

	GEORGIA DIVISION OF FAMILY AND CHILDREN SERVICES MEDICAID POLICY MANUAL			
	Chapter:	2300	Effective Date:	October 2022
	Policy Title:	Special Needs Trust		
Policy Number:	2346	Previous Policy Update:	MT 59	

REQUIREMENTS

A Special Needs Trust (SNT) is a trust that contains the assets of certain individuals for his/her benefit. It also limits the trustee's discretion as to the purpose of the distributions.

BASIC CONSIDERATIONS

A Special Needs Trust (SNT) must meet the following specific guidelines:

- Be established for the sole benefit of the individual by a parent, grandparent, legal guardian of the individual, or a court. Refer to Section 2502-7, Chart 2502.1 for definition of "sole benefit of".
- Provide that the State will receive all amounts remaining in the trust upon the death of the individual up to an amount equal to the total medical assistance paid on behalf of the individual
- May contain the assets of individuals other than the disabled individual.
- Must be established by a disabled individual under 65 and contain only their assets (income and resources).
- Must have had no additions to or augmentation of since member turned 65.

A SNT is set up to provide for extra needs of a disabled person, over and above the basic care provided by government programs. There are different SNT. SNT such as a Third Party SNT is created with money of someone else other than the beneficiary. Testamentary SNT is a trust created by a Will. Both the Third Party SNT and the Testamentary SNT do not require a Medicaid payback.

Other types of SNT could be called Luxury, Discretionary or Supplementary Trust(s). These trusts provide only what is not provided by Medicaid and adds to what Medicaid provides. At times, they are called "payback trusts" because federal law requires reimbursement to the State Medicaid Agency when the trust ends. Typically, they are set up to help the beneficiary become or remain eligible for SSI and/or Medicaid.

NOTE: Certain payments are not assignable by law and, therefore, are income to the individual entitled to receive payment under regular income rules. They may not be paid directly into a trust, but individuals may attempt to structure trusts so that it appears that they are so paid.

BASIC CONSIDERATIONS (cont.)

Important examples of non-assignable payments include:

- TANF
- Railroad Retirement Board - administered pensions
- Veterans' pensions and assistance
- Federal employee retirement payments administered by the Office of Personnel Management
- Social Security title II and SSI payments
- Private pensions under the Employee Retirement Income Security Act

Effective April 1, 2005, DCH Legal Services will determine the validity of all SNTs.

To be a valid SNT, attorneys drawing up the SNT should adhere to the following guidelines:

- Step 1** The attorney should send the SNT to DCH Legal Services two months prior to execution and/or judicial approval. Use the "Special Needs Trust Review Routing Form" found in Appendix F of the Medicaid Manual.
- Step 2** If the trust is to be funded with the proceeds of a settlement, a certified copy of the settlement and the court order must be submitted with the trust.
- Step 3** Notice of the time and place of any hearing regarding a Court approval of the settlement and SNT should be served upon the DCH at least 15 business days before the hearing.
- Step 4** The DCH will not recognize the validity of any SNT until all liens in favor of the DCH shall be first satisfied in full.
- Step 5** All SNTs are subject to a yearly audit by DCH or its agents. DCH may also audit prior years of the trust.
- Step 6** No payment can be made from the trust except for the benefit of the beneficiary and may not exceed the amount that can be determined to reasonably meet the special needs of the beneficiary. Refer to Section 2502-7, Chart 2502.1 for definition of "sole benefit of".
- Step 7** The SNT shall specifically identify, in an attached schedule, the initial source of the trust, all assets of the trust, all assets purchased with trust funds and all wages or payment for caregiver or other services. The trustee must update the schedule yearly. Schedules must be submitted to DFCS and to DCH Legal Services.
- Step 8** The SNT shall specifically state the age of the trust beneficiary and affirm that the trust beneficiary is disabled within the definition of 42 U.S. C. Section 1382c(a)(3), and whether the trust beneficiary is competent or incompetent at the time the trust is established.

BASIC CONSIDERATIONS (cont.)

- Step 9** The SNT shall specifically state that its purpose is to permit the use of SNT assets to supplement, and not to supplant, impair or diminish benefits or assistance of any Federal, State or other governmental entity for which the beneficiary may otherwise be eligible or for which the beneficiary is competent at the time the trust is established.
- Step 10** The DCH shall be given a minimum of 30 days' notice if there is a change in the trustee.
- Step 11** The DCH must be given notice within 5 days of the death of the beneficiary.
- Step 12** Beneficiaries are required to comply with SSI income rules. See 20 CFR 416.
- Step 13** Failure to comply with policy will result in the SNT being counted as an asset or transfer of resources.

PROCEDURES

Follow the procedures below for processing applications/reviews containing SNTs:

- Step 1** For applications pending on or after April 1, 2005, send a copy of the SNT to DCH Legal Services Section, along with proof of disability, prior to approval of the case. Use the routing form in Appendix F, entitled "Special Needs Trust Review Routing Form". Some attorneys may submit SNTs to DCH prior to the application at DFCS. Obtain copies of the submission to DCH and its determination. If not, submit SNT upon receipt during application process. Submit the same documents that are required above. If a Notice of Approval of a SNT is submitted with a Medicaid application, the SNT does not have to be sent back to the Trust Unit for review. As agreed with DCH Legal, if a Notice of Draft Approval is submitted with the application, it is verification that the SNT will be approved once the applicant is approved for Medicaid, and the SNT is excluded as a resource for application and eligibility purposes. The Trust Unit will provide the final Approval once the Medicaid application has been approved.
- For **active cases where a previously unknown SNT** is discovered, send a copy of the SNT to DCH Legal Services Section, along with proof of disability, prior to completion of the annual review or special review. Submit two months prior to review if possible. Use the routing form in Appendix F, entitled "Special Needs Trust Review Routing Form".
- Step 2** Do not finalize the application or review until DCH Legal has either approved or denied the validity of the trust.

PROCEDURES (cont.)

- Step 3** If the trust is irrevocable and cannot be used by the A/R for his/her support and maintenance, it is not a resource. If the A/R does not have the legal authority to revoke the trust or direct the use of the trust assets, the trust principal is not the A/R's resource.
- Step 4** Treat disbursements from the trust as follows:
- Cash paid directly to the A/R is unearned income.
 - Food, clothing, or shelter received as a result of a disbursement from the trust is income in the form of in-kind support and maintenance. Use the presumed maximum value (PMV) rule. See [Section 2430](#), Living Arrangement and In-Kind Support and Maintenance for ABD Medicaid.”
 - Disbursements by the trustee to a third party that result in the A/R receiving items that are NOT food, clothing or shelter are not considered income (example personal sitters, handicapped van, etc.).
 - If the trust principal is a countable resource to the A/R, disbursements from the trust principal received by the A/R are not income, but a conversion of a resource. However, the trust earnings (interest) are counted as unearned income.
- Step 5** If you find there have been additions to or augmentations of the trust since the member reached age 65, then count as an asset or transfer of asset.
- Step 6** Should you discover during an annual or special review that the requirements of the trust are not being followed, consult your Medicaid Program Specialist for instructions.

Contact GATrustUnit@gainwelltechnologies.com if there is a question as to:

-If the SNT has been reviewed and approved

-If a SNT has been received and not reviewed by the Trust Unit

-Is a questionable trust.

Note: SNT contact information
Phone number: 678-564-1168
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