

THE BEGLEY LAWYER ALERT

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POOLED TRUSTS – STATUTORY REQUIREMENTS

By Thomas D. Begley, Jr., Esquire

A self-settled pooled trust is defined as a trust containing the assets of an individual who is disabled that meets the six conditions discussed in the following sections.

Disabled

The trust must be for the benefit of a person with disabilities. Disability is defined by the Social Security Act § 1382c(a)(3). A person receiving SSI or SSD has already been determined to be disabled by the Social Security Administration and no further determination is necessary. If the individual is not receiving SSI or SSD, the State Medicaid Agency has to make a determination. The criteria of the SSI program must be used even in 209b states, unless the state had a more restrictive policy in 1972.

Non-Profit Association

The trust is established and managed by a *non-profit* association. A non-profit organization is an organization defined in § 501c of the Internal Revenue Code (IRC) and also has tax-exempt status under § 501(a).

Separate Account

Separate accounts must be maintained for each beneficiary of the trust. For purposes of investment and management of funds, the trust may pool the funds in the individual accounts. The trust must be able to provide an individual accounting for the individual. Each individual subaccount gets its own EIN number. Each self-settled subaccount is taxed to the beneficiary as a grantor trust.

Solely for the Benefit Of

The trust account must be maintained for the sole benefit of the individual with disabilities. The trust account must be established for the sole benefit of the disabled individual. If the account provides a benefit to any other individual, this exception to the trust transfer rules does not apply.

Established By

The trust may be established by a parent, grandparent, or legal guardian of such individual, or by such individual, or by a court. The fact that the individual may establish the trust himself is different from a self-settled special needs trust under (d)(4)(A). If a third party establishes a trust account on behalf of the individual, the third party must have legal authority to act with regard to the assets of the individual. This requirement refers to the individual who physically took action to establish the trust, even though the trust was established with assets of the SSI claimant/recipient. Since the pooled trust has already been established, this provision applies to the subaccount within the pooled trust.

A Pooled Trust can also be established by a Representative Payee. The POMS permit the transfer of disability benefits to establish a trust or to fund an existing trust. However, there is an exception for past due benefits, which meet dedicated account requirements. These past due benefits must be held in a savings account or checking account, or a money market account established in a financial institution. Representative Payee may pay a beneficiary's disability payments to the trust, provided that:

- Establishing the trust is in the beneficiary's best interest.
- The trust is established exclusively for the use and benefit of the beneficiary, to meet the beneficiary's current and reasonably foreseeable needs. Trust expenditures for food, clothing, housing, medical care, recreation, and education are considered expenditures for the use and benefit of the beneficiary and in his or her best interest. A trust with provisions prohibiting trust funds to be used specifically to meet the beneficiary's current needs for food, clothing, housing, and medical care would not be in compliance.
- The trust is for the sole benefit of the disabled person during his or her lifetime.

A provision in a trust directing disability payments to the trust is prohibited as a violation of the assignment of benefits provisions of the Social Security Act.

Payback

To qualify for the pooled trust exception, the trust must contain specific language that provides that, to the extent that amounts remaining in the individual's account upon death of the individual *are not retained by the trust*, the trust pays to the state from such remaining amounts in the account an amount equal to the total amount of medical assistance paid on behalf of the individual under the state Medicaid plan. There is no payback required by a third-party pooled trust.

To the extent that the self-settled trust does not retain funds in the account, the state must be listed as a first payee and have priority over payment of other debts and administrative expenses, except as listed below.

The following are *allowable* administrative expenses:

- Death taxes due to federal and state governments
- Reasonable fees for the administration of the trust estate

The following expenses are *prohibited*:

- Payments of debts owed to third parties
- Funeral expenses
- Payment to residual beneficiaries

The restriction on payments from the trust applies upon the death of the beneficiary. Payment of fees and administrative expenses during the life of the beneficiary are allowable as permitted by the trust document and are not affected by the state Medicaid reimbursement requirement.

Speakers

If you are interested in having an Elder & Disabilities Law Attorney from Begley, Begley, & Bookbinder speak at an event, please contact Colleen Caruso at (856) 787-4237.

Begley, Begley & Bookbinder

Begley, Begley & Bookbinder, P.C. is an Elder & Disability Law Firm with offices in Moorestown, Stone Harbor and Lawrenceville, New Jersey and Huntington Valley, Pennsylvania and can be contacted at 800-533-7227. The firm services southern and central New Jersey and eastern Pennsylvania.

The Firm provides services in connection with protecting assets from nursing home costs, Medicaid applications, Estate Planning and Estate Administration, Special Needs Planning and Guardianships. If you have a legal problem in one of these areas of law, contact Begley, Begley & Bookbinder at 800-533-7227.

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