



## 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 are types of trusts 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 Third-Party Pooled Special Needs Trust will be asked to complete **Budget: Estimated**

**Expenses to be paid for Using the Trust.** The Grantor can describe his or her vision for the trust by completing the **Family and Beneficiary Information** document. This information 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 the planned period of time. Looking into the future from the context of a yearly budget will help to not overspend from the trust.
- b) **Family and Beneficiary Information:** This document will provide background information to assist CCT staff in understanding the Grantor(s) wishes to provide for the Beneficiary. This form allows the Grantor(s) to elaborate on the vision for the trust and to share with CCT information about the Beneficiary.
- c) **Sample Letter to Family Members & Friends:** The Grantor(s) can use this sample letter to provide information on how additional bequests to the trust can be made by family members and friends who would like to direct funds to the Beneficiary through their estate planning tools.

## 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 contact CCT with any questions regarding the enrollment process.

The following documents and payments are required for enrollment:

1. **Joinder Agreement** for the Third-Party Pooled Special Needs Trust – Completed and signed by Grantor(s) in front of a notary.
2. **Fee Schedule** for the Third-Party Pooled Special Needs Trust – Signed by the Grantor(s).
3. Check for the enrollment fee made payable to *Commonwealth Community Trust*.
4. Check to fund the trust made payable to *TCVA, trustee for CCT, fbo (Beneficiary Name)* (if the trust is to be funded immediately).
5. Copy of the Beneficiary's Social Security card, if available.
6. **Attorney Checklist** for the Third-Party Pooled Special Needs Trust – if applicable.

## THIRD-PARTY POOLED SPECIAL NEEDS TRUST

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

A third-party trust is a general term for a special needs trust that a parent, family member or others (the "third-party") establish "for the benefit of" an individual with special needs. Third-party trusts are based on applicable state law (both statutory and common law). All assets intended for the Beneficiary must be third-party assets, typically belonging to the Grantor, family member, or friend at the time of transfer. None of the assets may belong to the Beneficiary.

CCT's Third-Party Pooled Special Needs Trust is administered by CCT, a nonprofit organization.

## 2. Why should I consider a Third-Party Pooled Special Needs Trust?

Family members or others can set up a Third-Party Pooled Special Needs Trust that will provide financial support for a loved one with special needs.

In the case of an individual who receives public benefits such as Supplemental Security Income (SSI) and/or Medicaid, an inheritance left directly to the Beneficiary will jeopardize eligibility because of the \$2,000 asset limit. (See **What is the connection between public benefits and personal resources (assets and income)?**) The same funds, if directed to a Third-Party Pooled Special Needs Trust for the benefit of the Beneficiary, will not be counted as an asset or income for the purpose of maintaining SSI and Medicaid eligibility.

In addition, the Grantor may have concerns about the Beneficiary's ability to manage his or her own funds. The Third-Party Pooled Special Needs Trust eases this anxiety by providing fiscal oversight to ensure that funds left for the Beneficiary meet their intended goals.

## 3. How can the trust be funded?

The most common way to fund the Third-Party Pooled Special Needs Trust is through the Grantor's will, estate plan, life insurance policy or employee benefit. The trust may also be funded by a gift, bequest, or inheritance directed to the trust by a family member or friend.

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

It is helpful to consult with an estate planning attorney who is familiar with special needs trusts when writing your estate plan or will. CCT can provide the Master Trust Agreement and suggested language, and is also available to assist with questions that you or your attorney may have.

## 4. What are the fees to establish the Third-Party Pooled Special Needs Trust?

There is a one-time Enrollment Fee that is due at the time the Joinder Agreement is completed, signed in front of a Notary and received by CCT.

If a Grantor does not submit a completed Joinder Agreement and Enrollment Fee prior to passing away, the Enrollment Fee is assessed at three times the current Enrollment Fee. Trusts that are established in this manner are much more complex to administer due to the lack of information about the Beneficiary and the Grantor's intentions for the trust.

For Third-Party Pooled Special Needs Trusts that will not be funded immediately, there is an Annual Renewal Fee. This fee is assessed annually until the trust is funded. Once the trust is funded, there are ongoing administrative fees and the Annual Renewal Fee is no longer billed.

(See **Third-Party Pooled Special Needs Trust Fee Schedule** for current fees and additional details.)

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

The Grantor can designate Primary and Contingent Successor Beneficiaries in the **Joinder Agreement**. For participants of the Third-Party Pooled Special Needs Trust, the Successor Beneficiaries will receive the remainder of funds in the trust sub account upon the death of the Beneficiary. The Grantor can designate one

person, several people or a nonprofit organization like CCT to receive a percentage or all of the remainder funds. This information can be updated by the Grantor at any time by completing the **Amendment to the Third-Party Pooled Special Needs Trust Joinder Agreement** form.

Upon the actual death of the Beneficiary, distributions for CCT and TCVA administrative and termination fees are allowed. After the administrative fees are disbursed, the remaining funds are distributed to the individual(s) designated in the Joinder Agreement.

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

#### **6. Can a family member or friend other than the Grantor make a contribution to the Third-Party Pooled Special Needs Trust?**

Yes, the trust can receive gifts, bequests, and inheritances from relatives or friends who choose to direct funds to the Beneficiary's SNT. This allows for an efficient and cost-effective way for family members to avoid having to prepare separate special needs trusts, since anyone can name the Beneficiary's trust with CCT in their estate plan or will. It is important that family members be notified that a Third-Party Pooled Special Needs Trust has been established and that funds should be directed to the trust with CCT and not directed to the individual.

Once the Third-Party Pooled Special Needs Trust is set up, checks can be made payable to the Trust Company of Virginia (TCVA) and sent to CCT for deposit into the Beneficiary's account. The Beneficiary's name, and account number if available, should be included on the check to ensure funds are deposited to the correct account.

## **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.

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