

## **GUIDELINES FOR POOLED TRUST ORGANIZATIONS**

### **Preamble:** How to Read and Understand these Guidelines

The Guidelines for Pooled Trust Organizations were developed in 2016 to support quality service delivery and develop standards for consistency in Pooled Special Needs Trust administration and management. They identify key factors to benchmark development of quality Pooled Special Needs Trust (PSNT) programs. These Guidelines reflect views freely offered by many pooled trust organization executive directors with volunteer technical assistance offered by attorneys who have in some cases represented pooled trust programs for many years.

With our work specifically authorized by federal law (42 USC 1396(p)(d)(4)(C)) and with origins going back more than a century, it is recognized that developing aspirational Guidelines applicable across many states is challenging because of varying local circumstances, unique fact patterns and practical limitations.

These Guidelines may at times exceed what federal or state law requires. Discretionary trust decision making in a social services context serving people with disabilities, is complex and important. With all of that said, these Guidelines should provide another milestone reference for our not-for-profit pooled trust profession. They are to be consulted on a discretionary basis in conjunction with other reference guides and the exercise of independent research and professional judgement.

The National PLAN Alliance adopted the Guidelines for Pooled Trust Organizations in September 2017 as aspirational standards and recommend that members and others use them to guide organizational growth and development. Smaller trusts organizations, newer trusts, growing trusts, will all find constraints in their budgets that preclude them from fully achieving the goals these Guidelines reflect. The Guidelines are a further step in the exploration of ideals to assist those who perform this important work

It is our experience that the not-for-profit pooled trust profession has largely been created and sustained by people with a great sense of public service seeking to provide services in a nonprofit context for people who have disabilities, and we thank everyone who has or will in the future help form these Guidelines.

Any entity adopting or referencing these guidelines should give attribution to the National Pooled Trust Standards Committee.

### 1) MISSION

- a) To provide pooled trust services with integrity. The pooled trust program's mission and primary purpose should be adherence to its fiduciary duties and the sole benefit status of each trust beneficiary's account.

### 2) CHARITABLE STATUS

- a) A pooled trust program should be qualified as a charitable entity by the Internal Revenue Service under Section 501(c)(3) of the Internal Revenue Code.
- b) Organizations should provide charitable services and seek donations and grants as needed in keeping with their charitable non-profit status.

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### **3) COMPETENCE**

- a) Organizations should hire competent staff and provide staff with ongoing training.
- b) Organization staff should possess or know where to obtain knowledge of trust laws specific to the applicable state, Medicaid laws and regulations specific to the applicable state; Social Security laws and regulations; HUD Section 8 laws and regulations; laws pertaining to other major programs; and law changes.
- c) Staff should possess or know where to obtain knowledge of the population served and receive ongoing training regarding the population served and changes in disability services.
- d) Organizations should conduct regular evaluations of staff.

### **4) POLICIES / INTERNAL OPERATIONS / FINANCIAL INTEGRITY**

- a) Organizational policies should be approved by the board of directors.
- b) The organization should have policies and procedures for the confidentiality of information and the privacy of beneficiaries.
- c) The organization should have systems for tracking information and processes for accurate and timely availability of needed information.
- d) Individual trust accountings should be provided on a regular schedule.
- e) When trusts are Court supervised, the organization should account to the Court for such trusts upon request.
- f) Organizations and their boards of directors should actively and regularly evaluate their operating reserves.
- g) Organizations should have regular audits of the organization, including internal financial operations, trust activity and Information Technology (IT) security.
- h) The organization should hold directors and officers and professional liability insurance.
- i) The organization may refuse appointment as trustee, resign as trustee, name a disinterested co-trustee or other fiduciary to make a decision, make application to a Court for instructions or do trust modification as appropriate.
- k) Lateral transfers to and from another similar pooled trust should not be unreasonably denied to promote choice and options for beneficiaries, as appropriate.
- l) Organizations should have a brief trust summary of each trust under management which could include names and contact information for grantors, trustees, beneficiaries and remainder beneficiaries, unusual provisions, financial restrictions, and examples of permissible purchases.
- m) The organization's program trust operations should be reasonably transparent for a beneficiary or that beneficiary's representative as applicable for that beneficiary's account.
- n) The Pooled Trust Program should have a conflict of interest policy. The pooled trust organization should require all board members and officers to disclose any real or potential conflict of interest at the time it arises and in any event should annually request disclosure of such real or potential conflicts. Where an individual has a conflict of interest, the board should take appropriate steps to protect the pooled trust organization from injury or undue influence arising from the conflict.
- o) Board members and officers should serve without compensation (other than expense reimbursement) except to extent they are employees of the pooled trust organization.
- p) No board member or officer should receive compensation or any other remuneration from any entity doing business with the pooled trust organization.
- q) This does not preclude a board member or officer from being paid out of an individual trust account for work on behalf of that beneficiary, or on behalf of the organization if approved by a disinterested member of the Board of Directors.

5) PRACTICES

- a) The pooled trust program should follow the terms of the trust instrument and applicable law.
- b) The organization should not make a warranty of eligibility for public benefits.
- c) The organization, with permission from the beneficiary or that person's representative as applicable, should provide public benefits authorities with an individual financial accounting upon request to avoid public benefits disqualification.
- d) The organization should make supplemental support services available to enhance fiduciary services and quality of life, either by direct service provision or referral or purchase of service. Services should be individualized, and person centered.

6) TRUST CREATION TRANSPARENCY

- a) The pooled trust program should disclose the operational features of its Trusts to each prospective beneficiary or that person's representative as applicable to set expectations of how the Trust may assist the beneficiary. The program should provide information related to trust irrevocability, sole benefit restrictions, in-kind support and maintenance restrictions, Trustee discretion, and restrictions on direct payments to beneficiaries.
- b) The pooled trust program should provide information to a prospective beneficiary or that person's representative as applicable about the details of how remaining funds are distributed upon the beneficiary's death, including the possibility of payback of funds to Medicaid agencies and retention of remaining funds by the organization pursuant to 42 USC 1396p (d)(4)(C).
- c) The beneficiary or that person's representative as applicable should be informed of the pooled trust program's typical time frame for processing distributions.
- d) The pooled trust program should encourage a prospective beneficiary or that person's representative as applicable to meet with independent counsel to discuss trust features and specific circumstances of Trust creation.

7) DISTRIBUTIONS TO BENEFICIARIES FROM POOLED TRUST ACCOUNTS

- a) The pooled trust program should maintain a professional relationship with the beneficiary and that person's representative as applicable, consider the needs of the beneficiary and respond to requests for trust distributions.
- b) The pooled trust program should have full discretion to decide if a beneficiary should have a written spending plan for each beneficiary that is provided to each beneficiary and that person's representative as applicable. This may include review of prior year spending, anticipated life of the trust, and considerations of principal and interest spending.
- c) The pooled trust program should not take retention by the organization into consideration when making distributions.

**8) INVESTMENTS**

- a) Pooled trust programs should develop written investment policy statements that are available for review by the beneficiary or that person's representative as applicable and consider prudent investments and risk tolerance.
- b) Investment managers should comply with the organization's investment policy statement.
- c) Pooled trust programs should conduct regular investment performance reviews of the performance of the investment manager and should provide a written report of the findings of such reviews to the organization's Board of Directors.
- d) Pooled trust programs should, upon request, make written investment policy statements available to each beneficiary or that person's representative as applicable.
- e) Pooled trust programs should, upon request, provide information to each beneficiary or that person's representative as applicable regarding who manages investments.
- f) It is the trustee's duty to make the investment selection option. The Trustee may obtain and consider relevant information on beneficiary preference and risk tolerance.

**9) FEES**

- a) Fees charged by the pooled trust program should be reasonable.
- b) The executive director in consultation with staff should develop a fee schedule that is reviewed and approved by the board of directors on a regular basis to see whether the fees are reasonable and are sufficient to meet basic organization expenses. The Board does not review each specific bill sent out.
- c) Fee schedules pertaining to individuals should be provided to that person or that person's representatives or grantors as applicable and should indicate that fees are subject to change upon advance notice.
- d) Legal fees incurred by the organization should not be paid by a beneficiary's account if the expense is not related to that account. A decision that legal fees are related to individual trust accounts should be approved by the organization's Board of Directors. A particular matter might impact just a group within a pooled trust or just one person, or all the pooled trust beneficiaries.

**10) RETAINED FUNDS**

- a) Funds retained by the organization upon the death of a pooled trust beneficiary should be used to benefit people with disabilities and to further the mission of the organization.

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These Guidelines were developed as part of an informal working group, the “National Pooled Trust Standards Committee”, comprised of members listed below, all stakeholders in non-profit organizations providing pooled trust services for beneficiaries with disabilities. Each author holds an undivided ownership interest in and to the final product in perpetuity until such right is extinguished by assignment back to the National Pooled Trust Standards Committee. It is the intent of the Committee that these Guidelines will be used in future academic, professional and industry publications, so as to advance and aid in standardizing the practices of pooled trust administration and management. To the extent these Guidelines are adopted or incorporated into subsequent publicly accessible third party publications, proper attribution must be made to the National Pooled Trust Standards Committee and its authors.

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## REFERENCES

Kitchen, John S., JD, LLM “Customary Special Needs Trust Practices” (January 2016), [www.johnkitchenlawoffices.com](http://www.johnkitchenlawoffices.com)

Lovelace, Renee C., Esq., Pooled Trust Options: A Guidebook, produced by National PLAN Alliance, Inc., Melange Press, NY (2010)

National Guardianship Association “Standards of Practice” Third Edition (2007) [www.guardianship.org](http://www.guardianship.org)

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