

# Special Needs Trusts

New Mexico

## What is a Special Needs Trust?

A Supplemental Needs Trust, often referred to as a Special Needs Trust, is a trust designed to benefit an individual with a disability who has qualified for Supplemental Security Income (SSI) and Medicaid.

Trusts provide funds to improve a person's quality of life but *may not replace* government benefits that cover basic needs, such as SSI, Social Security Disability Insurance (SSDI), Medicaid or Waivers. The person who the trust is set up for is called the beneficiary.

There are two main types of Special Needs Trusts: Third Party and Self-Settled.

## Third Party Special Needs Trust

A Third Party Special Needs Trust is established by a parent, grandparent or other third party. Typically, family members create a trust to leave assets such as a house, money and other items of value for a loved one with special needs.

Only assets from a third party, not from the beneficiary, can be added to this type of trust. Any funds left at the death of the beneficiary may be left to charity, siblings or others.

## Self-Settled Trusts - Two main types: (d)(4)(A) Trust and (d)(4)(C) Trust

- A “(d)(4)(A) Trust” or “payback” trust is a Self-Settled Trust that is set-up by a parent, grandparent, court, or guardian. The beneficiary must be younger than 65 years old and can be funded with settlement or judgement funds. The state of New Mexico must be reimbursed with any remaining funds when the beneficiary passes away.
- A “(d)(4)(C) Trust” or “Pooled Trust” is established by a non-profit 501(c)(3) organization such as The Arc of New Mexico. The non-profit is the trustee and manages the funds. Individual sub-accounts are established by a parent, grandparent, guardian, court or beneficiary themselves. Trust funds come from excess earnings, court settlements, back payments from Social Security, annuity payments, gifts or other sources.

## What can trust funds be used for?

- A person with a Special Needs Trust may use funds for items that are supplemental and extra care over and above what the government provides.
- If the beneficiary is receiving government benefits, such as SSI, Medicaid or Waivers, the trust may not be used to purchase items or services that the government services would cover.
- Purchased items cannot be illegal and violate the terms of the trust.
- Common services that may be paid for include: some medical services not covered by Medicaid or Medicare, dental services, caregiving, education, internet, cable, computers, a vehicle and more.

## Remember:

- A Special Needs Trust must be written. It cannot be just a verbal agreement.
- The Special Needs Trust is irrevocable and cannot be reversed.
- Careful selection of a trustee is very important. The trustee must understand how to make distributions that will not cause the beneficiary to lose their benefits.



### Common distributions from a trust:

- Travel/Transportation
- Recreation
- Technology
- Entertainment
- Education
- Caregiving
- Accessibility

### For more information:

#### The Arc of New Mexico

3655 Carlisle NE  
Albuquerque, NM  
87110  
505-883-4630

Southern Office:  
950 Anthony Drive,  
Ste. 4  
Anthony, NM 88021  
575-882-9208

[www.arcnm.org/trustfund/](http://www.arcnm.org/trustfund/)

### Questions?

Call the CDD  
Information Network

**1-800-552-8195**

or visit our website at  
[www.cdd.unm.edu/infonet](http://www.cdd.unm.edu/infonet)

Informational Tip  
Sheets:

[www.cdd.unm.edu/info-net/tip-sheets.html](http://www.cdd.unm.edu/info-net/tip-sheets.html)