



Preserve Assets | Protect Benefits | Live Well

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# Special Needs Pooled Trust First Party Informational Guide



Special Needs Trusts

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Special Needs Trusts

## OVERVIEW: WHO WE ARE & WHAT WE DO

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We help people with disabilities enhance the quality of their lives by—

- preserving their financial assets
- protecting their ability to receive public benefits (such as Medicaid and Supplemental Security Income), and
- providing personalized guidance on their financial expenditures

We help them—and their families—gain peace of mind. We do this by:

- operating Special Needs Pooled Trusts that support beneficiaries' long-term needs
- helping beneficiaries use their funds most effectively, and
- serving as a knowledgeable trustee to oversee disbursement of the trust's resources

### Special Needs Pooled Trusts

A Special Needs Pooled Trust (SNPT) is a way to set aside money for a beneficiary's future use—without jeopardizing their eligibility for public benefits, such as Supplemental Security Income (SSI) and Medicaid benefits. It is called “pooled” because all beneficiaries' separate accounts are invested together—reducing administrative costs and overhead for each.

Why create an SNPT? Because—

- Assets in the trust are not counted as the beneficiary's when determining financial eligibility for Medicaid and SSI.
- Distributions can be used only for the beneficiary, for goods and services that enrich their quality of life and supplement their basic needs.

### **PLAN manages two SNPTs:**

**The MARC First-Party Special Needs Pooled Trust** is the oldest pooled trust serving Massachusetts and the largest in Massachusetts and Rhode Island. Established in 1995, it now has more than 850 beneficiaries and almost \$57 million in assets.

The MARC Trust is a “first-party trust.” This means that each account is funded with the beneficiary’s own assets— which often come from savings, inheritance, or personal injury settlements.

**The Third-Party Special Needs Pooled Trust**, created in 2005, now has more than 100 beneficiary accounts. Those currently funded are valued at more than \$2 million.

“Third-Party” means that accounts are funded with assets from someone other than the beneficiary, such as family or friends. Funding can come from a variety of sources—including gifts, inheritances, or insurance policies. (A **Guide to Third-Party SNPTs**, is available on the website or by request from our office.)

SNPTs are closely regulated by federal and state law and must meet stringent requirements. For example, disbursements cannot be used to benefit another person; and for SSI recipients, disbursements cannot be used for housing and food. In addition, SNPTs must be irrevocable; therefore, once assets have gone into the trust, they can only be disbursed by the trustee and only in ways that meet legal guidelines. (Keep in mind, however, that SNPTs do not have to be *funded* at the time they are created; they can be funded at some later time—for example, with gifts from family members or proceeds from an inheritance or insurance policy.)

### **Personalized Support for Beneficiaries**

We take a direct and individualized approach to serving our beneficiaries. Indeed, PLAN is unique in having a veteran team of social-work trained Service Coordinators who support and advise beneficiaries on a continuing basis.

Each beneficiary is connected with a PLAN Service Coordinator, who is the primary point of contact for her/him and their family. Service Coordinators have three objectives: enhancing the beneficiary’s life; helping the beneficiary use funds thoughtfully; and protecting the beneficiary’s eligibility for public benefits, such as Medicaid and SSI benefits.

All PLAN Service Coordinators are licensed social workers with extensive experience. These caring professionals help a beneficiary identify day-to-day needs and long-term goals. They work with the individual, and often their family, to create a prudent spending plan that addresses those needs and goals. And they coordinate disbursement of funds to the providers of goods and services for the beneficiary.

Our Service Coordinators communicate with beneficiaries, family members, and external service providers. They help to identify unmet needs and eligible expenses; identify and suggest resources, goods and services; and help determine whether expenditures meet legal requirements.

In doing their work, Service Coordinators consider many factors—including the beneficiary’s age, disability, needs, expenses, and trust account balance. But the most important factor is first and always the beneficiary’s best interest.

### **Knowledgeable Trustee**

All trusts must have a Trustee—a person or organization responsible for disbursing funds, managing the trust’s operation, and ensuring that it adheres to all relevant federal and state regulations. By law, the nonprofit organization administering a SNPT must serve as the Trustee. This has the dual benefit of ensuring effective trust management and relieving family members of this responsibility.

With PLAN’s decades of experience as Trustee, participants are assured of effective, knowledgeable, and accountable trust management. As Trustee, PLAN handles all accounting, investments, tax returns, and disbursements for each beneficiary. Notably, we are skilled in identifying which disbursements are permitted by law and which are not—and helping beneficiaries (and families) plan accordingly for the effective use of their trust funds.

Contact us to learn more about how PLAN ensures high-quality management of our trusts and the funds in each beneficiary account.



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### **Community Fund**

PLAN is dedicated to serving people with disabilities, whether those disabilities are lifelong or related to illness, injury, or aging. In addition to the work we do every day with and for our Special Needs Trusts participants – preserving assets, protecting benefits and providing personalized guidance, we are committed to finding other ways to support individuals with disabilities.

Through our Community Fund, we help current and former Trust participants. For **current participants**, we look to help individuals who have limited trust funds to acquire an item or service that will enhance their quality of life. This is one of our ways of easing worry, and helping to ensure that the individual's funds will last longer. For **former participants**, whose accounts were closed due to lack of funds, we will purchase an item or service that will benefit their quality of life.

The Community Fund is also used to support other **nonprofit organizations** that directly serve people of all ages with disabilities. Financial support is given to help underwrite the programs and services provided by these valuable organizations.

A standing committee of PLAN's Board of Directors reviews requests from staff on a rolling basis.

## **THE MARC FIRST-PARTY SPECIAL NEEDS POOLED TRUST: PRESERVING ASSETS, PROTECTING PUBLIC BENEFITS, ENRICHING LIVES**

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### **PRESERVING ASSETS**

A special needs trust is a legal document that enables money to be set aside for a person with a disability. The trust is intended to help preserve the funds for the person, while protecting his/her access to public benefits, such as Medicaid and Supplemental Security Income (SSI).



## PROTECTING PUBLIC BENEFITS

PLAN's **MARC Special Needs Pooled Trust (SNPT)** is a "first party trust" (also sometimes called a "self-settled trust" or a "Medicaid payback trust.") This type of trust, which is explicitly permitted by both Medicaid and Social Security law,<sup>1</sup> is created by a person with disabilities for his/her own benefit.

Typically, it is a person's own assets that are used to fund the MARC trust; occasionally, however, funds of another person are used. Cash is the only type of asset that can be deposited into a trust account. Personal and real property are not accepted.

A beneficiary's funds held in the MARC Special Needs Pooled Trust are not countable assets for Medicaid (called MassHealth in Massachusetts, and Rhode Island Medical Assistance in Rhode Island) or for SSI eligibility.<sup>2</sup> So, a person with a disability can deposit any amount of funds into the Trust account without jeopardizing their eligibility for public benefits. (In technical terms, the deposit is not a "disqualifying transfer" for Medicaid eligibility,<sup>3</sup> and a deposit made before the participant reaches age 65 is not a "disqualifying transfer" for SSI eligibility.<sup>4</sup>)

By contrast, countable assets of as little as \$2,000 held outside of a Special Needs Trust can cause a person to lose eligibility for both Medicaid and SSI. Applicants should ask a knowledgeable attorney what assets count toward the \$2,000 threshold.

There are strict federal guidelines on how funds in an SNPT can be used. For example, all disbursements must be made by the trustee, and made directly to the provider of goods or services for the participant; at no time does the participant have direct access to the funds. Other examples: Disbursements can be used only for the benefit of the SNPT participant; and, for SSI recipients disbursements, cannot go to core needs such as housing and food (because that's what SSI itself is for). If trust disbursements are used for unqualified items or services, they may jeopardize a person's Medicaid or SSI eligibility.

Generally, neither the funds held in an SNPT nor the disbursements are subject to federal or state income tax. However, any earnings on the funds are taxable. Applicants should ask a knowledgeable attorney or accountant about the tax rate.

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<sup>1</sup> 42 U.S.C. § 1396p(d)(4)(C), 130 CMR 515.00; POMS § 01120.203(B)

<sup>2</sup> 42 U.S.C. § 1396p(d)(4)(C), 130 CMR 520.008(H), 520.023(D) and 515.001; 42 U.S.C. § 1382b(e), POMS § 01120.203(B)

<sup>3</sup> 42 U.S.C. § 1396p(c)(2), 130 CMR 520.019(D)

<sup>4</sup> 42 U.S.C. § 1382b(c)(1)(C)

PLAN is thoroughly versed on how SNPT disbursements can and cannot be used. Our experienced staff monitors disbursements from each trust account to ensure that a participant's Medicaid and SSI benefits are not adversely affected.

## ENHANCES QUALITY OF LIFE

A PLAN Service Coordinator will be assigned to a participant promptly after the SNPT account is opened. The Coordinator will contact the participant—plus, as appropriate, a family member, and/or a legal representative—to welcome them and schedule an introductory meeting.

Through this meeting and continuing conversations, the Coordinator will get to know the participant, learning about his/her interests and needs. The Coordinator will review the disbursement process, learn about the participant's expectations for how trust assets will be used, and review his/her current and anticipated expenses.

Together, they will identify specific ways the trust account can be used to enhance the participant's quality of life—while ensuring that disbursements don't undercut eligibility for public benefits.

Often, the participant and Coordinator will create a spending plan, which guides near-term disbursements, and gives participants a reference point to consider long-term use of their funds.

## MARC TRUST | HOW ARE FUNDS DISBURSED?

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### GUIDING PRINCIPLES

All disbursements from the MARC Trust are subject to the following four principles, which reflect federal law.

- **Sole Benefit:** Disbursements must be used for the sole benefit of the participants. They are to enable the person to lead as normal, comfortable, dignified and fulfilling a life as possible. Thus, for example, the trust cannot pay for birthday presents for a participant's sibling.
- **Supplemental Needs:** Disbursement must be used to supplement public benefits; for example, to pay for things that Medicaid would not pay for.



- **Payments to Third Parties:** Disbursements must be made to third-party vendors (such as a furniture store, for a more comfortable chair for the participant) or to reimburse third parties for payments made for the benefit of participant (such as when a caregiver buys a heating pack for the participant's use). Payments cannot be made directly to the participant.
- **Sole Discretion:** As the Trustee, PLAN has sole discretion in making (or not making) any payment from a participant's Trust account. Neither the participant nor any person acting for the participant can require that payments be made. This helps to ensure that disbursements are made on a completely objective basis; and that a participant's account is used in a way that serves his/her long-term needs.

## SAMPLE DISBURSEMENTS / USES OF TRUST FUNDS

The following examples illustrate the types of disbursements that can be made for a trust participant. This is a partial list of appropriate disbursements from a MARC Trust account:

- Health and dental treatment and equipment that are not otherwise covered by insurance—or where out-of-pocket cost or deductibles are charged to the participant. This could include, for example, eyeglasses, supplemental nursing care, dietary supplements, rehabilitative services, or private therapy.
- Social services such as companion services or private case management
- Clothing and personal needs such as toiletries or haircuts
- Household items such as furniture, bedding, television, or microwave
- Communications such as internet service, mobile phone, and other devices
- Transportation such chair-car service, taxi or transportation service rides, and adaptive vehicle purchases
- Recreational and cultural items and activities such as travel, books, movies, and entertainment
- Education and training programs such as college courses, online learning, local lectures, and personal mentors and tutors
- *If a participant is not on SSI*, then disbursements for rent, food, and utilities are permitted



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## PROHIBITED DISBURSEMENTS / USE OF TRUST FUNDS

The following examples illustrate the types of disbursements that cannot be made for a trust participant. This list is not exhaustive.

- *For those on SSI*, disbursements for rent, food, and utilities are NOT allowed
- Gifts for Others
- Gift cards
- Alcohol
- Gambling
- Weapons
- Pornography

## REQUESTING DISBURSEMENTS

There are three methods for requesting disbursements from a PLAN Trust account:

1. A trust participant (or someone s/he authorizes) submits a **Disbursement Request Form** (via email, fax or mail) to the assigned Service Coordinator along with a detailed written estimate or invoice before purchasing the item or service. PLAN will pay the vendor directly. A Disbursement Request Form can be found on the website and in the Forms section of this Guide.

-OR-

2. With approval from a Service Coordinator, a trust participant (or someone s/he authorizes) can request that certain recurring bills, such as telephone, cable, etc. be sent directly from the vendor to PLAN. This change must be initiated by the trust participant by calling and instructing the vendor to change the mailing address on future bills to PLAN, using the following address format.

*[Trust participant's name]*  
*c/o PLAN of Massachusetts and Rhode Island, Inc.*  
*Two Adams Place, Suite 110*  
*859 Willard St.*  
*Quincy, MA 02169*

-OR-



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3. A trust participant (or someone s/he authorizes) submits to PLAN a Disbursement Request Form along with **itemized receipts and proof of payment**. In case of payment by check, a copy of the cancelled check must be provided. The participant can request that PLAN pay a credit card company or a third party (family, friend, other). **No disbursements will be made if itemized receipts and proof of payment are not submitted along with the request form.**

Generally, disbursements are mailed within 7 to 10 business days after receipt of request.

If any single request for disbursement exceeds \$3,000, it must be reviewed by the Executive Committee of the Board of Directors. This might result in a few extra days of processing time

## MARC TRUST | HOW ARE TRUST FUNDS INVESTED?

PLAN understands that the funds are critical to providing each and every trust participant with the items and services s/he needs. That's why PLAN works with Webster Private Bank, a distinguished financial institution with a long history and a regional presence, to serve as PLAN's trust investment manager. Together, our chief objective is the continued preservation of trust assets with an eye toward long-term growth.

Webster Private Bank is the wealth management division of Webster Bank, a \$25 billion regional financial institution headquartered in Waterbury, Connecticut. WPB provides clients with holistic, integrated services and sophisticated fiduciary, planning, and investment offerings, taking pride in delivering straightforward, objective advice and attentive service from a single relationship manager.

Webster Private Bank offers four investment portfolios options, so that each participant may benefit from the one that is right for his or her particular circumstances. Selection of the portfolio model is performed by Webster Private Bank in consultation with PLAN. Among other factors, the participant's age, disability, account size, and spending needs are considered when determining an investment strategy. The portfolio selection is reviewed annually, and may change over time as the participant's circumstances change.



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## MARC TRUST | WHAT ARE THE FEES?

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### ENROLLMENT FEE

A one-time, non-refundable Enrollment Fee is payable to PLAN when an application form is submitted. It helps defray the actual costs of enrollment, such as legal and factual analysis of the individual's application; and preparation and submission of documents necessary for establishing a participant's account within the Trust (including the Instrument of Trust Assignment and the request for an IRS Tax Identification Number). There are two fee levels:

**The Basic Enrollment Fee of \$600** applies when a person can independently complete and sign a legal document (such as the Trust application) on his/her own behalf.

**The Fiduciary Enrollment Fee of \$750** applies for a person who is not able to complete and sign a legal document on his/her own behalf—and who requires the assistance of a Guardian, Conservator, Power of Attorney, or other fiduciary or agent.

### SPECIAL CIRCUMSTANCE ENROLLMENT FEES

Sometimes, an individual's circumstances require legal or administrative work in addition to what is involved in the standard application process. Fees for such work are charged *in addition to* the Enrollment Fees. These Special Circumstances could include (but are not limited to) when:

- Extended consultations are required between the individual's attorney and PLAN's attorney
- There are time-intensive or extended processes for liquidating and/or transferring the individual's assets for deposit in the Trust
- Documents must be prepared and submitted to state or federal courts or regulatory authorities

### ANNUAL FEE

Annual fees and other fees described below will be deducted from each trust account. At all times, sufficient funds must remain in the participant's account to cover fees.

The annual fee covers the costs of:



## Special Needs Trusts

- Fiduciary and administrative services
- Service coordination by licensed social workers
- Professional investment management
- Disbursements and record keeping
- Annual Reports to each participant showing all activity in his/her account
- Ongoing monitoring of public policies, rules, and regulations affecting Special Needs Pooled Trusts

Each participant's annual fee is determined by applying the following scaled percentage to the assets in his/her trust account:

- 3% on the first \$500,000
- 2.25% on the next \$250,000
- 2% on the next \$250,000
- 1.75 % on the balance over \$1,000,000

The Minimum Annual Fee is \$500.

As example, the annual fees for an account with a balance of \$50,000 would total approximately \$1,500—

- \$3,000 on an account with a balance of \$100,000
- \$7,500 on an account with a balance of \$250,000

In seeking to make our services more accessible, PLAN waived minimum fees in the third and fourth quarters of 2017. We will revisit this fee reduction initiative quarterly.

### **TAX PREPARATION FEE (ANNUAL)**

Effective January, 1, 2018, there is a fee of \$210 for preparing and filing the Federal and State Fiduciary Income Tax Return and for producing a "Beneficiary Information Tax Letter" (also known as a Grantor Letter). This document is delivered to the tax participant and used for his/her personal income tax statement.

### **AGENCY REPORTING-OF-ACCOUNT FEE**

A person who receives public benefits (SSI or Medicaid) must report his/her enrollment in the MARC Trust to the appropriate public agency; and the trust participant should anticipate a cost for preparing and submitting this mandatory report. The participant may ask his/her legal counsel to handle this report, and pay the counsel's fee. Or, the participant may ask PLAN to handle the report—in which case a fee will be billed to his/her account.



## LEGAL ACTION ASSESSMENTS

On rare occasions, PLAN may incur costs for defending claims against the Trust or for other legal actions involving the Trust; these may include attorney fees and other costs associated with the legal action. In those circumstances—and in PLAN’s sole discretion—special fees will be billed either to all Trust accounts on a *pro rata* basis or exclusively to the individual trust account(s) affected by the legal action.

## CLOSING COSTS AND CLOSING-RELATED TAX PREPARATION FEES

When a MARC trust participant dies or a participant’s account balance falls to an amount that is insufficient to cover costs and fees, PLAN will begin to close the trust account. The low balance benchmark is \$2,000, and it reflects the costs and fees that come due at the closing of a MARC trust account. These costs and expenses will be deducted from the participant’s account and include:

- Reasonable administrative fees of \$600 for closing investment account and transferring funds into an escrow account; completion and filing of documents; communications with representatives of deceased, with third party vendors who have outstanding claims, and with relevant Medicaid agencies; preparation of final accountings and accounting to a court (where appropriate; and other actions required in connection with account closing.
- The final tax preparation fee is currently \$348. Upon the death of a trust participant, PLAN must prepare and file a Final Fiduciary Return (also known as a Form 1041). This document informs the Federal and State governments of the participant’s death and the closing of the trust account.



## FINAL DISTRIBUTIONS

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Funds remaining in the account are distributed as follows:

- A percentage goes to PLAN's Community Fund to support people with disabilities (see Community Fund, p. 4 above), as follows:
  - If the participant dies within two (2) years of joining the Trust, PLAN will retain 10% of the remaining balance.
  - If the participant dies more than two (2) years after joining the Trust, PLAN will retain 20% of the remaining balance.
- After that charitable portion is deducted, Medicaid must be "paid back" the amount of the actual Medicaid payments the beneficiary received during his or her lifetime. That amount is determined by the state Medicaid agency.
- Any remaining funds (after a. and b.) are distributed to the "remainder beneficiaries;" those designated by the trust participant in the Instrument of Trust Assignment that created the trust account.
- Final disbursements will be made 14 – 16 months after the date of death. This timeline allows for a Medicaid determination, tax statement preparation, and the one-year statute of limitations for creditors' claims. No creditors' claims will be accepted or paid after the one-year period.

## CONSIDERATIONS BEFORE ENROLLING

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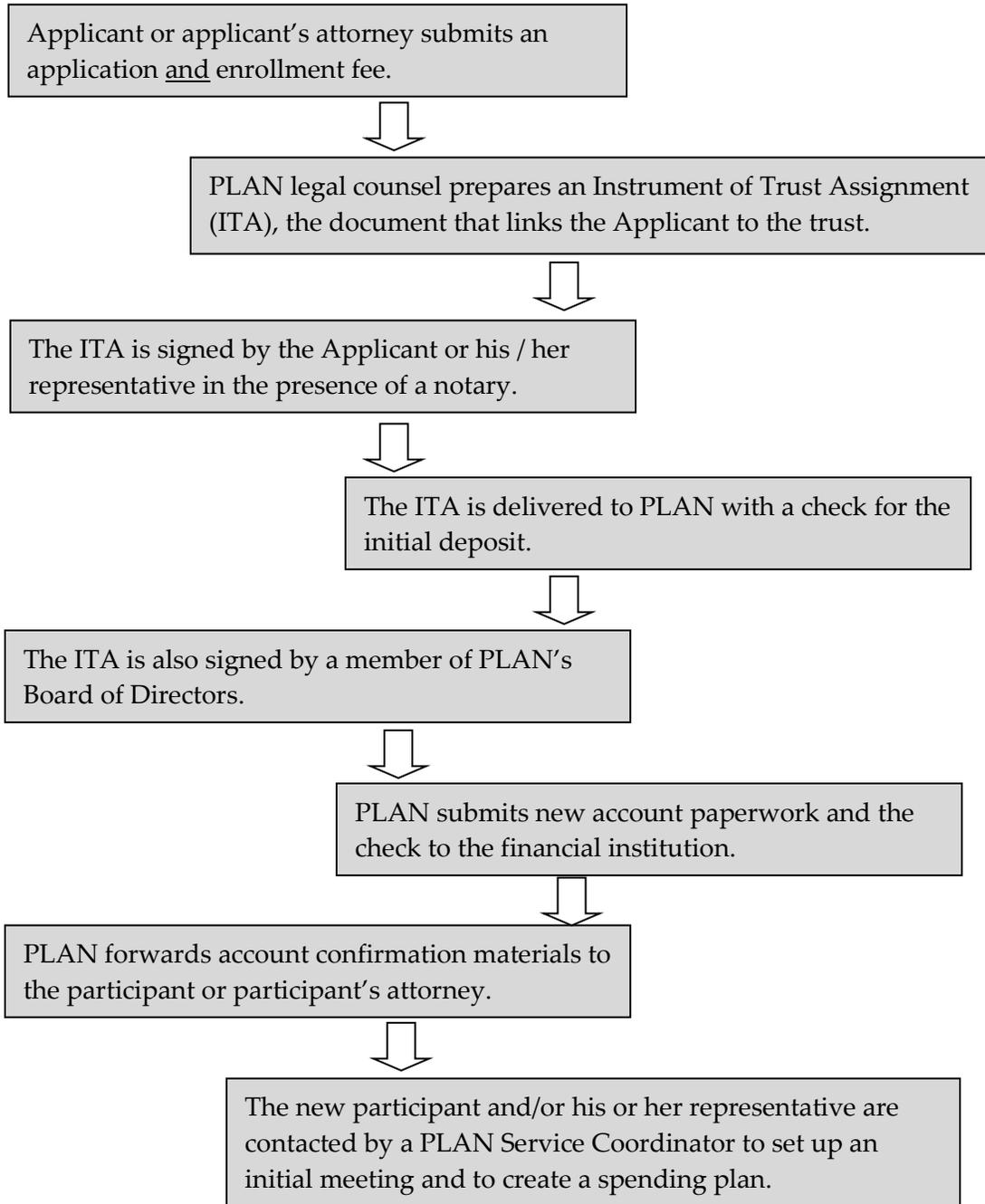
A Special Needs Pooled Trust is a valuable tool for supplementing public benefits and enhancing the quality of life for individuals with disabilities. At the same time, the administration of these trusts is governed by federal and state law, which require that:

- The Trust is **irrevocable**; once an account is established, the participant cannot undo it.
- The Trust is **discretionary**; only PLAN can authorize a payment. Neither the participant nor anyone acting on behalf of the participant can require payments from an individual's account.
- The trust funds are used for the **sole benefit** of the participant; the funds in the account cannot be used for gifts or for the benefit of someone else.
- Payments from the Trust are made to **third-parties**, not to the participant. Appropriate documentation is required when requesting a payment.
- PLAN does not have a minimum deposit for establishing a Special Needs Pooled Trust; but, for accounts with relatively low balances, the enrollment and ongoing fees may undercut the benefit of a trust account. In those cases, a spend-down of assets might be a more appropriate route for the individual.

**ENROLLMENT IN SNPT FIRST PARTY | WHAT TO EXPECT**

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The process for creating an account generally takes up to 3 weeks and includes the following steps:





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**REMEMBER --**

The decision to join the MARC Special Needs Pooled Trust is an important one, and it deserves informed thought.

We strongly encourage anyone interested in establishing a MARC Trust account to consult his/her own attorney or financial advisor.

Please contact us if you have questions or need additional information as you make your decision.

**WHAT FORMS DO I NEED TO COMPLETE?**

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**Application**

The application can be found on PLAN's website, <http://planofma-ri.org/>