

# MEPD, Appendix XXXVII, Master Pooled Trust and Medicaid Eligibility Information

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This information assists Medicaid applicants and their attorneys in gaining a basic understanding of the Master Pooled Trust. The Texas Health and Human Services Enterprise attorneys are prohibited from providing legal advice to the public. The only circumstances under which legal staff will review trust documents is when HHSC agency staff have questions about a trust that has been submitted along with a Medicaid application.

## Background

The Omnibus Budget Reconciliation Act of 1993 (COBRA 93), 42 USC 1396(d)(4)(c), allows nonprofit corporations such as the Arc of Texas to establish and manage a pooled trust for the benefit of individuals with disabilities. Pooled trust provisions are found in 1917(d)(4)(c) of the Social Security Act. A pooled trust:

- contains the assets of individuals with disabilities;
- maintains for each beneficiary a separate subaccount established by the disabled individual, parent/grandparent/guardian, or a court from the disabled individual's funds;
- is managed by a nonprofit association that pools the subaccounts for management/investment purposes; and
- includes a provision that, to the extent that amounts remaining in the individual's account at the individual's death are not retained by the trust, the state is reimbursed in an amount equal to the total amount Medicaid paid on the individual's behalf.

## Caution

This information applies only to an individual who meets the definition of disabled according to the Social Security Administration. Based on a medical determination, an individual is considered disabled if they are unable to engage in any substantial, gainful activity because of a medically determinable physical or mental impairment that can be expected to result in death or has continued or can be expected to continue for at least 12 months. A child who is not engaged in substantial, gainful activity is considered disabled if the child suffers from any medically determinable physical or mental impairment of comparable severity to which would preclude an adult from engaging in substantial, gainful activity.

## Transfer of Assets

Transfer-of-assets policy does not apply when a pooled trust is established for the benefit of an individual under age 65. Transfer-of-assets policy does apply when a pooled trust is established or when contributions are made to the pooled trust for an individual who is age 65 or older. Transfer-of-assets policy applies to individuals of any age when an individual's assets in the pooled trust are transferred to another party.

## **Necessity**

The principal purpose and objective of this trust is to provide a system for the management, investment, and disbursement of trust assets to promote a beneficiary's comfort and happiness by providing supplemental care. It is not the purpose nor objective of this trust to provide for or to make expenditures for beneficiary's basic maintenance, support, medical, dental, or therapeutic care, or any other appropriate care or service that may be paid for or provided by other sources. It is not the trust's purpose or objective to provide disbursements for the support of any beneficiary.

## **Characteristics of the Trust**

Disbursements for "special needs" or "supplemental needs" or "supplemental care" shall mean nonsupport disbursements and shall not include cash to the beneficiary or payments for food, clothing or shelter. It is not the intention to displace public or private financial assistance that may otherwise be available to any beneficiary. The trustee shall make disbursements only for the supplemental needs as directed by the manager within the manager's sole discretion. The trust is irrevocable upon acceptance of assets by the trustee. A separate trust subaccount shall be maintained for each beneficiary.

## **Disbursements**

The assets in the trust are to be used only for supplemental needs of the beneficiary and shall not include cash to the beneficiary or payments for food, clothing or shelter. Distributions of income or principal from the trust for medical and social purposes are not counted as income. Distributions to the beneficiary of cash or payments for food, clothing and shelter will be treated as income to the beneficiary.

## **Reporting Procedures**

The primary representative of the subaccount is responsible for reporting the establishment of a master pooled trust subaccount. The pooled trust manager maintains records of each disbursement for each subaccount. Medicaid eligibility specialists request records of disbursements made for the beneficiary as part of the eligibility determination process.

Examples of pooled trusts include:

- The ARC of Texas Master Pooled Trust, established in 1997; and
- the Declaration of Trust for the Travis County Master Trust; Founders Trust Company, Trustee, adopted by decree of the District Court of Travis County, Texas, 201st Judicial District, effective Aug. 1, 1993.