

# ***THE THIRD PARTY/FIRST PARTY TRUST DISTINCTION***

## ***THIRD PARTY SNT***

Refers to a Special Needs Trust (SNT) established and funded by a person or persons other than the beneficiary. Oftentimes, the parents of a disabled child set up a 3<sup>rd</sup> Party Trust for the benefit of their child. It is designed to supplement public benefits without supplanting them. If the child receives funds exceeding the applicable resource limit, that child would lose his/her SSI and MediCal (Medicaid) benefits. Once the excess resources were spent down to the applicable resource limit, the child could regain financial eligibility for public benefits, but with no “safety net” to pay for those needs that public benefits may not provide, such as transportation, attendant care, special programs, and recreation.

## ***FIRST PARTY/SELF-SETTLED SNT***

Refers to a SNT established and funded by the beneficiary or the beneficiary’s agent. It is sometimes referred to as a “self-settled” trust.

Such trusts must include a payback provision requiring that on the termination of the trust, usually the death of the child, the trustee shall reimburse the state Medicaid agency for benefits paid to the beneficiary during the existence of the trust.

The so-called (d)(4)(A) SNT is the most commonly used form of this trust. It was created to permit the use of SNTs to manage the proceeds of personal injury and other litigation for a disabled plaintiff. It is frequently called a Litigation SNT. This type of trust requires court approval, which may occur in contexts other than personal injury actions, such as guardianships, conservatorships, or pursuant to other state statutory authority.

The non-court approved (d)(4)(A) is used in non-court approved situations by mentally competent disabled persons. For example, a physically impaired but mentally competent SSI recipient might receive an inheritance and transfer it to this type of trust.

The (d)(4)(C) SNT: This is a lesser-used form of 1st Party SNT for pooled funds managed by a non-profit corporation.

Remember, the payback provision is ONLY for 1st Party SNTs, not for the SNTs established by family members for the disabled individual.