

Pooled Special Needs Trusts: Preserving Assets for the Benefit of Individuals with Special Needs



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Why consider a Special Needs Trust?

- ▶ A family or friend wants to provide financially for a loved one who has special needs.
 - ▶ Inheritance
 - ▶ Monetary gift



- ▶ Special concerns may exist when that individual has a disability:
 1. They may need help managing the funds.
 2. They may need to qualify for means-tested benefits such as Medicaid and SSI (Supplemental Security Income).
 3. You may want to leave specific instructions as to how the funds will be utilized by/for your loved one.

Who would benefit from having a *special needs trust*?

An individual who has special needs such as:

- ADD/ADHD
- Autism/Asperger Syndrome
- Brain/Neurological Injury
- Cerebral Palsy
- Heart Disease
- Dementia/Alzheimer's
- Diabetes
- Developmental Delay/Disability
- Down syndrome
- Dual Diagnosis
- Epilepsy
- Genetic Disorder
- Hearing Impairment
- Intellectual Disability
- Lead Poisoning
- Learning Disability
- Mental Illness
- Multiple Sclerosis
- Physical/Motor Disability
- Rheumatoid Arthritis
- Seizures
- Stroke
- Substance Abuse
- Visual Impairment
- Other disabilities



Key Definitions

- **Advocate:** Named by the Grantor, the Advocate is responsible for making requests for disbursements that are for the sole benefit of the Beneficiary. The Advocate will have access to financial statements and can be the Beneficiary, a Guardian, Conservator, Power of Attorney, family member and/or someone who is familiar with the needs of the Beneficiary, such as a case manager. It is also helpful to name an additional Advocate as backup with his/her contact information.
- **Beneficiary:** The Beneficiary of the trust is the person for whose benefit the trust was created; however, the Beneficiary does not own the funds in the trust. The Trustee has the legal ownership of the trust funds. Although the Beneficiary, or someone acting on behalf of the Beneficiary (e.g., designated Advocate), has the right to request disbursements to vendors, the Trustee is not required to approve the request. At the same time, however, the Trustee has a responsibility to ensure that the trust funds are available for supplemental needs that will improve, to the extent possible, the quality of life of the Beneficiary.



Key Definitions

- **Grantor:** The person who establishes the special needs trust.
- **Sole Benefit Rule:** Distributions from the trust are for the sole benefit of the Beneficiary. For SSI and Medicaid recipients, if a trust provides benefits to other persons, it will not be considered a special needs trust, it will become a countable resource.
- **Trustee:** A bank or trust company which has investment authority and invests and distributes the assets at the direction of the Administrator.
- **Trust Administrator:** A non-profit organization which administers the distribution requests for the Beneficiary.
- **PSNT – Pooled Special Needs Trusts:** Includes for this presentation both 1st party (D)(4)(c) and 3rd party (testamentary) pooled special needs trusts.



Role and Responsibilities



- WHO IS RIGHT FOR THE JOB?**
- Family Member
 - Attorney
 - Financial Institution or Bank
 - Nonprofit Pooled Special Needs Trust Administrator

- Utilize the funds for the benefit of the Trust Beneficiary
- Keep the best interest of the Beneficiary in mind
- Understand public benefits and keep up with changing rules
- Invest trust assets wisely and follow fiduciary requirements
- Maintain accurate accounting

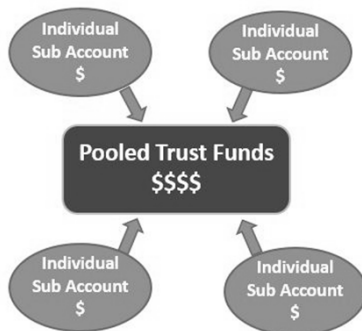


What is a Pooled Special Needs Trust (PSNT)?

- Administered by a 501(c)3 nonprofit organization, governed by a board of directors
- Specialization in providing trust administration services for individuals with special needs
- Partnership with an investment firm, bank or investment professional to manage and invest trust funds
- Set up for the benefit of the beneficiary who has special needs and is administered by the nonprofit so that the Beneficiary does not have control of the funds
- Provides SSI and Medicaid benefits protection as funds in the PSNT are not countable assets
- Also for a beneficiary who does not receive SSI or Medicaid but who would benefit from the services of a trust administrator.



Pooled Trust Funds, Fund Management and Fees



- Funds (cash assets only) are grouped together, “pooled”, for investment purposes
- Each Beneficiary has his/her own sub account
- Lower fees when compared to most other financial institutions and professional trustee options.
 - Banks or financial firms often require accounts to have a minimum of \$300,000-\$500,000 for an individual special needs trust and may have higher ongoing administration and investment fees.
- Authorized parties have access to financial statements (online or by mail)



Two Types of Pooled Special Needs Trust

Third-Party PSNT*	First-Party PSNT
Grantor can be a parent, family member or third-party individual(s).	Grantor can be the Beneficiary, the Beneficiary's Guardian, parent, or grandparent, or Court.
Funds from family member(s) or friend(s) for the Benefit of the Beneficiary in Estate Plans, Life Insurance Policy, Investments, Retirement Accounts or other assets.	Funds belong to the Beneficiary, usually from a personal injury or workers' compensation award, direct inheritance, the beneficiary's own funds or Social Security back payment.
Revocable or Irrevocable	Irrevocable
NOT subject to Medicaid payback	Subject to Medicaid payback
No Age Limitation	Age Limitation: A transfer of assets penalty may apply if the Beneficiary is 65 years old or older (varies by state).



Benefits of a Pooled Special Needs Trust

Benefit #1 Oversight and Objectivity

If you are concerned that a loved one may need help managing funds, a pooled special needs trust will put into place a trust administrator who has the responsibility of making sure funds for are (among other things):

- 1) used for his/her sole benefit
- 2) spent prudently
- 3) properly managed/invested



Benefits of a Pooled Special Needs Trust

Benefit #2 Public Benefits Eligibility / Protection

IMPORTANT! To qualify for these benefits, an individual cannot have over \$2,000 in countable assets.

- For SSI recipients the 2016 SSI monthly allocation is:
\$733 / individual \$1,100 / couple
- The PSNT trust administrator is knowledgeable about the rules regarding Medicaid and SSI.



Benefits of a Pooled Special Needs Trust

Benefit #3 Affordable, Comprehensive and Specialized Trust Services

- Specialization in working with individuals with special needs and their representatives
- Lower administration and investment fees
- Disbursement decisions that follow the sole benefit rule



Benefits of a Pooled Special Needs Trust

Benefit #4 Advocacy / Instructions (Letter of Intent)

Establishing a pooled special needs trust is an opportunity to seriously consider how a loved one's life may change in the future, and to give instructions about his or her care, living arrangements and other needs that must be met.



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Responsibilities of the PSNT Administrator

- Review and approve disbursements
- Income and principal is to be distributed for the Beneficiary at the sole discretion of the trust administrator
- Management and investment of trust funds
- Reports to Social Security Administration and Medicaid
- Financial statements provided online or by mail to Trust Advocate(s)
- Annually distribution of Schedule K-1 tax form for each Beneficiary's sub account
- Court qualification and court accounting, when required



How the PSNT account works

- Funds must be kept in a specific account for each Beneficiary (sub-account)
- All deposit and disbursements must be carefully accounted for
- Advocate(s) is named who works directly with the PSNT administrator to request disbursements and share information about the individual with special needs.
 - Beneficiary
 - Sibling or Relative
 - Guardian or Power of Attorney or Conservator
 - Caseworker
 - Other stakeholder
- Attention must be given to protect Medicaid and SSI, for a beneficiary who receives these benefits



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Best-Practices Criteria for Reviewing Disbursement Requests

- ✓ Whether the request is prudent
- ✓ Whether the request would jeopardize benefits (SSI and Medicaid)
- ✓ Whether the request is for the sole benefit of the Beneficiary which is most important for SSI and Medicaid recipients
- ✓ Whether the request is consistent with the intent of the Grantor, when appropriate



Examples of How the Trust Can be Used

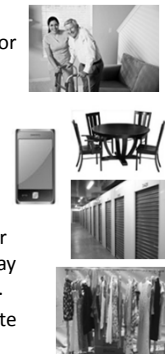
- ✓ **Medication and Devices:** The trust can provide funds for prescription and nonprescription medication not paid for by Medicaid, eye glasses, hearing aids, prosthetic devices, and expenses for maintenance of these devices.
- ✓ **Medical Services:** The trust can provide funds for services that are not paid for by Medicaid such as dental care, eye exams, and hearing exams.
- ✓ **Assistive Technology:** The trust can provide funds for technology such as iPads, computers, and Text-to-Speech (TTS) or speech synthesizers.
- ✓ **Education:** The trust can provide funds for vocational training and educational expenses such as tuition, books, supplies, computers, and software – and training in their use.
- ✓ **Vehicle:** The trust can provide funds for the purchase of a car (typically titled in the name of the Beneficiary). A lien will be required by the Trust Administrator on the vehicle at the time of purchase.
- ✓ **Housing:** The trust can provide funds for the purchase of a home under certain circumstances.
- ✓ **Home Modifications:** The trust can provide funds for home modifications such as ramps and rails to accommodate the Beneficiary, and similar items or expenses.
- ✓ **Home Repairs and Upkeep:** The trust can provide funds for housecleaning services, lawn cutting, household cleaning items, and paper products.



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Examples of How the Trust Can be Used

- ✓ **Clothing:** The trust can provide funds for the Beneficiary's clothing, including for work or school.
- ✓ **Household Bills:** The trust can provide funds for phone, cable, and internet service bills; car and renters' insurance; and storage units.
- ✓ **Care Providers:** The trust can provide funds for skilled nursing care providers, companion services, and travel companions if the Beneficiary requires assistance due to a medical condition or disability.
- ✓ **Vacations:** The trust can provide funds for travelling, including food and shelter expenses, if the Beneficiary will be away from home temporarily. It can also pay for a caregiver to accompany the Beneficiary with a doctor's recommendation.
- ✓ **Family Travel:** The trust can also provide funds for a family member or Advocate to visit a Beneficiary in a long-term care facility for the purpose of supervising their medical care and living arrangements.
- ✓ **Mileage:** The trust can reimburse for mileage to medical visits, school, and work while the Beneficiary is in the car.
- ✓ **Pre-Need Burial and Funeral Expenses:** The trust can provide funds for a prepaid burial or funerary arrangement as long as payment is made before the death of the Beneficiary.
- ✓ **Case Manager:** The Trust can provide for an assessment of the Beneficiary's needs and living conditions.



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Disbursement Procedure

- Payment Request Form with required signatures
- Payable to:
 - ✓ Vendors
 - ✓ Advocate for approved reimbursements
- **No** cash payments to a Beneficiary who receives SSI/Medicaid as it would jeopardize benefits.
- More flexibility if Beneficiary does not receive SSI/Medicaid
- Credit Card option

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Remainder Policy for Third-Party PSNT:

How are funds distributed upon the death of the Trust Beneficiary?

- **Remember:**
A Third-Party Pooled Special Needs Trust is NOT subject to Medicaid payback.
- Some PSNT nonprofit organizations maintain all of the remainder or a percentage.
- **CCT's Remainder Policy for the Third-Party Pooled Special Needs Trust**
 - CCT **does not retain** any portion of remainder funds from a Third-Party PSNT after normal administrative fees are deducted in the closing of the trust account.
 - CCT distributes remaining funds from a Third-Party PSNT to the designated successor beneficiaries who are named on the Joinder Agreement according to the stated percentages.
 - The Grantor can designate who will receive the remainder, such as family member or a charity of their choice.

Next Steps

- Determine what resources will fund the trust.
- Meet with an estate planning attorney familiar with special needs planning if a special needs trust will be a part of a will or estate plan.
- Update all beneficiary designations and notify anyone who may leave the individual with special needs an inheritance/monetary gift.
- Revisit the trust periodically or if family situation changes.



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How to Establish a Pooled Special Needs Trust

1. ***Joinder Agreement***
Legal document required to join
2. ***Fee Schedule***
Includes the enrollment, ongoing administration/investment and other fees
3. ***Family and Beneficiary Information (Letter of Intent)***
Though not required, this can be helpful to the PSNT administrator.



Additional Resources

- Special Needs Alliance
<http://www.specialneedsalliance.org/home>
 - “The Voice”: Great articles about a variety of SNT topics
 - “Find an Attorney” tool

- Social Security Administration Spotlight on Trusts
<http://www.socialsecurity.gov/ssi/spotlights/spot-trusts.htm>

- Contact CCT
 - Request a list of estate planning attorneys who specialize in special needs planning in your area
 - Helpful articles, key definitions:
<http://commonwealthcommunitytrust.org/resources/resources/>



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About Commonwealth Community Trust (CCT)

- 26+ years of experience, founded in 1990
- Has served 1,200+ Trust Beneficiaries
- Nationwide
- Currently administers approx. \$42.5 Million in funded trusts
 - The majority of Third-Party PSNTs with CCT are a part of Grantors’ estate plans and wills and therefore, unfunded at this time.
- Affordable Fees
- Works collaboratively with attorneys, families, financial planners, beneficiaries, and other stakeholders
- Active and involved Board of Directors
 - Comprised of parents who have a son or daughter with a disability, estate planning, elder law, personal injury and workers’ compensation attorneys, physicians, accountants, financial planners, and leaders in for-profit, non-profit and government sectors.
- Informative and user-friendly website

www.trustCCT.org



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