

Webinar Q & A

Special Needs Trusts &
Special Needs Pooled Trusts

Question: What language must the court order contain to permit a legally sufficient pooled trust?

Answer: There is no court order required to create a pooled trust. The pooled trust can only be created by a 501 c (3) non-profit organization, and it must include specific "Payback" language.

Q: Will the trustee of the pooled trust submit accountings to the court if the parent or legal guardian is a conservator?

A: Yes

Q: How long does it take to get an individual's money into the pooled trust

A: Same day or one - day after Joinder Agreement is signed

Q: Will the disabled person lose SSI or other benefits for a period of months)?

A: No, the money is deposited in a timely manner, usually by the last day of the month.

Q: What are the rules for renting or buying a piece of medical equipment? Are these considered Supplemental Needs?

A: Yes, either renting or buying the equipment is acceptable.

Q: What about paying for supplementary medical care (like physical therapy)?

A: It is a supplemental need. If MediCare or Medi-Cal is not paying, then it is acceptable.

Q: If the trust BECOMES irrevocable upon an event future to the establishment, is that acceptable?

A: A pooled trust is irrevocable from inception. It will always be administered by its 501 (c) (3) non-profit creator as trustee or an alternate 501 (c) (3) pooled trust administrator.

Q: If a Special Needs Trust does NOT contain a " Payback" provision, is the entire trust INVALID for SSI resource exemption?

A: Yes.

Q: Is a "First Person Special Needs Trust" the same as what you referred to as a "Pooled Trust"?

A: Yes, in a d 4 (c) trust, the grantor, owner of the money, is the first person – and grants the lump sum into a master pooled trust to retain public benefits. To create a self-settled first person d 4 (a) trust requires petitioning the court.

Q: What is the type of special needs trust that does NOT require a provision for Medicaid payback?

A: The trust where the recipient is not receiving any government benefits, usually a 3rd Party trust.

Q: If the special needs individual receives a \$50,000 check on 11/24, should he/she deposit the check?

A: Deposit the money into an individual account and be ready to join a pooled trust by the end of the month. Otherwise benefits can be discontinued and special needs individual would then have to re-apply and re-qualify for benefits.

Q: Is it possible to create a D(4)(A) trust under Probate Code 4500 for a competent but disabled adult who doesn't have a parent or grandparent to establish the trust under Probate Code 3600?

A: In general, the adult will need to petition the court for a self-settled D (4) (A) trust to be created. However a D (4) (c) master pooled trust only requires the signing of a Joinder Agreement.

Q: Example Situation: A homeless man, disabled, under 65, has a 3rd party special needs trust established by a parent. The Trustee apparently absconds with the funds. Have you ever seen the situation of a recovery against a trustee under a special needs trust, and allocation of those assets and/or roll of existing special needs trust assets into the pooled trust?

A: Never. However it might be possible to rollover the funds into a pooled trust, if the assets are received back in lump-sum form.

Q: Can someone who is "working disabled" be part of a pooled trust such as the one administered by Senior Medi-Benefits?

A: Possibly, check with us. The pooled trust would be used to shield a lump sum distribution which knocks the individual from their benefits program.

Q: Does Senior Medi-Benefits have case managers and spanish-speaking assistants that help people request funds and administer their trust accounts?

A: Yes.

Q: Are checks from the pooled trust issued to the beneficiary or directly to the third party providing the service? (ie: plane tickets)

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A: Checks can be issued directly to the beneficiary, or to a third party vendor or service provider. Checks can be issued to a Conservator, who then writes out supplemental needs checks. All amounts need to be documented, with receipts.

Q: Example Situation: A disabled person is a beneficiary of a special needs trust. She receives SSI and recently qualified for Medi-cal. She has a “share of cost” of \$617 per month. The trustee of the special needs trust has taken the position that the client is not entitled to any assistance for living expenses, or for that matter any monies at all for travel or entertainment. Her SSI does not cover her expenses, and her son (an out of work contractor) is supporting her and letting her live with him. He is having trouble making ends meet, too, and paying for her expenses has been a drain (she has severe medical issues that require almost daily medical treatment, most of which requires traveling 100+ miles for each treatment). What do you recommend telling the trustee?

A: The trustee needs to consider the difference between ‘living expenses’ and ‘supplemental needs’. Certain living expenses, if they are non-recurring, varying amounts’ can still be considered supplemental needs. She can pay gasoline, and get reimbursed for driving time.

For a more thorough list, please see our companion FAQ Sheet in pdf format: Defining Supplemental Needs, now available to download at <http://seniormedi-benefits.org/PooledTrust.html>

Q: What are the typical administration fees to maintain the SMB Special Needs Pooled Trust?

Set up fee-- between \$1500- \$3500; Annual Administration-- between 1% - 1.5%.

Please contact Senior Medi-Benefits at pooledtrust@seniormedi-benefits.org to see how your distribution amount fits into the scale.