

ABCD Fact Sheet on Special Needs Trusts

ABCD recommends that you consult an attorney who specializes in Special Needs Trusts before establishing one.

It is important that parents and legal guardians of children with developmental disabilities (of any age under age 65) understand the benefits of Special Needs Trusts. Eligibility for Medicaid and DDD Community Services is based on several requirements, including that an individual's resources not exceed \$2,000 (for a married couple the amount is \$3,000).

A provision of New Jersey Medicaid eligibility regulations allows individuals to exclude assets (money) from the resource test only if those funds are in a Special Needs Trust.

According to New Jersey regulations (NJAC 10: 71-4.11), a Special Needs Trust is intended to allow an individual to have assets to supplement, but not replace, any benefits or assistance from any federal, State or governmental entity for which the beneficiary is eligible or receiving benefits.

A Special Needs Trust contains the assets of a disabled individual and is established and funded prior to the time the individual reaches 65. The trust is established for the sole benefit of the disabled individual by a parent, grandparent, legal guardian or a court. Once established, a Special Needs Trust may not be changed.

To qualify as a Special Needs Trust, the Trust must:

- Be identified as an OBRA '93 trust (meaning that the trust is based on a provision in federal law from the Omnibus Reconciliation Act of 1993 allowing for these types of trusts) that cannot be changed, and that the trust is for the sole benefit of the trust beneficiary (child/adult with disability);
- Explain that the trust's purpose is to permit the use of assets to supplement benefits; and that if the trust provides for food, clothing or shelter, such expenditures are considered income under Social Security regulations for Supplemental Security Income and under New Jersey Medicaid regulations;
- State the name, address and age of the beneficiary and explain that the individual is disabled; state whether the beneficiary is competent at the time of the trust's establishment; and be established by a parent, grandparent, or legal guardian of the trust beneficiary or a court;
- Identify the source of the initial assets trust (money) and all assets of the trust; state that the Trustee shall fully comply with all state laws; and state that upon the death of the primary beneficiary (child/adult with a disability), the State will be notified and be paid all amounts remaining in the trust up to the total value of Medicaid paid on behalf of the beneficiary. If there is a provision for repayment of other assistance programs, the trust shall specify that Medicaid shall be repaid first.

Other provisions of the regulations explain that the state must receive advance notice of expenditures in excess of \$5,000, and that the assets in the trust, at the death of the beneficiary (child/adult with disability), cannot be left to other parties.