A person loses SSI and Medicaid eligibility if he or she possesses more than $2,000 in assets (the exact amount may vary by state – check with your attorney). This means a person with disabilities who receives money through an inheritance or a legal settlement will lose government benefits until the money has been spent.

A Special Needs Trust provides a way for a person with a disability to receive financial support while remaining eligible for SSI and Medicaid. Special Needs Trusts are also known as Supplemental Trusts. A person called a trustee administers the Special Needs Trust. The person with a disability for whom the trust is established is called the beneficiary.

**How does a Special Needs Trust preserve SSI and Medicaid eligibility?**

SSI pays for food, clothing, and shelter. Medicaid covers basic medical care. A Special Needs Trust allows funds to be used for anything not already covered by SSI or Medicaid. For instance, money from a Special Needs Trust cannot be used to pay the rent, because SSI already pays for housing. But money from a Special Needs Trust can be used to pay for furniture or a computer, because SSI and Medicaid do not cover these expenses. Other expenses a Special Needs Trust may fund include education, equipment, transportation, entertainment, travel, and out-of-pocket medical and personal care expenses.
A Special Needs Trust must be irrevocable. This means that once the money goes into the trust, the beneficiary cannot remove it. If the beneficiary has the ability to remove the funds, SSI and Medicaid will count the money in the trust as an asset belonging to the person with a disability.

**Who Can Be a Trustee?**

A person called a trustee manages the Special Needs Trust. The trustee is in charge of distributing funds to third parties to pay expenses for the person with a disability. Funds cannot be distributed directly to the person with disabilities. However, provisions may be drafted into the trust requiring the trustee to provide a regular accounting of how the trust money was spent.

Trustees should be chosen carefully. Generally, a family member is chosen as trustee, but a bank or social worker may serve as trustee.

**What if the Trustee Does Not Act in the Best Interest of the Beneficiary?**

When a person agrees to become a trustee, that person assumes a ‘fiduciary duty’. This means that he or she must act in the best interest of the person with disabilities and not in his or her own personal interest. The fiduciary duty exists anytime a person assumes a financial relationship with someone involving personal trust. A trustee can be sued for violating his or her fiduciary duty.

The attorney drafting the trust should address how to choose a trustee during the initial meeting. If there is concern about finding a reliable trustee, some solutions may be appointing more than one trustee, using a professional trustee (for a fee), or requiring regular accountings. An attorney who fails to adequately advise about choosing a trustee may be liable for malpractice.

Additionally, Washington State Adult Protective Services may investigate cases of financial exploitation involving adults with disabilities. For more information on reporting financial exploitation call: 1-866-END-HARM, or 1-866-363-4276.
Who Can Create a Special Needs Trust?

Self-Settled Special Needs Trusts
Any person with disabilities under age 65 may place assets in a Special Needs Trust to preserve Medicaid and SSI eligibility. However, a self-settled trust contains a ‘payback’ provision. This means that any money left in the trust at death must be used to reimburse the state for medical benefits before the leftover money can pass to heirs.

Third-Party Special Needs Trusts
Family or friends may establish a trust on behalf of a person with disabilities under age 65. The ‘payback’ rule does not apply to Special Needs Trust funded by third parties.

Other Kinds of Special Needs Trusts
The standard Special Needs Trust is an individual trust benefiting a person with disabilities under age 65. However, there are different varieties of Special Needs Trusts, listed below, which may be more suitable depending on particular situations. Consult an attorney for advice on setting up a Special Needs Trust that will meet a person’s needs.

Pooled Trusts
A non-profit organization may manage and act as trustee for a pooled Special Needs Trust. This trust combines the funds of multiple people with disabilities. Generally, the non-profit organization receives the remainder share of the pooled trust after the death of the person with a disability, in exchange for operating the trust.

Social Security Special Needs Trust
Lump-sum Social Security payments may be used to fund a Social Security Special Needs Trust. An individual of any age may establish a Social Security Special Needs Trust. The particular rules for establishing these kinds of trusts vary by state.
Washington State Developmental Disabilities Endowment Trust Fund

Washington State has developed a trust for the benefit of Washington residents with developmental disabilities. Any contribution to the this Special Needs Trust receives 25% matching funds from Washington State, up to a maximum benefit of $7,750. For more information on establishing this type of trust, please contact:

Patti Bell, Trust Manager
The Arc of Washington State
2600 Martin Way East, Suite D
Olympia, Washington 98506
888-754-8798

How Can a Person Create a Special Needs Trust?
An attorney should draft the Special Needs Trust. A knowledgeable attorney can assure that the Special Needs Trust follows the SSI and Medicaid rules.

Where Can a Person Find an Attorney?
Attorneys specializing in Special Needs Trusts can be located through the local county bar association, listed in the phone book. The Yellow Pages can be used to locate attorneys specializing in trusts.

The Washington State Bar Association is another resource. WSBA does not provide attorney referrals, but there is information about trusts and how to hire an attorney on their website. Contact the WSBA at (800) 945-WSBA or on the worldwide web at www.wsba.org.
Always advocate in a timely manner. Please be aware that there are certain time limits or deadlines to file a complaint, a lawsuit, or take legal action.

To receive this information sheet in an alternative format, such as large print or Braille, please call Disability Rights Washington (DRW) toll-free at 1-800-562-2702.

Permission to reprint this publication is granted by the author, Disability Rights Washington, provided that the publication is distributed free of charge and with attribution.

This information is current as of July 2007

Disability Rights Washington
315 Fifth Avenue South, Suite 850
Seattle, WA 98104
T: 206-324-1521 or 800-562-2702
TTY: 206-957-0728 or 800-905-0209
Fax: 206-957-0729
Email: info@dr-wa.org
Website: DisabilityRightsWA.org
Interpreters Available

DRW was formerly known as Washington Protection and Advocacy System. DRW is a member of the National Disability Rights Network. A substantial portion of the DRW budget is federally funded.