

Special Needs Trusts 101

The good, the bad, and the rarely talked about

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Golden State Pooled Trust

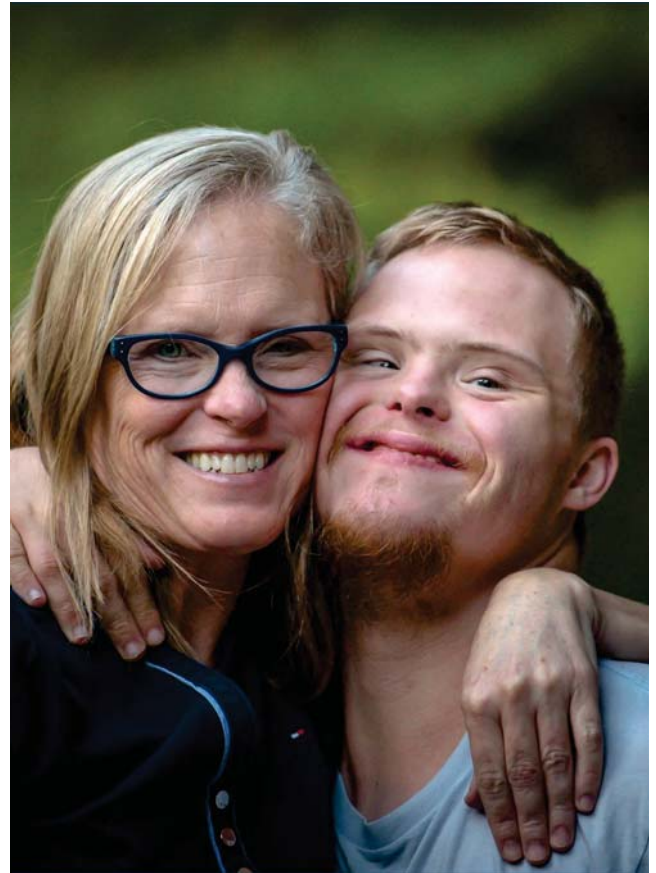
Learning Objectives:

- Understand the key features, benefits, and concerns around special needs trusts
- Identify benefits of individual versus pooled trusts
- Get an update on the latest policy context for SNTs
- Evaluate the key administrative functions and responsibilities of an SNT administrator
- Discuss the risks and tradeoffs of SNT administration for fiduciaries
- Compare ABLE accounts and SNTs
- Understand the regulations around SNT investments



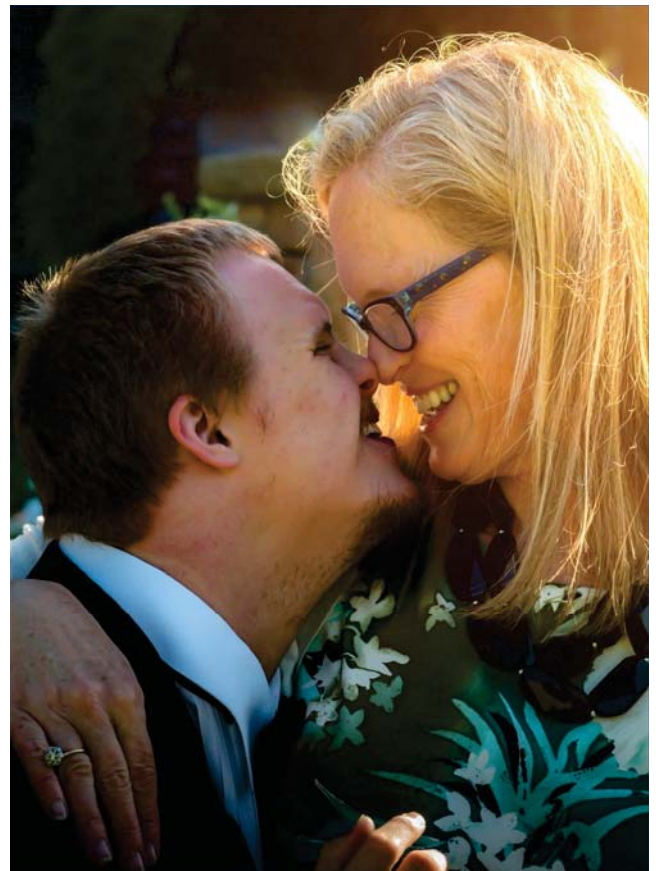
What is a special needs trust?

A special needs trust, also known in some jurisdictions as a supplemental needs trust, is a specialized trust that allows the disabled beneficiary to enjoy the use of property that is held in the trust for his or her benefit, while at the same time allowing the beneficiary to receive essential needs-based government benefits.



Benefits of special needs trusts

- Preservation of government benefits
- Assets protection
- Lack of control by beneficiary



Potential downsides of special needs trusts

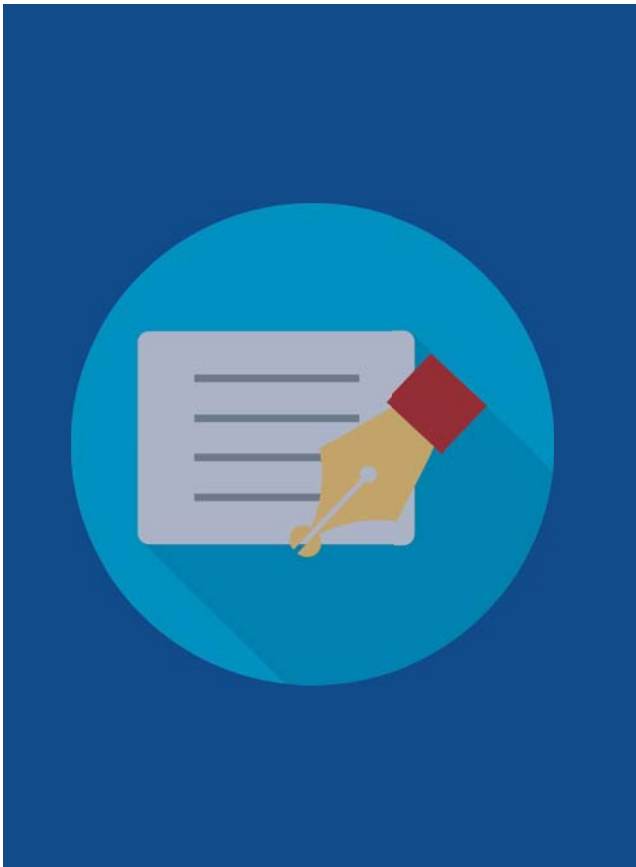
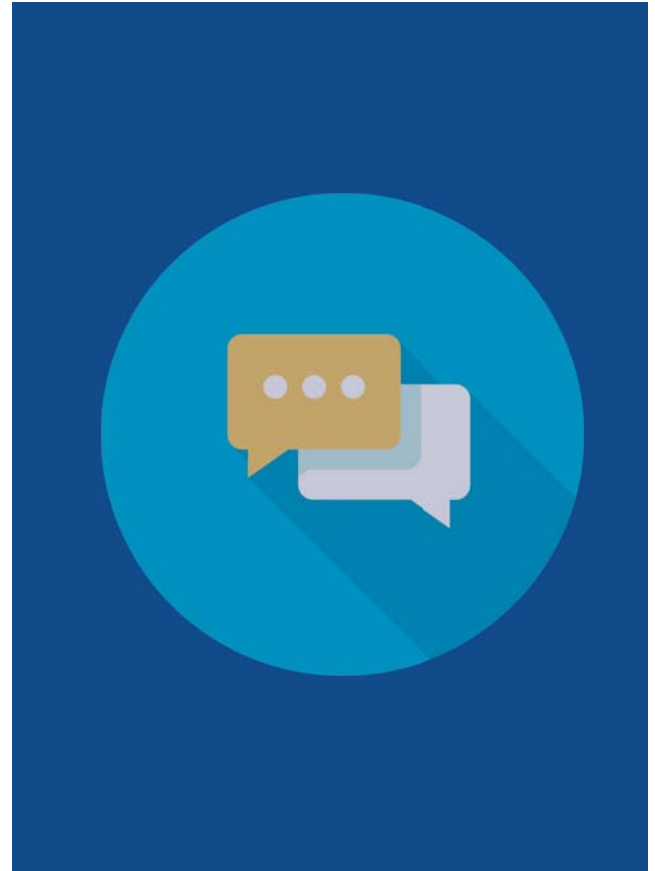
- Lack of control by beneficiary
- Expenses
- Restrictions
- Medicaid/MediCal Line
- Distribution complications



Key Functions & Responsibilities of SNT Administration

Communication

- Countless emails and hours on the phone make up the majority of a trust administrator's time
 - The earlier the better
 - Start communication from the onset of the trust
 - Provide key information in written and spoken form
 - Knowledge is power
 - Know WHO you are talking to



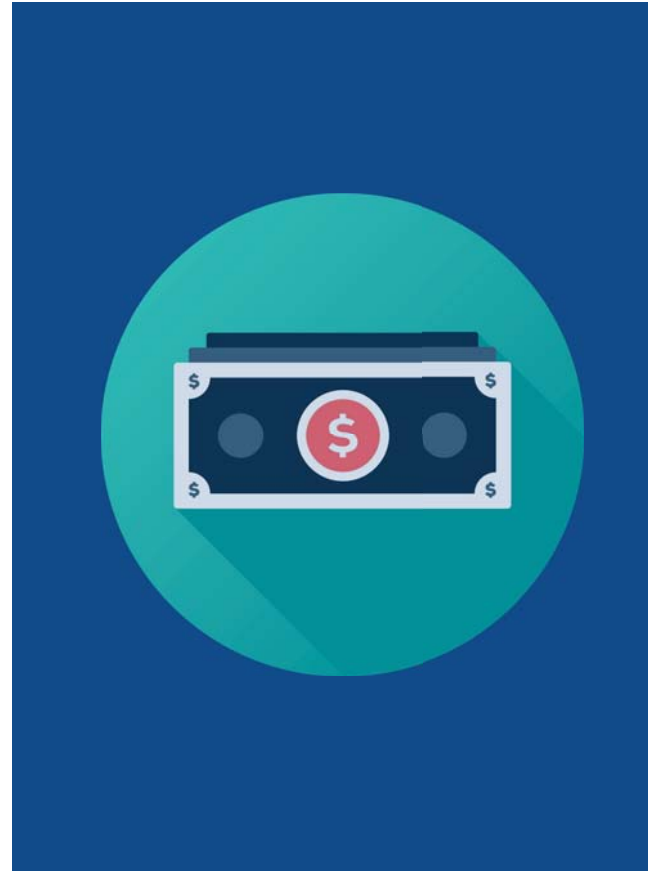
Documentation

- What is documentation but another form of communication!
 - External
 - Receipts, receipts, receipts!
 - Provide key information in written and spoken form
 - Internal
 - Fully executed legal documentation
 - Digitization



Disbursements

- Understanding the process
- Communication
- True Link Card



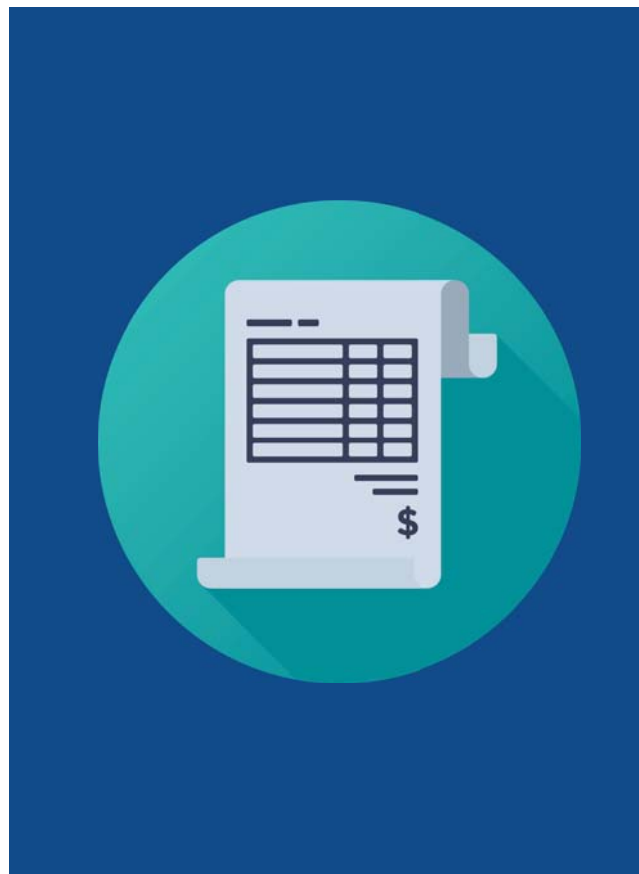
Asset/Benefits protection

- "It's MY money!"
 - Set a budget and stick to it
- Empowerment
 - If applicable, involve the beneficiary in the budget discussion
- Communication
 - What happens if rules are broken?



Accounting

- Receipts
- Audits
- Court reporting



Risks and tradeoffs of SNT administration for fiduciaries

- Administratively burdensome
- Court's regulation over fees
- SSA is reviewing trusts and expenditures in Region 9 to a degree never seen before
- Stress for beneficiaries and families



Pooled Special Needs Trusts, ABLE accounts, and the Social Security Administration

What is a pooled special needs trust?

A Nonprofit Pooled Income Special Needs Trust is authorized by 42 U.S.C. § 1396p(d)(4)(C). Again, the individual must be disabled under the Social Security definition. Unlike the other exempt trusts which can be administered by a private trustee who is an individual (such as a family member), the Pooled Income Trust is run by a nonprofit association, and a separate account is maintained for each individual beneficiary. All accounts are pooled for investment and management purposes. Upon the death of the disabled individual, the balance is either retained in the trust for the nonprofit association or paid back to the state Medicaid agency for its medical assistance.



Individual vs. Pooled Special Needs Trusts

	Individual SNT	Pooled SNT
Benefits protection	Protect SSI & Medicaid and require Medicaid payback	Protect SSI & Medicaid and require Medicaid payback
Disbursements	Distribution to beneficiaries after payback OK	Distribution to beneficiaries after payback OK
Investments	No limits	Limited to options of the trust
Asset limitations	Sometimes better for larger asset size, depending on investment options and service levels	Can handle small asset size
Who can establish	Parent, grandparent, guardian, or court (not individual)	Individual, parent, grandparent, guardian, or court

*Single funding after age 64 in California and transfer penalties may apply in some states



ABLE Accounts

The Stephen Beck, Jr., Achieving a Better Life Experience Act¹ (ABLE) Act was signed into law on December 19, 2014, after many years of advocacy and bipartisan work in both the House and Senate.

The law allows eligible individuals with disabilities the ability to establish “**ABLE accounts**” for qualified beneficiaries that resemble the qualified tuition programs, often called “529 accounts,” that have been established under that section of the tax code since 1996.

The new ABLE accounts will allow more individual choice and control over spending on qualified disability expenses and limited investment decisions, while protecting eligibility for Medicaid, Supplemental Security Income, and other important federal benefits for people with disabilities. **Without these accounts, many people with disabilities have very limited avenues to save and allow for further independence.**

Source: The Arc



Social Security POMS Recent Updates

POMS = Programs Operation Manual System

April 2018 : SI 01120.201 I.1.e

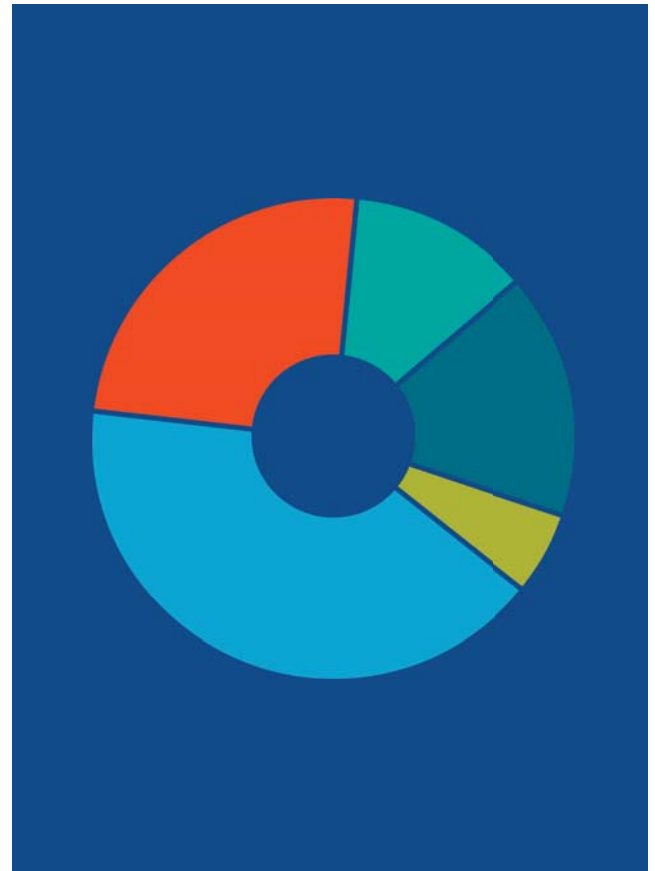
“ Administrator-managed prepaid cards, such as True Link cards, are a type of restricted debit card that can be customized to block the cardholder’s access to cash, specific merchants, or entire categories of spending... If the trustee is the owner of the prepaid card account... [t]he administrator-managed prepaid card is not the trust beneficiary’s resource.”



Core Trustee Responsibilities for Investments

Core trustee responsibilities regarding investments

- Require a personalized investment strategy designed for specific life situation and needs. Not one size fits all
- Formalize strategy using Investment Policy Statement
- Revisit the plan routinely to ensure that it is still relevant
- Ask the right questions, especially about fees and costs (service fees, internal costs, soft dollars)



Questions

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