



THE SPECIAL NEEDS TRUST

Producer Guide



 **TRANSAMERICA**
INSURANCE & INVESTMENT GROUP

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Providing for the Future



With proper legal and financial planning, the family can guarantee that the person with the disability will enjoy a comfortable lifestyle, while preserving governmental program eligibility.

Overview of a Special Needs Trust

A Special Needs Trust is like other trusts: It is a separate, legal entity that allows the donors to gift assets to a second person, the trustee, to be used for the benefit of someone else—in this case, a special needs child or dependent adult. Funds from this type of trust are not used to pay for benefits that would otherwise be provided by state or federal programs.

This type of trust is generally established for people who receive Supplemental Security Income (SSI) and Medicaid. In order to receive SSI and Medicaid, one's assets cannot exceed a specified level. Additionally, the grantor of the trust can specify that the trustee is not authorized to replace the cost of services covered by governmentally sponsored programs. The trust would require the trustee to provide funds only for certain items, services, or other expenses not covered by SSI and Medicaid.

Parties to a Special Needs Trust

The parties to a Special Needs Trust are:

- The trust grantor(s)—usually the family of the disabled individual
- The trust beneficiary—the disabled individual
- The trustee(s)—the person(s) responsible for managing and investing trust assets on behalf of the person with the disability

Growing Demand for a Special Needs Trust

As our country's population increases and people continue to live longer, there is a possibility that at some time in a person's life, he or she—or a loved one—will experience a disability. Consider these statistics:

- The National Center for Education Statistics reports that from 2007 to 2008, 13.4% of the school age population was served in federally supported programs for the disabled.¹
- "About 9.3 million persons received benefits based on disability" in the U.S., estimated the Social Security Administration in 2008.²
- The U.S. Department of Health and Human Services estimates that 10.2 million children in the U.S. have special health care needs.³
- The Department of Health and Human Services Centers for Disease Control and Prevention indicates that an estimated 1.7 million people sustain a traumatic brain injury annually.⁴



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Why a Careful Financial Strategy Is Important

Under current SSI eligibility requirements, assets in excess of \$2,000—with certain exceptions—disqualify an individual with special needs from most federal needs-based assistance programs such as SSI and Medicaid. Note that laws and services vary from state to state, and each state may have different eligibility and payback requirements.

Benefits provided by Medicaid include many crucial services, such as comprehensive health insurance, attendant services, dental coverage, day rehabilitation programs, and group homes. People with disabilities who receive publicly funded services must contribute toward the cost of their care on a sliding scale. They are usually allowed

a small personal care allowance to cover the cost of clothing, toiletries, and related items. In many cases, family members must subsidize the costs of these items because the personal care allowance is not sufficient to meet the disabled person's needs.

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Careful planning allows parents or spouses to provide help in purchasing the extras—such as travel, computers, higher quality medical and dental care, education, and rehabilitation—without exposing his or her loved one to cost-of-care charges after the parent or spouse dies or can no longer care for the disabled individual.

Common mistakes such as placing money in a Uniform Transfer to Minors Account or leaving a disabled loved one an inheritance, although well-meaning, may disqualify him or her from government benefits.

In creating a Special Needs Trust, coordination between public and private funding is absolutely necessary to provide a reasonably comfortable lifestyle for the disabled family member.

Understanding the Costs of a Disability

Because most advisors have limited experience in preparing for the future of a disabled person, it is important to understand the types of costs associated with the specific disability and their impact on government benefits. Of course, this approach will vary with each client and his or her needs.

Action Steps

Establishing the Special Needs Trust

The laws governing trusts are complex, and vary from state to state. This is why it is important that the client work with an attorney who has experience with Special Needs Trusts.

The Special Needs Trust must:

- not be funded by the disabled person with his or her own assets;
- be managed by a trustee (and successor trustees) other than the person with the disability;
- give the trustee complete discretion to provide whatever assistance is needed;
- not give the person with the disability more income or resources than permitted by the government;
- not replace the items and services provided by government benefit programs; and
- define what “supplementary” means as it relates to the person with the disability.

Furthermore, the grantor should:

- provide a letter of intent that specifies what kind of care the caregiver would want for the disabled person, should the caregiver die or no longer be able to care for the disabled person;
- determine who should receive the remainder of the trust after the individual with the disability dies; and
- include choices for successor trustees—people or organizations that will take a personal interest in the welfare of the person with the disability.

Preserving Eligibility

The Omnibus Budget Reconciliation Act of 1993 (OBRA '93) allows assets owned by a disabled person to be set aside in an OBRA '93 Payback Trust under certain conditions. The trust must be carefully written to comply with OBRA '93 and must require that the state providing services for the

disabled individual be reimbursed for the cost of services upon the beneficiary's death. It is important that this OBRA '93 type of trust not be confused with a Special Needs Trust.

Funding a Special Needs Trust

A Special Needs Trust can be funded much like any other trust, with a wide range of assets, including cash, stock, personal property, and real estate. It can also be the owner and beneficiary of a life insurance policy.

When a Special Needs Trust is the owner and beneficiary of a life insurance policy (generally on the disabled individual's parent's(s') life/lives), it is ideal for a special needs child or a dependent adult because the death benefit is:

- federal income tax-free,
- immediately available, and
- usually received without having to go through probate.

Additionally, permanent life insurance provides tax-deferred growth of the cash values that can be accessed during the life of the caregiver.⁵ If the caregiver is uninsurable, an annuity may offer a desirable funding alternative. However, an annuity will not have a federal income tax-free death benefit, and gains in annuity values may be subject to taxation at distribution.

Coordination between public and private funding is absolutely necessary to provide a reasonably comfortable lifestyle for the disabled family member.

Example: The Smith Family

Jim and Jane Smith, both 54, have a 13-year-old son, Mike, who has Down syndrome. The Smiths want to ensure that, should they die or become unable to care for their son, he will continue to receive government services while being able to pay for his education, travel, and other supplemental needs.

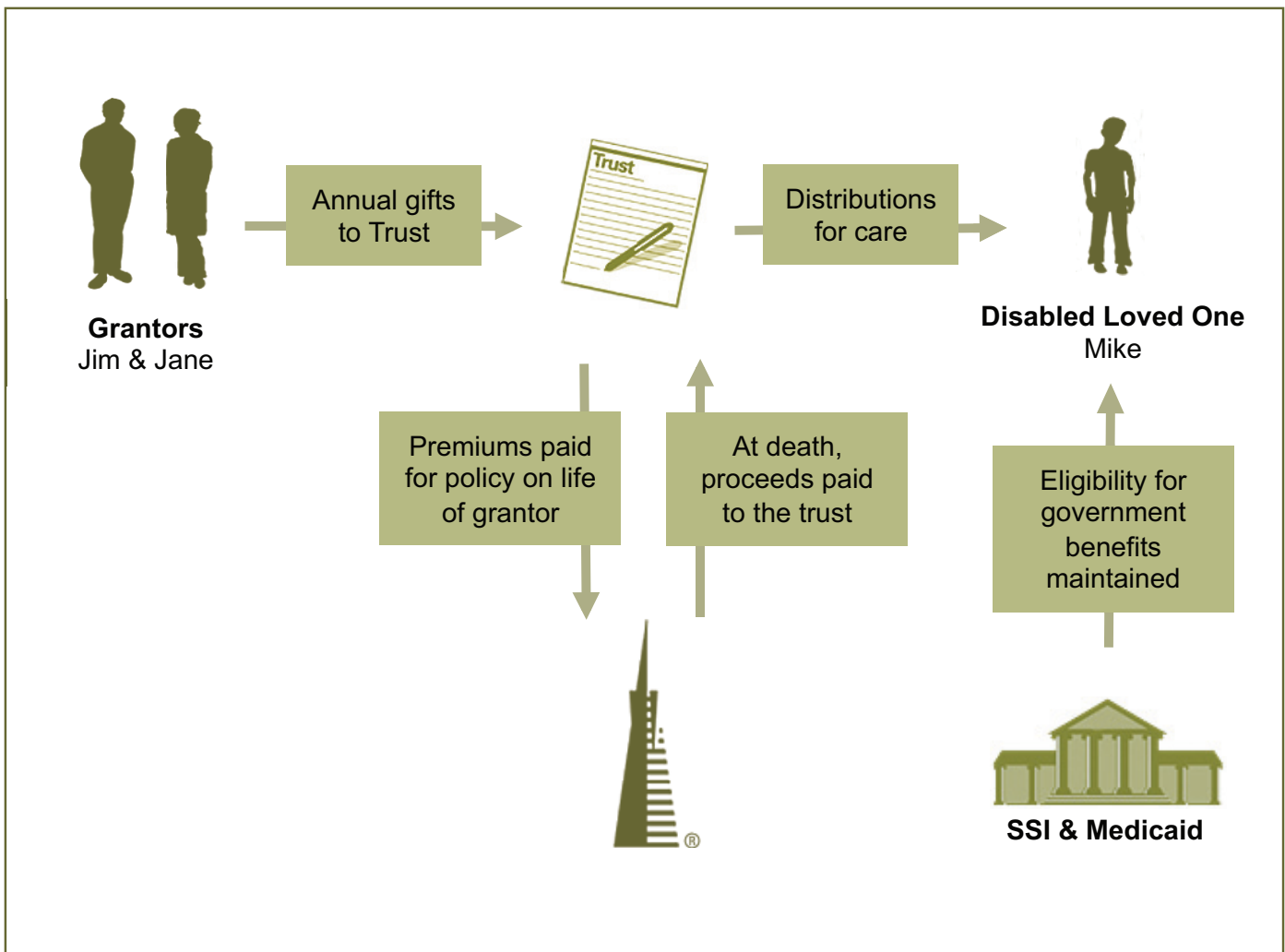
Consulting with their financial advisor, insurance professional, and an attorney experienced in special needs planning, Jim and Jane create a Special Needs Trust.

Jim and Jane make annual gifts to the Special Needs Trust which purchases a TransACE Survivor® 2008 life insurance policy.

In the event that Jim and Jane pass away, the Special Needs Trust has instant liquidity provided by the life insurance proceeds for the continued care of Mike.

Jim and Jane are careful not to name their son Mike as the policyowner or beneficiary since its cash value and policy proceeds would be considered a “countable asset” and could disqualify him from receiving government benefits.

How Does a Special Needs Trust Work?



Planning Options

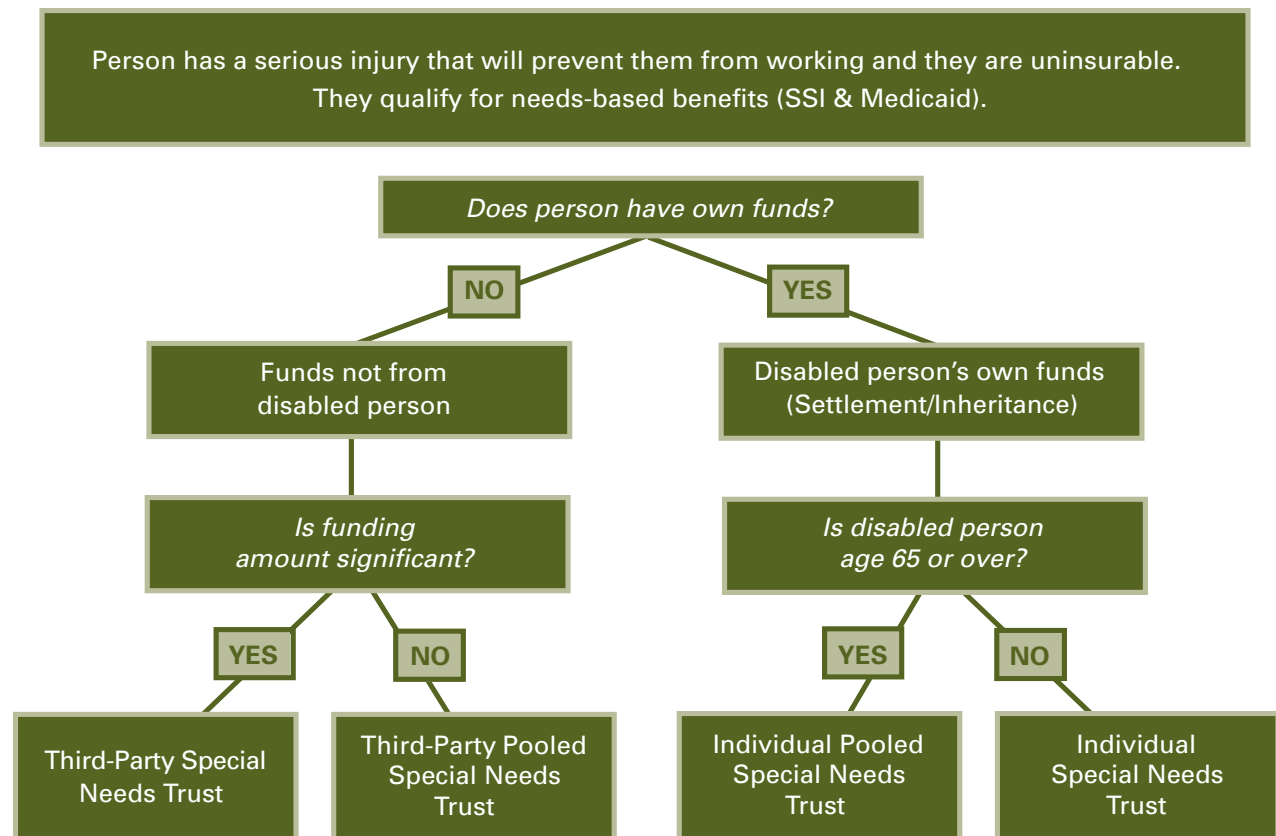
There are a number of planning options available based on the individual's specific situation.

These include:

- Pooled Special Needs Trust
- Third Party Pooled Special Needs Trust
- Individual Pooled Special Needs Trust
- Third-Party Special Needs Trust
- Individual Special Needs Trust

Pooled Special Needs Trust

Pooled trusts are managed by a non-profit organization. While the trusts are pooled together under one administrative system, each account is invested separately. The trustee opens an account for each disabled individual and invests the assets. The trust is able to make distributions to the disabled person without affecting his or her eligibility for governmental benefits.



Achieving Important Goals

A Special Needs Trust can help clients with disabled family members achieve vital estate planning and financial goals. With proper legal and financial planning, the family can guarantee that the person with the disability will enjoy a comfortable lifestyle, while preserving governmental program eligibility.

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- ¹ National Center for Education Statistics, Digest of Education Statistics, 2009.
- ² "SSI Annual Statistical Supplement, 2009," Social Security Online, February 2010
- ³ Health Resources Administration, Maternal and Child Health Bureau. The National Survey of Children with Special Health Care Needs Chartbook 2005-2006.
- ⁴ Centers for Disease Control and Prevention, Department of Health and Human Services, 2010.
- ⁵ Loans and withdrawals will affect the policy value and net cash value and may also affect the death benefit.
- ⁶ No minimum funding amount for trusts through Knights Administration, Inc.
- ⁷ Additional funding can be created from life insurance policy.

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