

**2346 – SPECIAL NEEDS TRUST**

<b>POLICY STATEMENT</b>	A Special Needs Trust (SNT) is a trust that contains the assets of certain individuals for his/her benefit. It also limits the trustee's discretion as to the purpose of the distributions.
<b>BASIC CONSIDERATIONS</b>	<p>A Special Needs Trust (SNT) must meet the following specific guidelines:</p> <ul style="list-style-type: none"> <li>• Be established for the sole benefit of the individual by a parent, grandparent, legal guardian of the individual, or a court. Refer to Section 2502-7, Chart 2502.1 for definition of "sole benefit of".</li> <li>• Provide that the State will receive all amounts remaining in the trust upon the death of the individual up to an amount equal to the total medical assistance paid on behalf of the individual</li> <li>• May contain the assets of individuals other than the disabled individual.</li> <li>• Must be established by a disabled individual under 65 and contain only their assets (income and resources).</li> <li>• Must have had no additions to or augmentation of since member turned 65.</li> </ul> <p><b>NOTE:</b> Certain payments are not assignable by law and, therefore, are income to the individual entitled to receive payment under regular income rules. They may not be paid directly into a trust, but individuals may attempt to structure trusts so that it appears that they are so paid. Important examples of non-assignable payments include:</p> <ul style="list-style-type: none"> <li>• TANF</li> <li>• Railroad Retirement Board - administered pensions</li> <li>• Veterans pensions and assistance</li> <li>• Federal employee retirement payments administered by the Office of Personnel Management</li> <li>• Social Security title II and SSI payments</li> <li>• Private pensions under the Employee Retirement Income Security Act</li> </ul> <p>Effective April 1, 2005, DCH Legal Services will determine the validity of all SNTs.</p> <p>To be a valid SNT, attorneys drawing up the SNT should adhere to the following guidelines:</p> <p><b>Step 1</b> The attorney should send the SNT to DCH Legal Services two months prior to execution and/or judicial approval. Use the "Special Needs Trust Review Routing Form" found in Appendix F of the Medicaid Manual.</p>

**BASIC  
CONSIDERATIONS  
(cont.)**

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| <b>Step 2</b>  | If the trust is to be funded with the proceeds of a settlement, a certified copy of the settlement and the court order must be submitted with the trust.  |
| <b>Step 3</b>  | Notice of the time and place of any hearing regarding a Court approval of the settlement and SNT should be served upon the DCH at least 15 business days before the hearing.  |
| <b>Step 4</b>  | The DCH will not recognize the validity of any SNT until all liens in favor of the DCH shall be first satisfied in full.  |
| <b>Step 5</b>  | All SNTs are subject to a yearly audit by DCH or its agents. DCH may also audit prior years of the trust.   |
| <b>Step 6</b>  | No payment can be made from the trust except for the benefit of the beneficiary and may not exceed the amount that can be determined to reasonably meet the special needs of the beneficiary. Refer to Section 2502-7, Chart 2502.1 for definition of “sole benefit of”.  |
| <b>Step 7</b>  | The SNT shall specifically identify, in an attached schedule, the initial source of the trust, all assets of the trust, all assets purchased with trust funds and all wages or payment for caregiver or other services. The trustee must update the schedule yearly. Schedules must be submitted to DFCS and to DCH Legal Services.                       |
| <b>Step 8</b>  | The SNT shall specifically state the age of the trust beneficiary and affirm that the trust beneficiary is disabled within the definition of 42 U.S. C. Section 1382c(a)(3), and whether the trust beneficiary is competent or incompetent at the time the trust is established.  |
| <b>Step 9</b>  | The SNT shall specifically state that its purpose is to permit the use of SNT assets to supplement, and not to supplant, impair or diminish benefits or assistance of any Federal, State or other governmental entity for which the beneficiary may otherwise be eligible or for which the beneficiary is competent at the time the trust is established. |
| <b>Step 10</b> | The DCH shall be given a minimum of 30 days notice if there is a change in the trustee.   |
| <b>Step 11</b> | The DCH must be given notice within 5 days of the death of the beneficiary.   |
| <b>Step 12</b> | Beneficiaries are required to comply with SSI income rules. See 20 CFR 416.   |
| <b>Step 13</b> | Failure to comply with policy will result in the SNT being counted as an asset or transfer of resources.  |

**PROCEDURES**

- Follow the procedures below for processing applications/reviews containing SNTs:
- Step 1** For applications pending on or after April 1, 2005, send a copy of the SNT to DCH Legal Services Section, along with proof of disability, prior to approval of the case. Use the routing form in Appendix F, entitled “Special Needs Trust Review Routing Form”. Some attorneys may submit SNTs to DCH prior to the application at DFCS. Obtain copies of the submission to DCH and its determination. If not, submit SNT upon receipt during application process. Submit the same documents that are required above.
- For currently eligible cases, with a SNT, send a copy of the SNT to DCH Legal Services Section, along with proof of disability, prior to completion of the annual review or special review. Submit two months prior to the review. Use the routing form in Appendix F, entitled “Special Needs Trust Review Routing Form”.
- Step 2** Do not finalize the application or review until DCH Legal has either approved or denied the validity of the trust.
- Step 3** If the trust is irrevocable and cannot be used by the A/R for his/her support and maintenance, it is not a resource. If the A/R does not have the legal authority to revoke the trust or direct the use of the trust assets, the trust principal is not the A/R’s resource.
- Step 4** Treat disbursements from the trust as follows:
- Cash paid directly to the A/R is unearned income.
  - Food, clothing or shelter received as a result of a disbursement from the trust is income in the form of in-kind support and maintenance. Use the presumed maximum value (PMV) rule. See [Section 2430](#), Living Arrangement and In-Kind Support and Maintenance for ABD Medicaid.”
  - Disbursements by the trustee to a third party that result in the A/R receiving items that are **NOT** food, clothing or shelter are not considered income (example personal sitters, handicapped van, etc.).
  - If the trust principal is a countable resource to the A/R, disbursements from the trust principal received by the A/R are not income, but a conversion of a resource. However, the trust earnings (interest) are counted as unearned income.
- Step 5** If you find there have been additions to or augmentations of the trust since the member reached age 65, then count as an asset or transfer of asset.

**PROCEDURES**  
**(cont.)****Step 6**

Should you discover during an annual or special review that the requirements of the trust are not being followed, consult your Medicaid Program Specialist for instructions.