

POOLED TRUSTS FOR INDIVIDUALS WITH DISABILITIES

A pooled trust is one way to protect the assets of individuals with disabilities who depend on public benefits to meet their basic needs. The federal law and Maine Medicaid (MaineCare) rules that authorize d4A trusts created for the benefit of one individual with disabilities also permit d4C trusts which are pooled trusts for multiple individuals. (For information about d4A trusts, please refer to this firm's article entitled "What Professional Advisors Need to Know About Special Needs Trusts Pursuant to 42 U.S.C. § 1396p(d)(4)(A).")

What Is a Pooled Special Needs Trust?

The assets in a pooled trust are managed, administered, and distributed by a nonprofit organization. Instead of holding the assets of a single individual with disabilities, a pooled trust holds the resources of many beneficiaries. It may be a more efficient and cost-effective way to establish a fund for an individual compared to establishing a new trust.

A separate subaccount is created for each individual member of the trust. If the pooled trust is designed as a first-party pooled trust, the subaccount may be funded with the individual's own assets that would otherwise make him or her ineligible for benefits. If the pooled trust is designed as a third-party pooled trust, it would be funded by family or friends who want to set aside some of their own assets for the benefit of the individual with disabilities.

A pooled trust may be a more appropriate vehicle than an individual trust when there is no capable friend or family member to serve as trustee or there are insufficient funds to justify the involvement of a professional trustee, like a bank trust department.

What Are the Options for Pooled Trusts in Maine?

The first pooled trust in Maine came into existence in 2002. Each beneficiary of the Maine Pooled Disability Trust has his or her own subaccount. The Trustees meet to make decisions about disbursements from a subaccount to the beneficiary of that account.

Upon the death of a beneficiary of the Maine Pooled Disability Trust, half of the funds in the subaccount are retained in the trust for the benefit of other disabled individuals or charities. The remainder is available to reimburse the State of Maine or any other state for medical assistance paid on behalf of the deceased beneficiary. If any funds remain, those may be distributed to the beneficiary's heirs.

The website for the Maine Pooled Disability Trust is www.mainepooleddisabilitytrust.org.

Another Maine pooled trust is the Maine Trust for People with Disabilities. The trust's website is www.themainetrust.com.

For additional information about pooled trusts and the other types of special needs trusts, please consult the Special Needs Alliance's website at www.specialneedsalliance.com.

How Does an Individual Join a Pooled Trust?

Each pooled trust has a joinder agreement that acts as an application to the trust. The agreement requests information about the individual, his or her disability, the funds to be held in the trust, and a designated beneficiary for funds remaining after the individual's death (if any).

The board members of the nonprofit organization will meet to review the application. If approved, the organization will sign the agreement and provide you with the next steps for funding a subaccount with the trust.

When seeking to join a pooled trust, it may be helpful to consult an elder law or special needs attorney to learn more about how a particular pooled trust works and to ensure the joinder agreement is completed correctly.

This article is intended to provide information of a general nature only. It does not provide or replace professional legal advice, and it does not establish an attorney-client relationship with the Maine Elder Law Firm or Rudman Winchell. Please consult an attorney for advice regarding your specific circumstances.

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