust, a trust created with the assets of the person with a disability.

HOW IS THE SPECIAL NEEDS TRUST TREATED IN PUBLIC BENEFIT ELIGIBILITY DETERMINATIONS?

Under federal and State law, the SNT is not a resource if it meets the requirements of the law. However, any distribution from the SNT to the beneficiary is income to the beneficiary.

Example: Alice establishes a SNT for Carol and puts Carol's savings account money, \$5,000, into the trust. Carol also has \$1,200 in another savings account. In the Medicaid eligibility determination, the State does not count the SNT as one of Carol's resources. Carol is eligible for Medicaid because the total value of her countable resources is \$1,200, which is less than the \$2,500 Medicaid limit.

Example: Alice establishes a SNT for Carol and puts Carol's savings account money, \$5,000, into the trust. In the Medicaid eligibility determination, the State does not count the SNT as one of Carol's resources. Carol is eligible for Medicaid. One month, Ben gives (distributes to) Carol \$350 from the trust to buy a television. The State counts the \$350 as income. If, as a result of receiving the \$350, Carol has more income than the State allows under the Medicaid program, Carol loses Medicaid eligibility that month.

However, if the trustee makes a distribution from the trust to a vendor, the State will not count the distribution as income, as long as the distribution was for a supplemental item or service.

Example: Alice establishes a SNT for Carol and puts Carol's savings account money, \$5,000, into the trust. In the Medicaid eligibility determination, the State does not count the SNT as one of Carol's resources. Carol is eligible for Medicaid. Ben pays ABC Appliances \$350 for a television for Carol. The State does not count the \$350 as income to Carol. Carol does not lose Medicaid eligibility.

WHAT ARE THE RULES FOR A SELF-SETTLED SPECIAL NEEDS TRUST FOR AN INDIVIDUAL UNDER AGE 65?

The law allows a person with a disability under age 65 to establish a trust with his or her assets. The trust must be for his or her own benefit and the trust must provide for a Medicaid pay-back upon the death of the person. This SNT is not a countable resource under public benefit eligibility.

However, public benefit programs will only exempt a SNT that strictly meets the rules of the law. The rules are listed in the table below along with some facts that you should know about some of the rules. If these rules are not followed, the trust will be counted as a resource in eligibility determinations for public benefits.

SELF-SETTLED SPECIAL NEEDS TRUST FOR THE INDIVIDUAL UNDER AGE 65	
Rules:	What else you should know about the rule:
1. The trust contains the assets of the individual.	Although this SNT is a self-settled trust, the federal policy is that the trust may contain assets of others in addition to the assets of the person with a disability.
2. The individual is under age 65.	The trust is not considered an asset as long as the person with a disability is under age 65. The trust will also not be considered an asset after age 65. However, any addition or change to the trust after age 65 may be treated as an available asset.
3. The individual is disabled (by government standards).	
4. The trust is established for the benefit of the individual by a parent, grandparent, legal guardian or a court.	Federal policy is that the trust is established for the <u>sole</u> benefit of the individual. It cannot also benefit someone else. This requirement does not prevent: <ul style="list-style-type: none"> - Reasonable compensation to the trustee; or - Disbursal to other beneficiaries upon the death of the individual, after the state's claim is satisfied
5. The trust provides that the State will receive all amounts remaining in the trust at the death of the individual, up to an amount equal to the amount of the total Medicaid payments made on behalf of the individual.	The self-settled trust document <u>must</u> contain a provision that states this. If the trust document does not state this, it will likely be counted as a resource.

WHAT ARE THE RULES FOR A SELF-SETTLED SPECIAL NEEDS POOLED TRUST?

The law allows a person with a disability, at any age, to establish a SNT with his or her own assets through a pooled trust. The *pool* is a trust established by a non-profit organization with the assets of a number of people with disabilities. The non-profit organization maintains separate accounts for each person and pools funds for investment. Upon the death of the person, the trust may retain some or all of the funds remaining. The trust document, however, must provide for a Medicaid pay-back with funds not retained by the trust.

As with the individual SNT, public benefit programs will only exempt a pooled SNT that strictly meets the requirements of the law. The rules for the pooled trust are listed in the table below along with some facts that you should know about some of the rules. If the rules are not followed, the trust will be counted as a resource in public benefit eligibility determinations.

SELF-SETTLED POOLED SPECIAL NEEDS TRUST	
Rules:	What else you should know about the rule:
1. The trust contains the assets of the individual.	Although this SNT is a self-settled trust, the federal policy is that the trust may contain assets of others in addition to the assets of the individual.
2. The individual is disabled (by government standards).	
3. The trust is established and managed by a non-profit organization.	
4. The non-profit organization maintains a separate account for each beneficiary, pooling the funds for purposes of investment and management.	
5. The trust accounts are established solely for the benefit of the individual by the individual, a parent, grandparent, legal guardian or a court.	Federal policy is that the trust is established for the <u>sole</u> benefit of the individual. It cannot also benefit someone else. This requirement does not prevent: <ul style="list-style-type: none"> – Reasonable compensation to the trustee; or – Disbursal to other beneficiaries upon the death of the individual, after the state’s claim is satisfied
6. Upon the death of the individual, the trust pays the state an amount equal to the amount of Medicaid payments made on behalf of that individual from the amounts remaining in the beneficiary’s trust account that are not retained by the trust.	The pooled trust may retain a portion of the individual’s funds upon the death of the individual. However, the trust document <u>must</u> have a provision for payment to the state for Medicaid costs. If the trust document does not state this, it will likely be counted as a resource.

The pooled trust offers much to the person with a disability and potentially to the disability community. The pooled trust offers the benefit of higher returns on combined assets, which is especially helpful to the person with a small fund. Initial costs may also be less than for an individual trust. Upon the death of the person, the balance may be left to the trust to be used for charitable purposes rather than to be used for Medicaid reimbursement. The pooled trust is also the only SNT solution for the person over age 65 who would like to establish a trust with his or her own assets.

Some pooled trust programs also offer services such as guardianship, representative payee, visitor and advocacy services.

ARE THERE ANY OTHER PROVISIONS THAT SHOULD BE IN THE SELF-SETTLED SNT?

Aside from the obvious rule requirements described previously, there are required and recommended provisions that come from New Hampshire trust law and from many court interpretations of public benefit law. Many of the recommended provisions presented in the following section on the third-party trust may be appropriate for the self-settled trust. For example, a self-settled SNT should have a spendthrift clause that protects the trust from seizure by creditors.

CAN A JUDGMENT OR SETTLEMENT BE THE ASSETS OF A SELF-SETTLED SPECIAL NEEDS TRUST?

Many see the self-settled SNT as a way to preserve legal settlements and judgments obtained from lawsuits. For this purpose, “timing is everything.”

As discussed in the section *Reimbursement of Public Assistance Payments under Public Benefit Considerations*, when a person applies for and accepts public assistance he or she automatically gives the State any rights to payment for medical care that he or she may receive from a third party. Therefore, if a person is already eligible for Medicaid when he or she receives a judgment or settlement, the State has a claim to those funds up to the amount that the State has paid on behalf of that person under Medicaid. This is true even if the judgment or settlement is placed in a SNT. If, however, the person receives the judgment or settlement payment prior to the eligibility determination, the funds may be fully transferred to a self-settled SNT as described previously.

THE THIRD-PARTY SPECIAL NEEDS TRUST

With a carefully structured third-party SNT, those providing support to a person with a disability may supplement public benefits with their assets without disturbing public benefit eligibility. Many providing supports do not have the means to fully support the person with a disability. Many, however, have the means to supplement the frugal lifestyle and limited services of public benefits to improve the person's quality of life for a long time, perhaps even the lifetime. The third-party SNT allows people to do just that, even after their deaths.

CAUTION – State agencies have successfully classified some third-party SNTs as an asset that is *available* to the person with a disability, resulting in the interruption of public benefit eligibility and forcing spend-down of trust assets. There are no federal or New Hampshire laws that provide an outright exemption for the third-party SNT. The legal reliance instead is upon the opinions of different courts as to what trust may be counted as a resource in public benefit eligibility determinations.

WHAT ARE THE ALTERNATIVES TO A THIRD-PARTY SPECIAL NEEDS TRUST?

Those concerned about the above caution may think that alternatives to a SNT are *safer* solutions. This is not necessarily so. An outright gift to a person with a disability, for example, readily becomes a countable asset for public benefit programs. The same would be true if you gave the funds directly to his or her guardian.

Some plan to leave funds to a relative for the care of the person with a disability despite the fact that this is often not a *safe* thing to do. An arrangement with a relative does not impose a legal obligation on the relative to use those funds as you might wish. When you leave funds to a relative, those funds become the relative's. As a result, the funds may:

- Increase the tax obligations of the relative;
- Be claimed in a legal proceeding involving the relative, such as a divorce or lawsuit;
- Be claimed by bill collectors of the relative;
- Have to be spent down if the relative should become disabled; and
- Be disbursed in ways that do not benefit the person with a disability if the relative should predecease him or her.

WHAT ARE THE BENEFITS OF A THIRD-PARTY SPECIAL NEEDS TRUST?

The carefully created third-party SNT provides a number of protections and benefits. It allows the person with a disability to keep public benefits without interruption. It creates legal obligations in the use of the funds. It protects against bill collectors and other claimants. It provides a way to maximize the value of the funds through careful investment and disbursement. It allows you to choose who will receive the remainder of the funds upon the death of the person with a disability.

WHAT SHOULD YOU FIND IN YOUR THIRD-PARTY SPECIAL NEEDS TRUST?

Court opinions show that there are certain trust provisions that should be a part of a third-party SNT document. Those provisions are listed in the table below, with an explanation as necessary.

TERMS YOU SHOULD FIND IN YOUR THIRD-PARTY SPECIAL NEEDS TRUST	
The terms of your trust should:	Why:
<input type="checkbox"/> Identify the source of funding as that of a third party by identifying that party.	To show that these are not the assets of the person with a disability.
<input type="checkbox"/> Identify the trustee(s) and the beneficiary(ies).	Standard trust provision. The settlor, the trustee and the beneficiary should all be identified.
<input type="checkbox"/> Describe the purpose of the trust, such as:	
<input type="checkbox"/> To supplement, not replace public benefits;	To show that these funds are not intended to replace public benefits.
<input type="checkbox"/> To supplement and not provide for the basic needs of food, shelter and clothing;	To show that the funds are for <u>supplementary</u> items and services and not for the basic needs that are covered by public benefit programs.
<input type="checkbox"/> To provide for items and services that improve quality of life (not for support);	To further show the supplementary purpose of the funds and the overall intent.
<input type="checkbox"/> Examples of trust fund uses, such as funding of: <ul style="list-style-type: none"> • Medical and dental items/services not covered under public programs, • Differentials in housing costs for private verses shared rooms, • Transportation , • Recreation, • Periodic travel and vacation, • Television and telephone services, • Hair care; 	To further show the supplementary purpose of the funds as well as to give examples of the supplementary items or services that you think would be appropriate for the person with a disability.
<input type="checkbox"/> For the lifelong benefit of the person with a disability.	To show that the funds are expected to be used over a long period of time and not to be spent down quickly. Rapid spend down would occur if the funds were used to meet the high costs of food, clothing, shelter and medical care. This provision emphasizes a “supplementary” purpose and the intent not to disturb public benefits.

TERMS YOU SHOULD FIND IN YOUR THIRD-PARTY SPECIAL NEEDS TRUST

The terms of your trust should:

Why:

Identify Trustee powers:

- The powers given by state law, except as added to or limited by the trust;
- Broad to full discretionary power (decision-making power);
- The power to initiate legal steps to initiate or continue public benefits.

Standard trust provision. (Identify the state.)

To show that the Trustee has the same control over the funds that you had and that the person with a disability has no control or expectations.

To show that the trustee has the authority to fund legal measures to ensure public benefits.

Identify Trustee duties:

- The duties required by state law, except as added to or limited by the trust;
- The duty to visit the person with a disability at a minimum frequency so to maintain familiarity with the person and his/her circumstances.
- The duty to know and consider income and resource limitations of the public benefit programs.
- The duty to know the items or services that public or private benefit programs are obligated to pay for and to resist payment for these.
- The duty to make payments directly to vendors of goods and services and not to the person with a disability;
- The duty to consider lifelong needs of the the person with a disability so as to maximize the use of resources

Standard trust provision. (Identify the state.)

To further show that you do not want public benefits interrupted and to show that the trustee must be aware of public benefit program requirements.

To further show that you do not want public benefits interrupted and to show that the trustee must be aware of public benefit program provisions.

To prevent the Trustee from giving the person with a disability income or what may be interpreted as income.

1. To further direct distribution of funds.
2. To further show that the funds are expected to be used over a long period of time and not to be spent down quickly. Rapid spend down would occur if the funds were used to meet the high costs of food, clothing, shelter and medical care. This emphasizes a “supplementary” purpose and the intent not to disturb public benefits.

TERMS YOU SHOULD FIND IN YOUR THIRD-PARTY SPECIAL NEEDS TRUST

The terms of your trust should:

Why:

<p><input type="checkbox"/> Include a spendthrift provision:</p> <p><input type="checkbox"/> Limit the beneficiary powers by prohibiting the person with a disability to compel or expect distribution, to transfer or to revoke the trust.</p> <p><input type="checkbox"/> Prohibit legal attachment by a creditor, private or public.</p>	<p>1. To further show the lack of control over and expectation of funds of the person with a disability.</p> <p>2. To prevent the bill collector of the person with a disability from attaching the funds.</p> <p>To show that the person with a disability <u>does not own</u> the trust.</p> <p>To show that no one, including the state, may seek funds owed by the person with a disability from the trust.</p>
<p><input type="checkbox"/> Include a termination provision directing when the trust will end and how the Trustee will distribute the remaining principle and income. (Name remainder beneficiaries.)</p>	<p>Standard trust provision. This also shows that you intend the remaining funds to go, for example, to another family member, friend, or charity. You may decide, for example, that the person with a disability may only benefit from the investment of trust funds or other property (just use the interest) and that the property will return to a family member after the death of the person with a disability.</p>
<p><input type="checkbox"/> Name successor trustees.</p>	<p>Standard trust provision. Always have an alternate trustee should the first trustee be unable to serve.</p>
<p><input type="checkbox"/> Include a choice of law provision.</p>	<p>Standard trust provision. For example, this provision may be that the trust is administered in accordance with the laws of the State of New Hampshire even if the person with a disability lives in Massachusetts.</p>

Optional Trust Provisions

<p><input type="checkbox"/> Forfeiture provision or second termination provision. Terminate the trust if the trust impacts the availability of public benefits. (The impact may occur, for example, because of a change in law.)</p>	<p>To show that the trust was not intended to replace public benefits and, if it impacts those benefits, it must be terminated so as to prevent interruption of the benefits. In this provision, you may also direct the distribution of the funds to the remainder beneficiaries with hopes that they may use those funds as described in the trust— although they have no legal obligation to do so.</p>
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TERMS YOU SHOULD FIND IN YOUR THIRD-PARTY SPECIAL NEEDS TRUST

The terms of your trust should:

Why:

<input type="checkbox"/> Spray provision. Name multiple trust beneficiaries.	<ol style="list-style-type: none"> 1. To diminish the interest in the trust of the person with a disability and to show the interest of others in the trust. 2. To further justify the duty of the Trustee to limit fund distribution.
<input type="checkbox"/> Remainder obligation. Require that the Trustee consider the interest of remainder beneficiaries (beneficiaries of the trust after the death of the person with a disability) and conserve distribution so as to ensure that there will be trust funds available for distribution to the remainder beneficiaries.	<ol style="list-style-type: none"> 1. To justify preserving funds, so that there are funds available for later distribution to remainder beneficiaries. 2. To further show that this is a supplementary trust. This emphasizes that if the trust were spent down for food, clothing, shelter or medical care, there would be no funds for remainder beneficiaries.
<input type="checkbox"/> Reference to letter of intent. Refer to the letter of intent compiled for the person with a disability for an understanding of your expectations for the person with a disability.	<p>To demonstrate the full scope of intentions for the person with a disability and how trust funds will likely be used.</p>
<input type="checkbox"/> No obligation to support. In a testamentary trust (trust created and funded by your will), include a provision stating the absence of your obligation to support the person with a disability after your death.	<p>If you are a parent, this emphasizes that you realize that you have no obligation to further support your child's basic needs after your death. If your child relies on Medicaid only (not New Hampshire Financial Assistance), you may use this provision during your lifetime also.</p>
<input type="checkbox"/> Name the State as a claimant. You may include a provision to allow the State to recover public payments made on behalf of the person with a disability after the person with a disability's death.	<p>This would essentially create a trust that meets the requirements for the self-settled Medicaid-payback trust discussed above, as long as all other rules for that type of trust are met.</p>

Keep in mind that there is no set format for creating a trust. The trust items listed here may be found under different headings in different trusts. Your trust may not look exactly like the trust your friend has. Each attorney will create a trust in the way that he or she was taught and there is no set way for doing this. Your attorney will also be addressing your own unique situation.

WHO SHOULD BE THE TRUSTEE FOR THE SPECIAL NEEDS TRUST?

You should carefully select the trustee of the SNT, as well as successor trustees. Although a trustee can never replace you, the SNT trustee will step into your shoes to supply those extras that ensures the person with a disability a better quality of life. The trustee will also be responsible for wise management of the trust.

The trustee that you select should be able to oversee the supplemental needs of the person with a disability, including oversight of those needs in light of his or her disability and public benefits. The trustee should understand the person's capabilities and limitations. The trustee should understand his or her medical status and the present and future effects of that status. Finally, the trustee should be knowledgeable of the public benefit programs, including income and resource eligibility limitations, as well as benefits.

The trustee that you select should also be able to manage the trust. Your directions in the trust document should clearly state how the trustee should use the trust. It can be further clarified through the letter of intent that you create for the person with a disability. The trustee is also responsible for investment of trust funds, filing tax returns on the trust, and maintaining an accounting of the trust. Wise administration of the trust is essential to the availability of funds over the lifetime of the person and for the availability of remainder funds for those who will inherit upon the termination of the trust.

You may select a family member, friend, non-profit organization, or financial institution to be the trustee. Your attorney will help you with this decision. Selection may depend on the amount of funds in the trust, the extent of the non-financial services the trustee must perform, or the willingness of a particular person to become trustee. A family member may manage small trusts in an easy and straightforward way. Larger trusts may require more expertise than a family member is able or willing to provide. Certain non-profit organizations may provide needed support services in addition to financial management. A financial institution may provide trustee services only for trusts over a certain amount. You should explore these issues with your attorney.

You may also need to compensate a trustee. Compensation may be arranged for in the trust document. Family members or friends may provide these services at no cost. Non-profit organizations and financial institutions will charge for trustee services.

WHAT PROPERTY DO YOU PUT INTO A SPECIAL NEEDS TRUST?

What property that you put into a SNT and when you put the property in is entirely up to you. You may, for example, put cash, stocks, or a home into the trust. Life insurance benefits may be left to a trust. You may advise others to leave inheritances to the trust rather than directly to the person with a disability. You may fund your trust all at once or over time. Your attorney will advise you on when and what to place in the trust, as well as advising you on tax considerations.

When deciding what property to place in your trust, you need to think about the person's needs that you are trying to fulfill and what property or how much money will be needed to do that. You should consider—how much you contribute to the support of the person now; the costs of supplementary items and services that you expect he or she will need; and what standard of living you would like to help him or her achieve. Consider the person's expenses, such as:

- Educational or vocational expenses;
- Costs for supports and advocacy services, that are not otherwise covered;
- Equipment and assistive technology costs;
- Medical and dental expenses not covered under Medicaid;
- Expenses related to the upkeep and maintenance of a home;
- Miscellaneous emergency reserves;
- Expenses related to hobbies, vacations, recreation, and seeing friends and relatives;
- Other items like televisions, stereos and furniture; and
- Other personal expenses.

(See the *Checklist for a Person with a Disability*.) Your attorney or financial planner can help you to evaluate these costs and estimate costs for the future.

SOME FINAL THOUGHTS...

The SNT is a very valuable and recommended tool for those supporting a person with a disability. Seek out a qualified attorney to create the SNT for you. The attorney you choose should have experience with the SNT and have knowledge of public benefit law. If you already have a trust, check it and make sure that it has all of the necessary provisions.