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**Special Needs Pooled Trust
Third Party
Informational Guide**

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OVERVIEW: WHO WE ARE & WHAT WE DO

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. (**A Guide to Third-Party SNPTs**, is available on the website or by request from our office.)

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.

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 participant is connected with a PLAN Service Coordinator, who is the primary point of contact for her/him and their family. 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.

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 THIRD-PARTY SPECIAL NEEDS POOLED TRUST: PRESERVING ASSETS, PROTECTING PUBLIC BENEFITS, ENRICHING LIVES

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 **Third-Party Special Needs Pooled Trust (SNPT)** was created to meet the needs of families who wish to provide a safety net for the future care of a relative who has a disability. Families recognize the limitations of earned income and public benefit programs, and the SNPT allows them to supplement their loved ones' resources responsibly.

When creating an account, families can choose to contribute funds immediately or at some point in the future. Once funded, PLAN carefully monitors disbursements from individual accounts to ensure public benefits such as Medicaid and SSI are not adversely affected.

Cash is the only type of asset that can be deposited into a trust account. Personal and real property are not accepted.

A participant's funds held in the Third-Party 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.¹ So, any amount of funds can be deposited into the trust account without jeopardizing his/her eligibility for public benefits. (In technical terms, the deposit is not a "disqualifying transfer" for Medicaid eligibility;² and a deposit made before the participant reaches age 65 is not a "disqualifying transfer" for SSI eligibility.³)

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.

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. 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.

¹ 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)

² 42 U.S.C. § 1396p(c)(2), 130 CMR 520.019(D)

³ 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 enrollment in the SNPT. 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 donor's and participant's expectations for how trust assets will be used, and review his/her current and anticipated expenses.

A family will be asked to create a Life Care Plan, which the Coordinator can help guide and maintain. The Life Care Plan provides a road map for continuing services for the participant. It addresses a range of needs (including housing, health care, education, work, transportation and recreation) and identifies the resources required to meet those needs.

In the case of a currently funded trust, the Coordinator 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. The Coordinator will initiate contact with the participant semi-annually to ensure that his/her needs and goals are being met.

With a future-funded trust, the Coordinator will check in with the participant annually to inquire about the status of the participant and as to whether any changes have occurred that should be reflected in the Life Care Plan. When the trust is funded, the Coordinator will meet with the participant, family and/or legal representative to review the Life Care Plan, his/her current and anticipated expenses, and the disbursement process.

THIRD-PARTY TRUST | HOW ARE FUNDS DISBURSED?

GUIDING PRINCIPLES

All disbursements from the Third-Party Trust are subject to the following four principles.

- **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 Third-Party 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*

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** 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. Submissions can be made by email, fax or mail. A Disbursement Request Form can be found on the website.

-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.
50 Cabot Street, Suite 206
Needham, MA 02494

-OR-

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.

THIRD-PARTY 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 straight-forward, 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.

THIRD-PARTY TRUST | WHAT ARE THE FEES?

ENROLLMENT FEE

A one-time, non-refundable Enrollment Fee of \$500 is due at the time the Joinder Agreement is returned to PLAN. It helps defray the actual costs of enrollment, such as legal and factual analysis of the individual's joinder agreement; and preparation and submission of documents necessary for establishing a participant's account within the trust (including the request for an IRS Tax Identification Number).

SPECIAL CIRCUMSTANCE ENROLLMENT FEES

Sometimes, an individual's circumstances require legal or administrative work in addition to what is involved in the standard joinder agreement process. PLAN will communicate these circumstances with the beneficiary or the person s/he authorizes. Fees for such work are charged *in addition to* the Enrollment Fees; they will be billed to the trust participant's account. 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

FUTURE-FUNDED ACCOUNTS

There is no annual management and consultation fee charged until the account is funded. The one-time \$500 enrollment fee is payable upon receipt of the signed Joinder Agreement.

CURRENT-FUNDED ACCOUNTS

An annual fee 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:

- 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.

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

- \$ 3,000 on an account with a balance of \$100,000
- \$ 7,500 on an account with a balance of \$250,000
- \$15,000 on an account with a balance of \$500,000

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 \$348 fee 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.

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 Third-Party trust participant dies or a participant's account balance falls to a balance that is insufficient to cover costs and fees, PLAN will begin to close the trust account. The low balance benchmark is \$2,000. These costs and expenses will be deducted from the participant's account and include:

- Administrative fees of \$600 for closing the investment account and transferring funds into an escrow account; completion and filing of documents; communications with the trust participant or representatives of the deceased, with third party vendors regarding 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

Upon the death of a participant, any funds remaining in the account are distributed as follows:

1. Any remaining funds are distributed according to the instructions of the donor as specified in the Joinder Agreement.
2. No remainder funds are retained by PLAN, unless the donor has chosen to distribute a remainder share to the organization. If the donor chooses to distribute a remainder share to PLAN, the funds will go to PLAN's Community Fund to support people with disabilities (see Community Fund, p. 6 above).
3. There is no requirement to repay any public benefits that the beneficiary may have received during his or her lifetime.
4. Final disbursements will be made 14 – 16 months after the date of death. This timeline allows for 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

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 laws, 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, sufficient funds must remain in the participant's account at all times to cover costs and expenses.
- For 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 THIRD PARTY | WHAT TO EXPECT

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

Donor or donor's attorney submits a Joinder Agreement and enrollment fee.



PLAN legal counsel reviews the Joinder Agreement, and the Joinder Agreement is fully executed by a member of PLAN's Board of Directors.



If the account will be immediately funded, the donor submits check to fund the account.



PLAN submits new account paperwork and the check to the financial institution.



PLAN forwards account confirmation materials to the donor or donor's attorney.



A PLAN Service Coordinator contacts the donor and the participant to set up an initial meeting and to create the Life Care Plan.

REMEMBER—

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

We strongly encourage anyone interested in establishing a Third Party 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.