

*Providing peace of mind as we help pass your legacy to the next generation*



# WHY FAMILIES SHOULD FOCUS ON SPECIAL NEEDS PLANNING



The **Bell Law Firm** P.A.

“ Planning can help you be more fully present in the life of your loved one.

*Thoughts from Jerry* Families who have children or loved ones with special needs must plan ahead. It's not really optional, and if you're reading this, you probably already know how vitally important planning can be. Unfortunately, this area of law can be confusing, under-served, and somewhat complicated. That's part of the reason, for several years now, one of our key focus areas has been helping special needs families and individuals with disabilities.

There are two main reasons we believe your family requires proactive planning:

1. **BENEFITS:** It is critical to plan ahead and preserve essential benefits that provide care for your loved one.
2. **PEACE OF MIND:** Planning can help you be more fully present in the life of your loved one. We understand that you want to treasure the time you have. Planning can help you do that because it reduces your worry about the future, allowing you to live more in the moment.

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As an attorney who focuses on special needs planning, we believe it's important to create an entire network of support as you go about your planning. Much like the medical team that likely helps your family in a myriad of ways, it is important to have a trusted team to help with financial and legal planning issues.

In addition to working directly with you to create, maintain, and evolve your plan, it is critical for our firm to share tools, news, knowledge, and value with the advisors and support networks that you may already have in place. More importantly, helping you and your advisors understand the confusing interaction between Social Security, Medicaid, Medicare, and SSDI is critical for overall planning. We spend time and resources making sure we are up-to-date and focused, so we can effectively help families. This includes memberships and affiliations with the following organizations that have a special needs focus: Academy of Special Needs Planners, National Academy of Elder Law Attorneys, and ElderCounsel.

Our firm offers several resources/ tools to help with planning:

- A monthly email newsletter on helpful special needs topics
- A Special Needs blog
- Memorandum of Intent template – creating a Memorandum of Intent is a simple, yet hugely impactful step you can take towards effective planning. You can find a downloadable PDF on our website at [www.jbellLawFirm.com](http://www.jbellLawFirm.com) under Learn More => Resources.

It is critical for all involved – advisors, attorneys, parents, etc. – to become better educated on the unique challenges that are faced by your family, and how those challenges can be overcome or minimized. Whether it is helping an individual with disabilities to protect “sudden money” that has come their way, or helping a

family provide their special needs family member with a higher quality of life, it is vital that you create a plan now.

It has been a privilege over the years to help families



like yours with their planning. One said this about life with his non-verbal child, and it's stayed with me for years: "...For every dream that died (along the way), God replaced it with a blessing. I never imagined that life could be so hard and yet so good all at the same time. And I never dreamed that the things

that created the most challenges would also bring the greatest blessings..."

Therein is the joy of working with special needs clients. I am honored to work with this group of remarkable people. They have shown me that despite the hardships, their glass is usually half full, and their perspective inspires me in my everyday life.

If we can be of any assistance to you in planning for your family, give us a call at 913-345-2323, and we will be more than happy to talk with you.

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# SPECIAL NEEDS TRUST, A KEY PLANNING TOOL

## *Planning for special needs families continues to evolve.*

Historically, families left their estates to other family members, and they just hoped the family would take care of the person with special needs. They would leave nothing to the person with special needs because that could risk future continuity of care. A Special Needs Trust (SNT), also known as a Supplemental Needs Trust, provides a much better option for families with special needs.

A Special Needs Trust is primarily designed to preserve the beneficiary's eligibility for public benefits. Special Needs Trusts are commonly used for three main reasons in planning:

1. For the future of a disabled person,
2. For a disabled client who inherits an estate, or
3. For a client receiving a personal injury claim.

As the number of defined disabilities increases (i.e. the increase in autism), the Special Needs Trust has become much more common in planning.

In general, Special Needs Trusts fall into three primary categories:

## **FIRST-PARTY SPECIAL NEEDS TRUSTS, OR SELF-SETTLED SPECIAL NEEDS TRUSTS**

A first-party special needs trust, or a self-settled special needs trust, is created with the beneficiary's own assets, and many times from a settlement or other lawsuit award. It is important to understand the assets involved are the assets of the person with special needs.

This trust is also called a d(4)(A) special needs trust, a reference to the US code creating the trust (42 U.S.C. Section 1396(d)(4)(A)).

Regardless of what you call these types of trusts, the trust assets and income are used only for the beneficiary's special needs (sole benefit rule) under specific, limiting guidelines. The assets held in the first-party SNT, and the transfer of assets to this trust, will not disqualify the beneficiary from means-tested government benefits such as Medicaid and Supplemental Security Income (SSI). This allows the beneficiary to qualify for these government



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benefits, and also use the trust assets to enjoy a higher quality of life. If any assets remain in the first-party special needs trust at the death of the beneficiary, then these assets must be used to pay back the government agencies for any benefits paid.

## **POOLED SPECIAL NEEDS TRUSTS**

A related trust is a pooled trust, or a pooled Medicaid payback trust. This trust is also known as a d(4)(C) special needs trust (42 U.S.C. Section 1396(d)(4)(C)). This trust is created by a nonprofit organization and separate accounts are created for the benefit of the disabled individual(s). A major benefit is there are no federal age restrictions for this trust, as compared to the trusts discussed above in #1, which can only be created for those 65 years and under. Like the first party trust, a transfer of assets to the trust does not disqualify the beneficiary. Any remaining assets

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are either paid back to the government agency, or kept in the pooled trust to assist other disabled individuals.

### THIRD-PARTY SPECIAL NEEDS TRUSTS

The most common application for special needs trusts is the third-party special needs trust. A third-party special needs trust is created with assets from parents, family members or other third parties to the beneficiary. As an example, parents will leave their life insurance to a third-party special needs trust for a disabled child. These assets are used to support the beneficiary during his or her lifetime without disqualifying the beneficiary from means-tested government benefits. Generally these assets cannot be used for food or shelter, and there are specific guidelines on how these assets can be used. Upon the death of the SNT beneficiary, any assets remaining in a third-party SNT are NOT subject to Medicaid payback provisions. So these assets can then be distributed to additional beneficiaries named in the third-party special needs trust.

While SNTs continue to serve as the backbone of any special needs plan, there are additional planning tools we can use like Medicare Set-Aside Trusts that also have applications for special needs families. Laws like the Achieving a Better Life Experience Act (ABLE Act of 2014) created ABLE accounts, which are designed to work with Special Needs Trusts. Even as the field continues to evolve, SNTs remain the key planning tool upon which all effective special needs plans are built.

This is a complicated area of law, and special needs families need an experienced attorney as part of their support

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system. If you, or someone you know could benefit from a special needs plan, we encourage you to call our office. Your initial consultation will be on us, so you can get to know our team and we can get to know you and the unique details of your situation. Then, we can recommend best next steps for you and begin the process of creating the targeted results.

**GIVE US A CALL AT 913-345-2323 TO SCHEDULE A TIME TO TALK**

# ABLE ACCOUNTS AND SNTs

*On December 19, 2014, the Achieving a Better Life Experience Act (ABLE Act of 2014) was signed into law.*

The ABLE Act allows for those with disabilities to have a supplemental source of income beyond those provided by governmental programs, such as Medicaid and social security.

The ABLE Act allows people with special needs to create tax-free savings accounts (ABLE accounts) that can be used to pay for any expenses related to the eligible individual's blindness or disability that includes transportation, personal support services and health care, among other expenses. Structurally, ABLE accounts are built

upon the foundation of the current 529 Education Savings Plans that help families save for college. The ABLE Act provides persons with disabilities the same types of flexible savings tools that others have through college savings accounts, including choice of investment strategies. Similar to 529 plans, income earned by the accounts will not be taxed. Some states also offer a tax deduction for contributions.

ABLE accounts are limited to those individuals with "significant disabilities" with an age of disability onset before turning age 26. If an individual meets this criterion and is also receiving benefits already under SSI and/or SSDI, they are automatically eligible to establish an ABLE account. If a person with a disability is not already receiving SSI and/or SSDI, there is a certification process, which may apply to open an ABLE account. This certification cannot be used to qualify for SSI or SSDI.

Federal regulations have been established, and states are offering ABLE accounts. Individuals are free to open ABLE accounts in states other than their home state, similar to 529 accounts. Many states have joined together to roll out their programs.

It is important for families to understand the differences between ABLE accounts and special needs trusts, and this table provides one comparison.



ISSUE	FIRST PARTY SNT	THIRD-PARTY SNT	ABLE ACCOUNT
Purpose of establishment	Enhances quality of life by paying for goods and services without the loss of SSI or Medicaid	Enhances quality of life by paying for goods and services without the loss of SSI or Medicaid	Allows individuals to have a cash account to pay for certain expenses and to enhance the quality of life without loss of SSI or Medicaid
Primary beneficiary	Person with a disability	Person with a disability but can be others	Person with a disability or their agents/guardians
Creator/Maker	Person with disability, parent, grandparent, legal guardian, the Court	Any person or entity except the person with a disability	Person with the disability or their agents/guardians
Owner/Trustee	Any individual or professional but not person with disability	Any individual or professional but not person with disability	Any individual or professional including person with disability
Number of accounts	Unlimited	Unlimited	One
Source of funding	Disability person's assets	Anyone but the disability person's assets	Assets of anyone including person with disability
Amount allowed for funding per year	Unlimited	Unlimited	Limited to annual gift tax exemption (currently is \$15,000 per year in 2021)
Total amount allowed with the account	Unlimited, but no funding after age 65	Unlimited	Currently \$100,000 for SSI recipients and for recipients up to state 529-plan limits (varies by state)



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# SERVICES AVAILABLE

- Asset Protection Planning
- Special Needs Planning
- Trusts and Estate Planning
- Elder Law
- Business Exit Planning
- Business Services and Formation
- Trust Administration and Probate
- Guardianships and Conservatorships
- Long-Term Care Planning
- Medicaid Asset Protection Planning
- Veterans Benefits (Accredited by the VA)
- Prenuptial and Postnuptial Planning

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