



## Frequently Asked Questions

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### How are the Frequently Asked Questions to be used?

The information provided in the Frequently Asked Questions is not intended to be legal advice, but merely conveys general information related to legal issues commonly encountered. The reader is encouraged to consult with an attorney who is knowledgeable about estate planning. Contact CCT if you would like a referral to an attorney.

## GENERAL INFORMATION

### 1. What types of trusts are administered by CCT?

CCT administers the following pooled special needs trusts:

- **Third-Party Pooled Special Needs Trust** – A trust established by a third party, usually a parent, grandparent, relative or friend for the benefit of a loved one with special needs.
- **First-Party Pooled Special Needs Trust** – A trust established with the Beneficiary's own funds with the Grantor being the beneficiary, parent(s), grandparent(s), Guardian, Conservator or the court.
- **First-Party Pooled Special Needs Trust with Medicare Set-Aside Account** – A trust established with the Beneficiary's own funds with the Grantor being the Beneficiary, parent(s), grandparent(s), Guardian, Conservator or the court following a worker's compensation or liability lawsuit which requires a portion of the settlement funds to be "set-aside" in an account to pay for future injury-related medical expenses and/or medications known as a Medicare Set-Aside (MSA).
- **Military Survivor Benefit Plan Pooled Special Needs Trust** – A trust established by a parent who is a military member or retiree for the benefit of his or her dependent child with special needs and funded by annuity payments from a Military Survivor Benefit Plan. This trust is also a first-party pooled special needs trust.

The trusts differ in whose assets are funding the trust. All trusts are administered by CCT in a similar manner. Many Beneficiaries have both a third-party and first-party trust with CCT. For Medicaid recipients, a major difference between a first-party and third-party trust is how the remainder is handled when the Beneficiary who received Medicaid passes away. (See **How can the trust be funded?** and **What happens to the remainder when the Beneficiary passes away?**)

### 2. How are the trust funds managed and invested? What does "pooled trust" mean?

Each Beneficiary's funds are placed in an individual sub account. CCT accepts cash assets for deposit into the trust; no real estate or non-cash assets are accepted. The cash assets from all sub accounts are then "pooled" together, and are invested and managed by the Trust Company of Virginia (TCVA) ([www.tcva.com](http://www.tcva.com)). TCVA is a federal chartered financial institution with trust powers, located in Virginia. Pooling the funds reduces administrative fees and increases the principal for investment purposes. Earnings based on the Beneficiary's share of the principal are reinvested into each sub account.

A financial record is maintained for each sub account that reflects all the activity in the account. The Advocate has the option of receiving quarterly financial statements in the mail or accessing financial information about the account online at the TCVA website.

The funds are conservatively invested. The Investment Committee of CCT's Board of Directors provides oversight and meets quarterly with the staff at TCVA. TCVA staff members make a presentation to the full Board annually. The CCT Board determines the Investment Policy.

CCT provides trust administration services that include reviewing payment requests and managing disbursements.

### 3. Who can have a trust?

CCT provides services for people who meet the criteria for disabled under the Social Security Administration's (SSA) definition. Adults are considered disabled if they are unable to perform gainful employment.

Children are eligible for Supplemental Security Income (SSI) if they are unable to function in age appropriate activities.

CCT's Third-Party Pooled Special Needs Trust is available to Beneficiaries of any age.

CCT's First-Party Pooled Special Needs Trust is available to Beneficiaries of any age. For an individual who is 65 years of age and older and receives or plans to apply for Medicaid Long Term Care, the eligibility requirements for a first-party trust vary from state to state. Please contact CCT for more information.

#### **4. In what states are trusts from Commonwealth Community Trust available?**

Commonwealth Community Trust (CCT) is a nonprofit organization operating nationally that provides trust administration service for individuals with special needs across the country. The CCT staff is knowledgeable about the rules and provisions for Medicaid and SSI per state in order to not jeopardize benefits.

#### **5. What expenses can the trust pay?**

The trust can be used in many ways to enrich the quality of life of the Beneficiary. The trust can pay for clothing, computer equipment, furniture, dental care, eye exams and eye glasses, vocational training or other educational expenses, and transportation.

The trust must be used for the sole benefit of the Beneficiary.

For a Beneficiary who receives SSI and/or Medicaid, it is the responsibility of CCT to preserve these benefits. CCT follows the rules of government agencies for pooled trust organizations. Disbursements are not made that would duplicate what benefit programs are providing, such as food and shelter for SSI recipients, as these disbursements would affect benefits.

#### **6. Who can request disbursements?**

Primary and Secondary Advocate(s) are named on the Joinder Agreement by the Grantor and can be changed at any time by completing the **Change of Advocate Form**. The Advocate has the responsibility of requesting disbursements, receiving financial statements, and communicating with CCT about the needs of the Beneficiary. The Advocate can be a parent or Guardian, Conservator, Power of Attorney, family member, case manager, or the Beneficiary himself or herself.

#### **7. How are disbursements handled?**

CCT follows the rules outlined in the Master Trust Agreements in administering trusts.

For clients receiving SSI and/or Medicaid, checks are made payable to a vendor, not the Beneficiary, so as not to be counted as income or assets.

Members of the Board of Directors with expertise in estate planning and other related fields serve on the Disbursement Committee and assist the Executive Director, as needed, in making disbursement decisions on behalf of the Beneficiary.

## 8. How do I share my vision for the trust and other helpful information with CCT?

The Advocate for the First-Party Pooled Special Needs Trust will be asked to complete the following forms to share his or her vision for the trust and can be updated as needed.

- a) **Budget: Estimated Expenses to be Paid for Using the Trust:** This form will provide an estimate of how long the trust will last if disbursements stay within that budget over a planned period of time. Looking into the future from the context of a yearly budget will help to not overspend from the trust.
- b) **Objectives for the First-Party Pooled Special Needs Trust:** This form is helpful for CCT to understand how best to meet the needs of the Beneficiary. It allows the Advocate to describe goals for the trust and areas in which disbursements are anticipated.

## 9. What tax information is provided?

Participants with funded trusts will receive a K-1 Form as required by IRS regulations. This form is for tax preparation purposes and will reflect taxable activity of the trust during a given calendar year. Please consult with a tax preparer if you have any questions.

## 10. What is the enrollment process?

CCT encourages prospective participants to consult with an attorney or trusted advisor, and to contact CCT with any questions regarding the enrollment process.

The following documents and payments are required for enrollment:

1. **First-Party Pooled Special Needs Trust Joinder Agreement** completed and signed in front of a notary by the Grantor(s)
2. **First-Party Pooled Special Needs Trust Fee Schedule** signed by the Grantor(s)
3. Checks
  - A. Enrollment Fee made payable to *Commonwealth Community Trust*
  - B. Check for the amount to fund the trust made payable to *TCVA, trustee for CCT, fbo (Beneficiary Name)*

NOTE: If only one check can be dispersed, have the check made payable to *TCVA, trustee for CCT, fbo (Beneficiary Name)* and CCT will deduct the Enrollment Fee from this deposit.
4. Copy of the Beneficiary's Social Security card, if available.
5. **First-Party Pooled Special Needs Trust Attorney Checklist** – if applicable.

## FIRST-PARTY POOLED SPECIAL NEEDS TRUST

### 1. What is the First-Party Pooled Special Needs Trust?

The federal Omnibus Budget Reconciliation Act of 1993, known as OBRA, is a federal law that defines who can have a special needs trust and still qualify for public benefits, and how the trust can be established. OBRA allows people with special needs to place their own money into an irrevocable pooled special needs trust and still be eligible for SSI and Medicaid. These trusts, sometimes also referred to as OBRA trusts, can be set up to prevent personal funds from being counted as the person's assets, so the individual's eligibility for SSI and Medicaid services is not jeopardized. The pooled trust program must be set up and managed by a nonprofit organization such as CCT, and should be established within the same month that the funds are received to ensure that public benefits will not be interrupted.

CCT's First-Party Pooled Special Needs Trust is established by a Grantor and self-funded by the individual with special needs. The Grantor can be the Beneficiary, parent, grandparent, Guardian, or the Court.

## **2. How can the trust be funded?**

The First-Party Pooled Special Needs Trust is funded with the Beneficiary's own funds. These trusts can be established with funds from a personal injury settlement, Social Security back payment, sale of property, inheritance left directly to the Beneficiary, or the Beneficiary's own savings.

Checks can be made payable to *TCVA, trustee for CCT, fbo (Beneficiary Name)* for deposit to the beneficiary's subaccount at any time. Real estate or other non-cash assets are not accepted, since the funds must be pooled for investment purposes.

## **3. What is the First-Party Pooled Special Needs Trust with Medicare Set-Aside Account?**

Following settlement of a worker's compensation or liability lawsuit, federal law prohibits Medicare from paying for injury-related medical expenses or medication that an employer or health insurer is primarily responsible to pay. To ensure Medicare does not pay a medical expense or medication when it is not primarily responsible, federal regulations require that a portion of settlement funds be "set-aside" in an account to pay for future injury-related medical expenses and/or medications known as a Medicare Set-Aside (MSA).

## **4. What is the Military Survivor Benefit Plan Pooled Special Needs Trust?**

With the passage of the National Defense Authorization Act of 2015, military members and retirees can direct annuity payments from their Survivor Benefit Plans (SBP) to a special needs trust for the benefit of a dependent child who has special needs. By law, the Military Survivor Benefit Plan Pooled Special Needs Trust must be set up as a first-party funded special needs trust due to the Medicaid payback provision.

## **5. Is the First-Party Pooled Special Needs Trust irrevocable?**

By law, the First-Party Pooled Special Needs Trust is irrevocable.

## **6. What are the fees to establish the First-Party Pooled Special Needs Trust?**

There is an initial one-time Enrollment Fee, and ongoing administrative fees. (See **First-Party Pooled Special Needs Trust Fee Schedule** for current fees and additional details.)

## **7. What happens to the remainder when the Beneficiary passes away?**

The Grantor can designate Primary and Contingent Successor Beneficiaries in the Joinder Agreement. The Grantor can designate one person, several people or a nonprofit organization like CCT to receive some or all of the remainder funds. This information can be updated by the Grantor(s) at any time by completing the **Amendment to the First-Party Pooled Special Needs Trust Joinder Agreement** form.

### *For a Beneficiary who has never received Medicaid benefits:*

After administrative fees are deducted, the remaining funds are distributed to the Successor Beneficiaries per the Joinder Agreement.

### *For a Beneficiary who received Medicaid benefits:*

The First-Party Pooled Special Needs Trust is a Medicaid payback trust for Beneficiaries who receive Medicaid. Upon the actual death of the Beneficiary, there are specific rules for what happens to the remainder. These rules may vary state-to-state.

In general, the Medicaid office for each state in which the Beneficiary received Medicaid benefits is notified upon the death of the Beneficiary. CCT requests information regarding the total amount of claims (funds that Medicaid has spent) that is owed to Medicaid on behalf of the Beneficiary.

The following scenarios help to explain CCT's policy for the remainder of the First-Party Pooled Special Needs Trust upon the death of the Beneficiary. CCT's policy is followed to the extent that it complies with each state's Medicaid Policy:

**A. When Medicaid is *owed less* than the amount remaining in the trust:**

The Successor Beneficiaries per the Joinder Agreement will receive the balance after Medicaid is reimbursed and administrative fees are deducted. For example, if there is \$50,000 remaining in the trust and Medicaid is owed \$25,000.

**B. When Medicaid is *owed more* than the amount remaining in the trust:**

The remainder will be retained by CCT to support the mission of CCT, which includes the Charitable Fund Award. For example, if there is \$50,000 remaining and Medicaid is owed \$60,000.

**IMPORTANT!** Pre-need funeral and burial arrangements for the Beneficiary should be made and paid for in advance, as disbursements will not be approved after the Beneficiary has passed away.

It is also important that CCT is notified by the Grantor or Advocate at the time of death of the Beneficiary. We are not notified by any other agency. A copy of the death certificate is requested when it becomes available. See the **First-Party Pooled Special Needs Trust Joinder Agreement** section on *Distributions Upon the Death of the Beneficiary* for further details.

## **SUPPLEMENTAL SECURITY INCOME (SSI) AND MEDICAID INFORMATION**

**1. What is the connection between public benefits and personal resources (assets and income)?**

Many individuals with special needs receive SSI, a monthly monetary allowance that pays for food and shelter and usually makes the person eligible for Medicaid. Medicaid pays the cost of health services for people with special needs who demonstrate a financial need. Adults are eligible for SSI if they have a disability that prevents them from working and earning a self-sufficient wage, and they do not have more than a certain amount of assets. Children, who are minors, are eligible for SSI if they have "marked and severe functional limitations" from a physical or mental condition.

In order to be eligible for SSI and Medicaid, a person cannot have more than \$2,000 (current in 2016) in assets that can be converted to cash.

Establishing the First-Party Pooled Special Needs Trust or Third-Party Pooled Special Needs Trust will preserve funds that can be used for the benefit of an individual with special needs, without jeopardizing SSI and Medicaid, as the funds in these trusts are not counted as income or assets.

**2. What services are not provided by public benefit programs?**

Usually people who receive SSI have meager funds available for basic living expenses. SSI pays for food and shelter related expenses, and allows a small amount of money, which may be as little as \$30 a month, for a personal care allowance. A trust can pay for supplemental needs that include eye and dental care, eye

glasses, hearing aids, clothing and other items and services that would enhance the Beneficiary's quality of life.

**3. What must be reported to government agencies for SSI and Medicaid recipients by the Beneficiary or his/her representative?**

It is the responsibility of the Beneficiary or his/her representative to report the following:

- A change in the Beneficiary's living arrangement.
- A change in the Beneficiary's income (including the receipt of any direct income from the trust, but not distributions that are "not income").
- A change in any countable resources.
- New eligibility for other public benefits.
- Substantial medical improvements that may result in the Beneficiary no longer being considered disabled.
- A change in the Beneficiary's marital status.
- Admission to or discharge from any health facility or public facility, such as a hospital or nursing home.
- Any intended trip outside the United States.

The report should be in writing to the Social Security Administration and include the Beneficiary's name and Social Security number, the name of the person making the report, and a description of the event reported and the date it happened. The report is due within 10 days after the end of the month in which the event occurred.

**4. What information is reported by CCT to government agencies for clients receiving SSI and Medicaid?**

The following reports are provided to the appropriate public agencies for Beneficiaries who receive SSI and or Medicaid:

- The establishment of the trust at the time of enrollment.
- When requested by a public agency, CCT will provide a copy of the Joinder Agreement and financial statements that detail deposits and disbursements.
- CCT will provide notification to the state Medicaid office, upon the death of the Beneficiary, for clients who have the First-Party Pooled Special Needs Trust and receive Medicaid.
- Disbursements that would impact benefits, usually for an emergency, and with the advocate's written acknowledgement.

***Please contact the CCT office if you have any questions.***