

Drafting the Special Needs Trust

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Variations of SNTs

Distribution Standards

- Strict
- Broad
- Discretion to Partially Disqualify
- **Totally Discretionary**

Creation

- **Self Settled and Court Created**
 - Third Party
- 

Where Are the Rules?


42 U.S.C. §1396p(d)(4)(A) – Individual SNT

42 U.S.C. §1396p(d)(4)(C) – Pooled SNT

SSI Rules:

- Social Security Program Operations Manual System (POMS)

Medicaid Rules:


- Medicaid for the Elderly and People with Disabilities (MEPD) Handbook
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Enabling Statutes Giving Court Authority 142 vs. 1301

Texas Property Code §142.005

- Independence from court supervision

Texas Estates Code §1301 et seq.

- Continued supervision of court
 - Annual reporting
 - Trustee fees must be approved
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Absolute Essentials

Individual under age 65

Individual has a disability

Established by proper party

State(s) will receive

- all amounts remaining in trust
- upon death of individual
- up to amount equal to total medical assistance paid under Title XIX on behalf of individual under state(s)' Medicaid plan(s)

Who Can Establish?

Individual

Parent

Grandparent

Legal guardian

Court

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Also available as part of the eCourse

[When Personal Injury Settlements Meet Special Needs Planning](#)

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