




**How the Special Needs Trusts Can Be Used To Promote A Person's Quality of Life**

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**SNT Basics**

Parties to a trust

- Trust Creator
- Beneficiary
- Trustee
- Remainder/Ultimate beneficiary

Trust Corpus




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**SNT Basics**

Kinds of Trusts

- Individual Trusts v. Pooled Trusts
- Testamentary Trusts
- Inter Vivos Trusts
- Special Needs Trusts also known as Supplemental Needs Trusts (SNTS)




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### SNT Basics

- When are SNTs used – individual receiving governmental benefits now or in the future?
  - Excess income
  - Excess resources
- Why are SNTs used – maintain governmental benefits
- SNTs should be irrevocable
- First Party money and third party money should not be co-mingled in the one trust.




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### SNT Basics

- Third Party SNTs
- When are Third Party Trusts used?
- Source of the funds
  - Inheritance (wills, beneficiary of life insurance and retirement plans)
  - Gifts by third parties
- Who can be the trustee?
  - Individual
  - Pooled Trustee – NYSARC Trust




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### SNT Basics

- First Party SNTs
- When are First Party Trusts used?
  - Source of the funds placed in First Party SNTs
    - Excess governmental benefits
    - Excess income
    - Excess resources
    - Inheritance
    - Personal injury or medical malpractice awards
    - Windfalls
  - Who can be a Trustee?
    - Individual
    - Pooled Trustee – NYSARC Community Trusts




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SNT Basics

NYSARC TRUST SERVICES

- Third Party Trust – NYSARC Trust
- First Party Trusts - NYSARC Community Trusts I, II & III




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GOVERNMENTAL BENEFITS

- Medicaid and SSI and the use of SNTs
- SSI Program Operations Manual System (POMS) Rules and SNTs
- New POMS rules with regards to Trusts




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SSI POMS RULES OF INTEREST

Disbursements from SNT

- Gift Cards, gift certificates, credit cards
- True link cards
- Able Accounts




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**SSI POMS RULES OF INTEREST**

- SOLE BENEFIT RULE
- General rule – The trust is for the sole benefit of the individual is the only person entitled to benefit from the trust
- Expenditures by the trust for the primary benefit for the trust beneficiary
- Collateral benefit
  - Examples: house, television, car, companion expenses
  - Liens, title
- Companion Services
  - Family member as companion




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**SSI POMS RULES OF INTEREST**

TRAVEL EXPENSES

- Payment of third party travel expenses (transportation, food and lodging) to accompany beneficiary
- How many providers/companions?
- Providers v. non-providers
- Expenses of third party travel expenses to visit the beneficiary
- Travel expenses of a trustee to visit beneficiary




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**SSI and MEDICAID**

DOCUMENTATION

- Receipts




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**FIDUCIARY RULE**

- What are the obligations of the Trustees?
- Present expenditures
  - Size of the trust account
  - Age of the beneficiary
  - Funeral and burial
  - Other resources (Able, other SNTs (1st and/or 3rd party)
  - Can the trustee say no to a request?
  - Consideration of SSI and Medicaid rules




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**FACT PATTERN**

Penny, who is 40 years old, lives in a supervised IRA. Prior to moving into the supervised IRA 10 years ago, she lived with various family members. She has cerebral palsy, has limited communication skills, has anxiety and is non ambulatory. She is considered to be severely disabled. She is confined to a wheel chair. She needs 100% assistance in all activities of daily living. Her sister was appointed her personal needs guardian.




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**FACT PATTERN continued**

As the result of a settlement of a negligence action for birth injuries, she is the beneficiary of a large first party trust (now \$1,000,000) with monthly annuity payments as well as periodic lump sum additions. She is also a beneficiary of small third party trust (\$100,000) created by an Uncle. Penny attends a day program operated by her provider of residential services. She has overnight visits with her sister, the personal needs guardian.




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**FACT PATTERN continued**

From time to time the personal needs guardian makes requests of the Trustees for expenditures. Request for expenditures include:

- An allowance for the guardian of the person, family member
- An accessible room in the house of her sister.
- A van to be used by the guardian to engage in activities with Penny
- Travel wheel chair
- All terrain vehicle
- Chicken coop
- Hot tub




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**FACT PATTERN continued**

• A heated endless pool that is enclosed in a building to enable year round use at guardian's residence. Two story building housing the pool.

- Camper
- Physical Therapy
- Occupational Therapy
- Aquatic Therapy
- Trustees commissions




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**FACT PATTERN continued**

- Guardianship Services
- Cash
- Recreation and entertainment
- Computer
- Phone bills
- Special medical care that Medicaid will not cover




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**FACT PATTERN continued**

- What if the Trustees have concerns with the request for disbursement? What will the Trustees do?
- Who should the Trustees speak to regarding expenditures?
- Mental Hygiene Legal Service (MHLS)
- Providers
- Evaluators
- Care Coordinator
- When does one go to court? Who is notified if there is an application to the court?




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**FACT PATTERN continued**

- Requests for disbursements and reimbursement
- How
  - When
  - Kind of expenditures
  - Mechanics
  - Best practices




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**FACT PATTERN continued**

- Trustee considerations:
- Medical needs
  - Age of beneficiary
  - Prepaid funeral
  - If requests are made for expenditures when do you need to notify MHLS?
  - When is there an application for court involvement?
  - Third party trust v. first party trust




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### Questions? We'd love to hear from you!

If you have additional questions following today's presentation, please don't hesitate to contact us:

**(518) 439-8323**

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