



# Elder Law and Special Needs Planning

## August 2023 Newsletter





### Responsibilities of a Special Needs Trust Trustee

For individuals with disabilities, an inheritance or settlement can jeopardize a their government benefits, such as Medicaid and Supplemental Security Income (SSI). A special needs trust (SNT) can help the individual remain eligible for these benefits while ensuring they have additional financial support.

#### What Is a Special Needs Trust?

A special needs trust (SNT) is a type of trust that can be created to benefit a person with a disability. Special needs trusts offer a number of benefits to the individual:

- Helps ensure they stay eligible for public benefits
- Supplements their income, so that they can pay for needs not covered by public benefits (such as education or recreation)
- Preserves any assets they may have from an inheritance, a lawsuit settlement, or gifts

Special needs trusts may also be referred to as **supplemental needs trusts**.



# What Is the Role of the Trustee?

The trustee plays a critical role in the life of the special needs trust beneficiary. Serving as the trustee of an SNT involves several important considerations and responsibilities.

In managing the SNT, the trustee must act in the best interests of the trust beneficiary. They must make decisions that help the beneficiary maintain their public benefits as well as the highest quality of life possible.

## 1. Making Distributions From the Trust

The SNT trustee makes distributions to the beneficiary, transferring assets or income from the trust to the beneficiary. When making distributions, the trustee is responsible for ensuring the following:

- The distribution is allowable under the trust's terms.
- The payment will not compromise the ability of the beneficiary to receive benefits. (In certain rare instances, a trustee might decide to make a distribution that disqualifies the beneficiary from benefits. This may be the case when it is in fact in the best interest of the beneficiary.)
- The trustee must understand the trust's terms as well as the benefits regulations.

Trust distributions cannot go to expenses that Supplemental Security Income or Medicaid covers. For example, a beneficiary receiving SSI cannot put trust distributions toward food and basic shelter expenses. This is because SSI is intended to pay for these types of expenses. A Medicaid recipient cannot use trust funds to pay for covered medical expenses.

Using distributions for covered expenditures could cause a beneficiary to lose their benefits.

- Funds from the trust must directly benefit the beneficiary. The trustee is not permitted to distribute funds to a third party.

SNT funds may indirectly benefit another person as long as they primarily support the beneficiary.

## 2. Managing Investments of Trust Property

In addition to handling distributions from the trust, SNT trustees are also responsible for overseeing investments. The level of risk should be appropriate for the situation. Investment options may depend on the age, life expectancy, and needs of the beneficiary.

In many cases, a financial advisor selects investments. Yet even when a financial professional is involved, the trustee should provide oversight, attending meetings with financial advisors and accountants.

## 3. Maintaining Trust Records

Record-keeping is another essential obligation of special needs trustees.

- While the trustee can hire a professional bookkeeper or accountant, they are responsible for ensuring accurate and detailed records are kept. Records must track all financial transactions related to the trust, including income, disbursements, and investments.
- The trustee must provide regular accountings of the trust to the beneficiary. These reports must also go to the representative of the beneficiary and any co-trustees or other interested parties. Accountings should include a detailed description of all financial activity related to the trust since the last accounting. They also should contain an updated balance sheet.
- Records should also include all correspondence and communications related to the trust. This includes any meetings or discussions with the beneficiary or other interested parties.

It is essential that the trustee maintain proper records for audit by the beneficiary or a court. This documentation shows that the trustee acted in the beneficiary's best interests and followed the trust's terms.

## 4. Tax Reporting for the Special Needs Trust

Tax obligations also apply to SNT trustees. Responsibilities include filing state and federal income taxes for the trust. The deadline to file an annual tax return generally falls on or around April 15.

For third-party SNTs, the trustee is responsible for reporting income, deduction, and credit. Trustees use Form 1041 to report income to the federal government.

Beneficiaries and their representatives must also receive copies of tax documents.

In some cases, particularly when there is a large, complex trust, tax professionals prepare the trust's taxes for filing. Yet, as part of their role, trustees must comprehend the basics of trust accounting and how the government taxes distributions.



## 5. Fulfilling Fiduciary Duties

SNT trustees have a fiduciary duty to act in the best interests of the beneficiary. They must avoid any actions that would harm the financial or personal interests of the disabled individual. Making decisions inconsistent with the welfare of the individual with a disability breaches the fiduciary duty, making the trustee liable.

The trustee must ensure that the trust supports the needs of the beneficiary while also following the trust's terms. This encompasses using trust funds to pay for expenses not covered by government benefits, so that the beneficiary remains eligible for these programs.

To act in the best interests of the beneficiary, the trustee must remain informed of the person's unique needs and circumstances. Trustees may opt to work with such professionals as financial advisors, attorneys, and care providers. These kinds of experts can help ensure that the individual with the disability is receiving appropriate support.

## 6. Communicating With the Beneficiary of the Special Needs Trust

In addition to helping sustain quality of life for the beneficiary, the trustee must communicate consistently with them. Failing to communicate with the beneficiary and involved family members can put a trustee at risk of legal action.

- By keeping lines of communication open with caregivers, trustees can stay informed about the needs of the person with the disability. They also can gain a thorough understanding of how to use trust funds to enhance quality of life for the individual.
- Coordinating payment for essential services like housing and medical care is often an essential part of the trustee's role. Communication with caregivers and others involved in the beneficiary's life is important in keeping the beneficiary eligible for benefits.
- As mentioned, the trustee may decline a beneficiary's request so that the beneficiary stays eligible for benefits. In such cases, the trustee should explain their reasoning to the beneficiary and family members.

## Consult With a Special Needs Planning Attorney on Trust Administration

Serving as a trustee for a special needs trust can be complex, as trustees have many essential obligations and responsibilities.

Individuals who have taken on the role of trustee can benefit from consulting with a special needs attorney. [The Special Needs attorneys at Mandelbaum Barrett PC](#) can help SNT trustees safeguard themselves from misconduct allegations. They also can support trustees as they fulfill their duties to the person with the disability.



## Is “Aging in Place” Right for Me?

Most older adults want to remain in their homes and communities as they age rather than move into assisted living facilities or nursing homes.

For those who wish to maintain their independence and continue living at home as they grow older, taking certain steps to protect their physical, mental, and financial welfare is essential.





## What Does It Mean to Age in Place?

The Centers for Disease Control and Prevention defines aging in place as a senior's "ability to live in one's own home and community safely, independently, and comfortably, regardless of age, income, or ability level." According to 2021 data from AARP, more than three-quarters of adults 50 and older say they would prefer to age in place.

## Health Considerations for Older Americans Aging in Place

Older adults must consider their physical, emotional, and social well-being when deciding where to spend their later years. They may consider adding supplemental services over time to help improve their quality of life.

To ensure that you will have the support you need for safely aging in place, take the following into consideration:

### Resources to Manage Chronic Diseases

Disease management is vital for anyone, especially an older person with a chronic illness. Many older people suffer from at least one chronic illness. If a senior has a chronic disease and wants to age in place, they and their caregivers should focus on:

- Ensuring that spaces in the home are safe and easily accessible to make getting around easier;
- Learning about proper nutrition; and
- Increasing access to dental health services. Research has found that proper oral care can help prevent the progression of many chronic diseases.

### Eating Well While Aging at Home

Proper nutrition is a vital part of caring for yourself at home. In facing potential changes to your financial situation after retirement, you may need help buying nutritious meals even after budgeting.

If you find yourself in need of meals, community resources may be available. Neighborhood senior centers, places of worship, and charities may provide a hot meal while you make new friends. If you cannot leave your home, some meal delivery services drop off food at your door for little or no cost.

### Support for Mobility

Exercise and maintaining your mobility can increase overall physical and mental health even as you grow older. Seniors aging in place need to be able to move

around their homes and neighborhoods safely. Aging in place is a much more realistic goal if you can walk for exercise, access transportation to medical appointments and errands, and maintain a safe environment at home, free from increased fall risks.

If you desire to age in place, consider simple changes you can make to your home to promote your safety. Examples of helpful modifications around the house include handrails, temporary ramps, no-slip bath rugs, and assistive seating.

### Mental Health, Substance Abuse, and Memory Care Services

There is an increased need among older adults for mental health, substance abuse, and memory care services. An estimated 20 percent of older adults have a mental health disorder, and the total number of seniors with a mental health or memory care diagnosis is likely to increase over time.

Suggestions for addressing mental health concerns among older people include:

- Focusing on preventative care. Seniors and their caregivers should work with their primary care physician to identify warning signs of depression, anxiety, other mood disorders, and memory care problems. Preventative care can help mitigate the progress of these disorders and improve quality of life.
- Looking for common signs of a substance abuse problem. This is an often overlooked area of older adult mental health care. Older adults may turn to substances to deal with unresolved childhood problems or to avoid a feeling of loss of meaning and purpose. Some common signs to watch for include reduced hygiene, unexplained bruises, erratic behavior, and the smell of alcohol on their breath.

If you are a senior's caregiver and suspect substance abuse, you can find resources and support through the Substance Abuse and Mental Health Services Administration (SAMHSA).

## The Need for Social Connection Among Aging Adults

Older adults benefit tremendously from social connections and interaction. People over 65 are likely to live alone, so creating a community outside the home is necessary. Feeling a sense of purpose is beneficial to mental and physical health. For seniors looking to create a sense of community and purpose, they may benefit from such activities as:



- Joining an organization or social club
- Volunteering for a cause close to their hearts
- Learning a new hobby
- Attending a religious institution
- Adopting or fostering a pet
- Using technology to stay in touch with friends and family

## Wearables and Smart Monitoring Devices

Technology can help us not only remain connected to one another, but also monitor our health and that of our aging loved ones. Many devices make detailed health information readily available at our fingertips. These devices benefit seniors because they can learn more about their health and make the most of doctor's visits by communicating effectively about their medical needs.

Examples of wearable health and smart-home monitoring devices include:

- Smartwatches and smartphones, which can track your cardiac health, fitness activity, and sleep patterns
- Medical alert bracelets and personal alert necklaces, which can aid in detecting falls or contacting emergency services when necessary
- Contact sensors and smart locks, devices that can alert caregivers when their loved one living at home leaves a window, garage, or door open, or has forgotten to lock them
- Smart plugs, which can automatically turn on and off lights, space heaters, thermostats, security cameras, and more



## Money Management While Aging in Place

Money management can also be an area of concern for seniors and caretakers. Seniors want to make sure they have sufficient financial resources to remain in their homes and communities comfortably, eat well, care for their medical needs, and have fun.

Creating a budget with the help of financial counselors and geriatric care managers can benefit someone on a fixed income. There may even be volunteers in your area that offer a similar service. Being aware of how to prevent and avoid common types of scams that target the senior population is equally as important.

## How Can Caregivers Help Seniors Age in Place?

Careful planning is the best way to accomplish your goal of staying home as you age.

If you are considering plans to age in place and want assistance, the Elder Law attorneys at Mandelbaum Barrett PC are available to help you learn more about your options.



# What You Need to Know About Applying for SSDI or SSI

The Social Security Administration pays disability benefits through the Social Security Disability Insurance (SSDI) program and the Supplemental Security Income (SSI) program.

Applying for disability benefits through the SSDI or SSI programs can be daunting. Here is a brief overview of how the application process works and what you can expect after you've applied.



## What Is Supplemental Security Income?

Supplemental Security Income (SSI) has been a federal program since the 1970s. It provides modest monthly payments to assist seniors, people with disabilities, and others who have limited income.

To qualify, you must be unable to work, and your income and assets must meet very specific restrictions. In 2023, the standard monthly SSI benefit is \$914 per individual.

## What Is SSDI?

Social Security Disability Insurance (SSDI) is another federal program offering cash assistance. People with disabilities can benefit from SSDI regardless of how much they have in terms of income or assets.

In 2023, SSDI payments average \$1,483 a month per individual.

## How to Apply for Federal Disability Benefits Through SSDI or SSI

You can apply for federal benefits through SSDI and SSI as a result of a disability. Your personal circumstances will dictate which program is right for you. In some circumstances, you can apply for both.

The SSDI program pays disability benefits to those who cannot work due to a medical condition that is expected to last at least one year or result in death. SSDI does not give money to people with a partial disability or short-term disability.

## SSDI Application

To apply for SSDI successfully, a person must meet two different earnings tests:

- The “recent work” test, which requires a person has worked for a certain amount of time ending with the quarter they developed a disability and is based on the age at which a person became disabled; and
- The “duration of work” test, which requires a person has worked a minimum amount of years or quarters before the age they developed the disability and is also based on the age a person became disabled.

You can apply for SSDI by:

- using the Social Security Administration’s (SSA’s) [online application](#),
- telephone (1-800-772-1213), or
- by making an appointment to visit your local Social Security office. ([Find your local office online.](#))

As part of this process, you have the right to be represented by an attorney or other qualified person.

The SSA recommends that applicants apply for disability benefits as soon as they develop a disability. Gather the following documentation to apply for SSDI:

- Your Social Security Number
- Your date and place of birth
- Medical records, including:
  - Information on all medications you take
  - Lab and test results
  - Information about all doctors and medical professionals you have seen for your medical condition
- Your work history for the past 15 years
- A copy of your most recent W-2 Form and most recent tax return

You must provide specific details regarding your disability and medical condition in your application. The SSA can assist the applicant with getting the information if they cannot.

## Applying for SSI

Another way to apply for benefits is through the SSI program. SSI provides financial assistance to people with limited means and who are either over 65, blind, or have a medical condition that keeps them from working. Similar to SSDI, the applicant’s a medical condition must be expected to last at least one year or result in death.

If you are applying for SSI, be prepared to provide financial information about yourself and potentially your spouse’s or family’s income and assets.

You can apply for SSI online on the [SSA website](#).

## How to File for SSDI and SSI

If you’re over age 18 with a disability and intend to file for both SSI and SSDI, you can apply [online](#) for both benefits simultaneously as long as you:





- Are between 18 and 65
- Have never been married
- Are a U.S. citizen residing in one of the 50 states, the District of Columbia, or the Northern Mariana Islands.

You should expect to provide your personally identifying information, contact information, birth certificate, as well as information on the following:

- Your Social Security
- Your living situation (whether you rent, live at home, etc.)
- Your income, if applicable
- What assets you own
- All the doctors and medical professionals you have seen for your condition, if you are applying for SSI because you are disabled or blind

If you apply via phone or online, you will need to send the SSA additional supporting documentation to prove U.S. citizenship or residence. Once the application is complete, the SSA begins reviewing your application to decide whether you are eligible for benefits.

In order to receive concurrent benefits, you typically must be under certain income and asset levels. An example of when this may occur is where your resulting SSDI award is under the current SSI monthly payment amount. If you are below the SSI thresholds, you may also be entitled to an SSI payment.

## Rejections and Appeals

The SSA initially rejects **approximately 70 percent** of disability applications. Its most common reasons for denying applications for benefits are when:

- The applicant has an impairment that is expected not to exceed 12 months,
- The impairment is not considered severe,
- The SSA believes the applicant can perform their usual type of work or another type of work,
- An impairment resulting from drug addiction or alcoholism is not sufficiently medically documented or evidenced, or
- The applicant did not cooperate with the SSA, did not follow treatments, or returned to substantial work before the disability could be established.

If SSA rejects your application, it's important to retain a competent **attorney** immediately to advise you about the next steps in the appeals process. Whatever you do, do not delay; failing to file a timely appeal could jeopardize your chances of obtaining retroactive disability benefits that you might otherwise be entitled to receive based on the date of your initial application.

The **appeals process** can be demanding, but is worth it if it opens up your access to these federal benefits and the medical coverage that comes with them. In the first stage of an appeal, called a "request for reconsideration," the disability agency that made the initial determination gets a second look at your application. Very few appeals are won at this level.

If rejected for reconsideration, you go to a hearing before an administrative law judge to plead your case. Applicants who make it this far have a roughly even chance of winning the appeal – a chance that grows larger if competent counsel represents you. If the judge rejects your appeal, you can file for review by the Appeals Council, which approves only between 2 and 3 percent of all appeals.

Your final recourse is to file suit in federal court, which can be costly.

## Retroactive and Back Payments

Because the disability application process can take months, the SSA awards successful applicants back payments that they would have received in the months between the date an application for benefits was filed and a final determination is made.

In addition to back payments, SSDI (but not SSI) recipients can receive retroactive payments going back one year from their application date if they were disabled during that time. However, the SSA takes five months off of a successful applicant's established disability onset date when calculating retroactive payments. So, an applicant would have to have been disabled for 17 months before applying to receive the full 12 months of benefits.

If all these rules seem complicated, that's because they are. **The Elder Law and Special Needs attorneys at Mandelbaum Barrett PC** are here to discuss the disability application process before you apply so you can have an accurate picture of what is needed and what your chances are before you begin.





# Which Should I Choose?

## Nursing Home Care vs. Hospice Care

End-of-life decisions are never easy. One of the most important decisions you may make regarding health care as you age could be whether you need a nursing home or hospice care.

To make the best choice for you and your family, it helps to know the difference between the nature of the care provided through a nursing home as compared with hospice.



## Nursing Home Care

Nursing home facilities offer residential care for the elderly and disabled. The treatment patients receive from a nursing home differs from what is available in hospice care. Residents at nursing homes receive treatment to extend their lives. Care that you can expect from a nursing home may include custodial and some skilled care.

Custodial care includes non-medical treatment, such as assistance with dressing, bathing, cooking, laundry, and other types of personal care. The provider does not need a medical license to give residents this type of care.

Skilled nursing care is provided by licensed medical practitioners. Nursing home residents may receive some skilled care, including wound care, physical therapy, injections, and other care that they may need to ensure their physical well-being.

Note that Medicare generally does not cover custodial care. And while **Medicare Part A** (hospital insurance) coverage may be available for enrollees with certain medical conditions, it is often limited to those who need short-term care in a **skilled nursing facility**, rather than a nursing home. (Learn more about Medicare's limited **nursing home coverage**.)

If you are eligible for Medicaid, a program for individuals with limited income and assets, there are nursing homes in many states that accept Medicaid patients.

## What Is Hospice Care?

Hospice care is an option for patients who do not wish to receive treatment to help improve their condition or extend their life, but want comfort care as they reach the end of their lives. Your hospice care team may include doctors, nurses, social workers, spiritual advisors, and volunteers.

A hospice care team is trained in treating end-of-life pain. Hospice care can be administered in a **patient's home** or in an institutional setting. It also may provide support to family members and caretakers, including **respite care**.

If a patient has Medicare Part A and meets the following qualifications, they may have hospice care services, including pain-relieving medication and home aide services, covered:

A primary care physician, or a hospice care doctor, confirms that the patient's condition is terminal and they will not live for more than six months. The patient is willing to receive palliative care only and not care that is intended to try and improve their condition. The patient signs a statement confirming that they will receive hospice care instead of any other Medicare-covered treatments related to their physical condition.

For Medicaid recipients with a terminal illness, **certain states** may provide **help in paying for hospice**.

## A Note on Concurrent Care

Complicating matters is the fact that Medicare will generally not cover nursing home care and hospice care, known as concurrent care, at the same time. Currently, individuals on Medicare must give up Medicare payment for care related to their terminal condition if they want to receive Medicare's hospice benefit. As a result, many individuals facing a terminal illness **may not opt for hospice support services**.

Policymakers have been pushing for a **benefit within Medicare** that would allow patients who wish to benefit from hospice care services (for example, a hospice aide, in-home respite care, or nutritional support) to receive curative treatment (for example, chemotherapy) simultaneously.

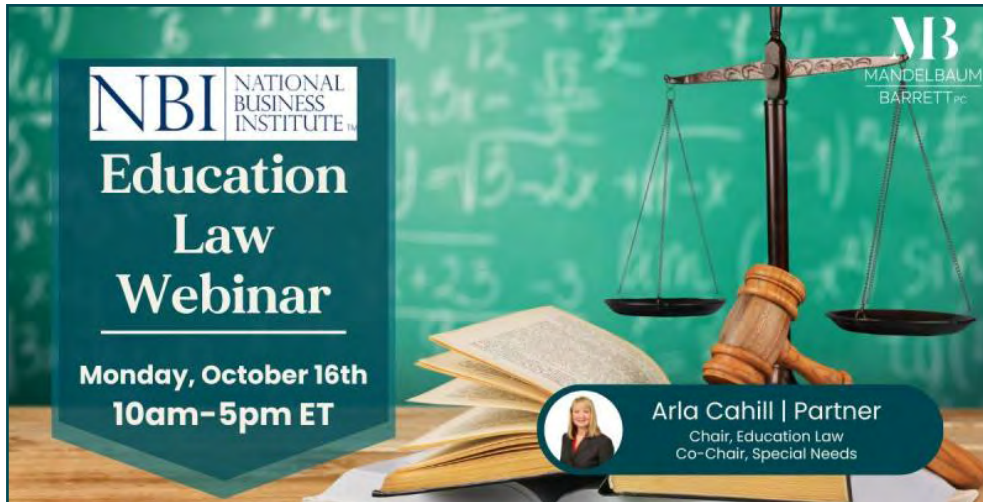
The Centers for Medicare and Medicaid Services has spent the past several years testing various models, including one known as the **Medicare Care Choices Model (MCCM)**. MCCM **has been shown** to improve the quality of patients' end-of-life while also resulting in Medicare savings. However, this option has not yet been made permanent.

## End-of-Life Dilemma: Which Should I Choose?

While considering the next steps to take in your health care plan, speak candidly with your family and health care team about your needs and how you see your future.

If you have questions about coverage options that may be available to you in a nursing home or with hospice care, the Elder Law attorneys at Mandelbaum Barrett PC are here to help you.

## UPCOMING EVENTS



How does your knowledge of special education law stack up?

What are the newest legal issues concerning technology and the classroom?

Are you up to date on the latest Title IX developments?

Join Mandelbaum Barrett PC Education Law Chair **Arla D. Cahill, Esq.** for the **National Business Institute (NBI, Inc.)**'s "The ABCs of Education Law." Being held on Monday, October 16, 2023, this program is a Beginner's Guide to IEPs and 504 Plans, Transgender Students' Rights, and more.

It is designed for attorneys, but school administrators, teachers, principals, counselors, superintendents, board members, school psychologists, and paralegals may also benefit.

Register and learn more here: <https://link.edgepilot.com/s/3ede8c51/tz2galzgbOKdEYHIA3clA?u=https://bit.ly/3KH6Asu>

Use Promo Code **FSPN50A** at checkout to get **\$50 off**.

### Richard Miller and Shawna Brown to speak on NJICLE panel discussing "Guardians Ad Litem- How They Work & How to Get Appointed"

On September 20th, 2023, **Richard Miller, Esq.**, Chair of Elder Law and Co-Chair of Special Needs and **Shawna Brown, Esq.**, Counsel in the Elder Law and Special Needs Practice Groups at

Mandelbaum Barrett PC will join a distinguished panel of Judges and practitioners for an NJICLE CLE webinar to share real world scenarios that give context to the Statutes, Rules and Case Law that govern Guardians Ad Litem. From the Family Part to the Civil Part to Chancery and Probate, this informative seminar covers everything you need to know about Guardians Ad Litem (GAL).

[Register and learn more here.](#)





## MEET OUR TEAM



### Meet our Team: This month's spotlight is Mariah Hernandez – our Legal Coordinator

**Q.** *What is your favorite part of being a member of #TeamMandelbaum?*

**A.** “My favorite part of being a member of #TeamMandelbaum is witnessing growth of the firm. Things looked a lot different when I started in 2019, then we experienced a global pandemic which shifted the traditional workforce as we knew it. Watching how the firm handled this

shift and complimentarily pivoted to continue its success has been a great reflection of how having the right team makes for better business.”

**Q.** *Could you share something valuable that you've learned during your time here so far?*

**A.** “Active listening! I do a majority of the new client intakes for our department and all conversations start with a person on the other side of the phone, often full of emotion, just wanting to be heard. Taking the time to listen, connect with clients, and assist them through the intake process is one of my favorite roles.”

**Q.** *What do you enjoy most about being a part of the Elder Law Practice Group?*

**A.** “I get to work with some of the most intelligent, caring, humble people I've ever met – it's truly a reward to be surrounded by and learn from such wonderful people daily.”

**Q.** *What's something about you (a fun fact) that not many people know?*

**A.** “I am named after my father, not Mariah Carey (despite being born in 1994). My name is my father's name, backwards, with an extra “a” (Hiram > Mariah).”

**Q.** *What's one item you can't live without?*

**A.** “My son, Miles! Miles turns 9 months on the 16th, he has 7 teeth and is just as demanding as his mother.”

THANK YOU

Thank you for placing your trust in our team.

*Team Mandelbaum*



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