

# Pooled Trusts- An Underused Planning Tool

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Twenty years ago, enabling legislation was included in the Omnibus Budget Reconciliation Act of 1993 (OBRA '93) which addressed the estate planning concerns of families wishing to maintain, gift or bequeath assets to an individual with special needs. Eligibility for public benefits is based upon means testing, which precludes access by an individual with special needs to the use of resources which would otherwise disqualify an individual from such available benefits. As a consequence to the strict guidelines of government benefits programs, Congress empowered the special needs community with the ability to receive governmental needs based benefits such as Medicaid and Supplemental Security Income (SSI) while using private funds to enhance the quality of life of the recipient. Today, the Special Needs Trust is an established planning tool which, with disciplined application, can provide a wide range of benefits to the Special Needs community.

Relying upon data from the United States Census of 2010 and a report from the U.S. Department of Commerce issued July, 2012, it is enlightening to note that almost one out of five (18.7%) Americans in the non-institutionalized population have a disability. Over 12.5% of our population has a severe disability. Although a traditional Special Needs Trust is used routinely by advisors providing planning services to the special needs community, in OBRA '93, Congress also established the Pooled Medicaid Payback Trust (PMPT), an additional planning tool, to hold the assets of a person with disabilities, even those age 65 and older, without jeopardizing governmental needs based benefits.

In addition to state specific rules, there are numerous requirements for the creation and administration of a PMPT. Trust assets must be for the sole benefit of a person with disability, as defined by the Social Security Administration, and the Trust must be administered by a non-profit, 501(c)3 organization. The trust may be established by a parent, grandparent, legal guardian, court or the disabled person himself or herself, and separate accounts must be maintained for each individual. All separate accounts are pooled for investment and management purposes. Upon the death of the person with a disability, the remaining balance on account may be paid to the state to cover the expense of all lifetime Medicaid assistance previously received, or retained by the trust to benefit other disabled individuals.

The purpose of a PMPT is to pay for items or services not provided by public assistance benefits. Assets in the protected trust fund may be used to purchase supplemental items and services for the disabled individual. These items and services do not supplant SSI or Medicaid benefits but rather enhance them. SSI monies are to be used to pay for food and shelter, and for 2014, the maximum Federal monthly benefit for an SSI recipient is \$721. This money is intended to cover

all costs associated with shelter, including utilities and, if necessary, real estate taxes. Complimenting SSI benefits, assets held in a PMPT can be used to pay for a wide variety of expenses. Examples include *inter alia* the expense of phone and cable TV, computer and internet services, the purchase and maintenance of pets, taking vacations, including the costs incurred by a necessary companion, experimental or elective surgery, advocacy, including attorney fees, special therapies or adaptive equipment, and items or services that bring “joy, optimism or dignity” to the beneficiary. Using private money to enhance the quality of life for an individual with special needs allows the beneficiary to participate in meaningful activities and enjoy as normal a life as is possible.

All 50 states have at least one nonprofit organization offering Pooled Medicaid Payback Trust services. Ohio has the distinction of having one of the first, and the largest pooled trust in the nation. The Community Fund Management Foundation (CFMF), with headquarters in Strongsville, Ohio, and offices in Columbus and Cincinnati, offers administrative services as the Trust Advisor in 79 of the 88 counties in Ohio. CFMF has created over 2,600 trusts since its inception in 1993. Currently, CFMF serves over 1,550 clients with over \$60 million in assets under management.

In January this year, CFMF entered into a three party agreement with Equity Trust Company, an independent Trust Company with headquarters in Westlake, Ohio, as the Successor Trustee, and Vantage Financial Group with headquarters in Independence, Ohio, providing third party administrator services. In addition to CFMF, other Ohio pooled trusts include the Disability Foundation, affiliated with the Dayton Foundation, offering its services in the same counties served by the Dayton Foundation, and The Ohio Pooled Trust, administered by The Center for Special Needs Trust Administration, located in Clearwater, Florida.

Pooled Trusts are relatively inexpensive to set up and are administered by professionals familiar with the unique and complex requirements of public benefits laws. Assets held for the benefit of a beneficiary are held in a subaccount and are combined with the assets of many other sub-trusts, or sub-accounts, for investment and management of the assets. Each sub-account is managed individually for contribution and distribution purposes and the PMPT must be able to provide individual accounting for each sub-account. Fees are charged to open a trust account, and accounts that have reached a certain level of assets are also subject to nominal trustee and administration fees.

A Pooled Medicaid Payback Trust allows an individual with a disability to set aside his or her own money to use for supplemental services while maintaining eligibility for government benefits. It is not uncommon to fund a PMPT with proceeds received from a litigation settlement as a result of personal, physical injuries incurred from a tort action. Funding may also come from inheritance, backpayments from Social Security, life insurance and even lottery winnings. A PMPT is irrevocable.

In the event that an individual or parent or grandparent wishes to establish a pooled trust but is unable to fund the trust with a requirement minimum, initial deposit, \$5,000 for CFMF, an account called a Roll-in Pooled Medicaid Payback Trust may be established, permitting an individual with a disability to gradually save small amounts of his or her own money in a trust

account while safeguarding eligibility for means-tested government benefits. Assets in the trust are considered exempt resources. Once the pre-required minimum account balance of \$5,000 is attained, the beneficiary becomes eligible to receive distributions from the trust.

CFMF frequently works in partnership with other non-profit, 501 (c) (3) organizations that provide support and services to individuals with special needs. Working together, these organizations are able to educate individuals in these organizations about the characteristics and benefits of pooled trust accounts to improve their quality of life and protect their future. State wide, the Community Fund Management Foundation partners with The ARC of Ohio, The Hattie Larlham Foundation, The Jewish Federation of Cleveland and The Association of Developmental Disabilities (ADD).

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