



# Personal Injury Settlements: Planning Considerations For Persons With Disabilities

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Personal injury claims for malpractice and work place injuries often result in monetary awards or settlements that jeopardize an individual's eligibility for government benefits. Whether the award or settlement is paid to the individual in the form of a lump sum, a structured settlement, or a combination of the two, the proceeds are expected to provide for the individual's care over his or her lifetime. Despite this intention, many settlements and awards are implemented without considering the long-term needs of the individual or the effect of the settlement or award on the individual's eligibility for public benefits. Often, the settlement or award alone fails to meet all of the individual's needs, the funds are rapidly dissipated, and the individual fails to qualify for public benefits because his or her assets are over the program limit. Unfortunately, by the time family members realize the inadequacy of the settlement and attempt to restructure it, precious time and resources have been wasted.

Achieving access to public benefits must be contemplated during any settlement negotiation or trial. The objective of establishing public benefit eligibility and the preservation of substantial assets can be met through the use of a certain type of supplemental needs trust, often referred to as an "OBRA Trust", a "d(4)(A) Trust", or an "Under 65 Trust". To meet the statutory requirements, the Trust must be established by the individual's parent, grandparent, guardian, or by the court prior to the individual turning 65 and it must be irrevocable. The individual with special needs must be the only beneficiary during his or her lifetime and the state must

be reimbursed for the amount of Medicaid benefits paid on the individual's behalf. Any trust assets remaining in the trust after the payback is satisfied may be distributed pursuant to the individual's wishes as established in the trust.

Incorporating a supplemental needs trust into an individual with a disability's settlement or award enables the client to remain on public benefits despite the receipt of substantial assets, or enables him or her to achieve eligibility without being subject to a penalty or look-back period for the transfer of assets. In addition, the amount of reimbursement that the trust must pay upon the individual's death is based on the care received by the individual at a discounted government rate, rather than what individuals pay for private care.

The use of a supplemental needs trust in the context of a personal injury award or settlement enables an individual with a disability access to the public benefits they are entitled too, while establishing a supplementary pool of money to provide for all the extras your family member deserves.

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