

The Use of a WisPACT Trust and
Other Special Needs Trusts to Work
Around Public Benefit Income and
Asset Limitations

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Know The Benefits Of Your Client

- SSI (Supplemental Security Income)
 - SSDI (Social Security Disability Income)
 - Veterans' Benefits
 - Medicare
 - Medicaid
 - Food Share
 - Housing Subsidy

Know The Rules for These Benefits

- Federal Law
- State Statutes
- Federal Administrative Law
- State Administrative Law
- Social Security Program Operations Manual
- Wisconsin Medicaid Eligibility Handbook
- State and Federal Courts

SSI	SSA	SSDI
Supplemental Security Income	Social Security	Social Security Disability Income
Disability	Retirement	Disability
Cash + Medicaid	Cash	Cash + Medicare (After 2 years)
No work history	Work history	Work history
Income Cap - \$674/month in 2010	Income Cap - \$14,160/yr in 2011, if under age 65	Income Cap - \$1,000/month in 2011
Earned & unearned income	Earned income	Earned income
Resource cap - \$2000.00	No resource cap	No resource cap
Minimum cash benefit	Insurance	Insurance

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	Medicaid	Medicare
Program:	Health Care	Health Insurance
Administered by:	States	Federal
Eligibility:	Must Qualify	Entitlement
Qualifications:	Financial & Disability	Age or Disability
Covers:	Several in-home care programs; Skilled nursing care; Long Term care; Prescriptions and co-pays	Hospitalization; 100 days maximum rehabilitation; Prescriptions
Contribution:	Reimbursement required	Premiums and co-pay
Estate Recovery:	Yes	No

Medicaid Subprograms, Part I

- SSI Related Medicaid
- Institutional Long Term Care
- Family Care Long Term Care (FCLTC)
- Home and Community Based Waivers Long Term Care (HCBWLTC)
- Katie Beckett
- Special Status Medicaid
- Medicaid Purchase Plan (MAPP)
- Not a comprehensive list, but note how many of the programs have similar asset and income requirements!

Exempt Assets Part II

- Problem: Many of these assets are not liquid and very difficult to convert!
- Solution: A Special/Supplemental Needs Trust (SNT) is a liquid, exempt asset.
 - Maximize the leverage of Public Benefits
 - Can save for long term needs
 - Prevent “wasteful” spend downs

Introduction To SNT’s

- Third Party v. Self-Funded Trust
- Standalone v. Pooled Trust

Stand-alone Self-Funded SNT (d4A)

- Beneficiary is disabled
- *Beneficiary is < 65 years old at time of creation*
- Trust is for “sole benefit” of beneficiary
- No legal right to distributions from the trust
- Trust is created by parents, grandparent, guardian, or court
- Remaining assets in the trust must be used to reimburse the Medicaid State Agency

Pooled Self-Funded Trust (d4C)

- Beneficiary is disabled
- Trust is established by a non-profit association
- Separate account maintained for each beneficiary
- Accounts are established for sole benefit of the beneficiary
- No legal right to distributions from trust.
- Trust is established by parents, grandparent, guardian, *individual*, or the court
- *Beneficiary can be > 64 at time of establishment.*
- Assets remaining in trust can go to retained fund before going to Medicaid State Agency
 - Retained Fund must be spent on beneficiaries of pooled trust.

Third Party Pooled and Stand-alone SNT

- Cannot mix any assets of the beneficiary with the trust.
- Divestment rules when considering creation.
- The disabled beneficiary cannot have any legal right to distributions from the trust.

SNT's Are Not Countable Assets Or Income

- SNT's are not countable assets nor income for Social Security and Medicaid based benefits.
 - Proper creation
 - Proper Administration
 - A beneficiary cannot receive distributions directly.
 - Sole Benefit Rule
 - SSI limitations

Exemptions From Divestment Rules

- Transfers to a third party trust are divestments unless:
 - The disabled beneficiary is the settlor’s child.
 - The disabled beneficiary is not the settlor’s child but is under 65 years old.

More Divestment Stuff

- The creation of a pooled SNT and/or contributions to such a trust by a third party after disabled beneficiary turns 65.
 - *Unless* the beneficiary is the disabled child.
- Not a comprehensive list of divestment rules, but provides a good background.

Special Considerations For SNTS For Spouses

- Third party special needs trust created and funded *by will* to benefit disabled surviving spouse is not a divestment

**Why Do We Care About These
Divestment and Availability Rules?**

- Family members and friends can get money to their disabled loved ones without disqualifying them for benefits
- Family members can gift to others in limited circumstances and subsequently apply for benefits.

**The Advantages of a Pooled WisPACT
Trust over Standalone SNT's**

- The Retained Fund
- Can be Created by Those < 64
- Expertise in Trust, Special Needs Trusts, and Public Benefits Law
- Professional Services at an Affordable Cost
- Familiarity

**A WisPACT Pooled Trust Does Not
Necessarily Result In Medicaid Payback**

- If the remaining amount < Medicaid Payback = all to retained fund
- If the remaining amount > Medicaid Payback Amount,
 - First to Medicaid Payback .
 - Then whatever is left to remainder beneficiaries.
- The trust's remaining assets can *always* be directed to benefit a specific person under the retained fund.

Leveraging The Retained Fund Part I

- The beneficiary of a WisPACT Trust I can direct the use of their remainder assets to another beneficiary of a WisPACT Trust I.
- Examples:
 - Disabled brother can set up a Trust I and direct its remainder to disabled sister’s Trust I.
 - Disabled *husband* can set up a Trust I and direct its remainder to *wife’s* Trust I

Leveraging the Retained Fund Part II

- The Retained Fund is also used to help non-specific WisPACT Trust I beneficiaries on a grant-like basis.
 - Getting around complications for funeral expenses not pre-paid and incurred after death.
 - Distributions for emergency situations
 - Up to \$1,000 to help subsidize creation costs for trusts funded with \$10,000 or less

A WisPACT Trust Can Be Created By Someone > 64

- Not possible for a standalone self-funded SNT.
- This is especially important for the elderly who develop a later need for Family Care or other MA services.
- A Power of Attorney can now be used to avoid going to court.

Duties of a Trustee

- Identify & Secure Trust Property
- Follow the Trust Agreement
- Manage/Invest/Conserve Trust Assets
- Process Discretionary Requests
 - Does this distribution violate the trust instrument?
 - Does this distribution violate any public benefit laws?
 - Does this distribution create additional venues of liability?
 - Does this distribution put the beneficiary's interest at risk?
 - Can the trust pay for this request or must/should it hold the asset?
 - Can this request be paid by another source?
- File Fed/State Tax Returns (K1)
- Maintain and Provide Accounting Records.

Duties of a Trustee (cont'd)

- Periodic Meetings with Beneficiary/Team
- Cannot administer terms of trust that would require illegal acts or actions against public policy
- Must get approval of trust and pass reviews by SSA and Medicaid
- Handle distributions at death of beneficiary
 - Review MAD summary of Medicaid Activity
 - Pay the appropriate parties – State Medicaid, fees, remainder beneficiaries, cutting trust distributions off at date of death, etc.
- Juggle concerns of liability
 - Workers Compensation -- Tortious Liability
 - Tax Liability (e.g., Do you have anyone who could be considered employed by the trust?)
 - Unemployment Insurance
 - Fiduciary Duties - cannot act in bad faith, self-dealing, overly high fees, duty of impartiality & loyalty, prudent investor rule, etc.
 - Distinguish liabilities of the trust from liabilities of beneficiary

Problems For Corporate Trustees

- No guarantee expertise with public benefit law.
- A bank does not usually serve the disabled community as their primary customers.
- Usually only accept large trusts.
- EXPENSIVE

Problems for Family/Friend Trustees

- Incredibly time intensive.
- Family complications
- Vendors can be apprehensive
- May be cheap, but you may lack expertise.
- Things change – individuals are not permanent.
- Sometimes, there just is not anyone available (now or later).

WisPACT and Associated Bank work to provide a High Quality, Inexpensive Trustee

- The minimum required amount to open a trust is very low.
- Vendors are more receptive to a corporate trustee.
- The Beneficiary Specialists make it possible for the trustee to have a personal relationship with each Beneficiary.
- Pooling beneficiaries = More affordable professional services.
- The trusted family member, guardian, friend, or case worker can serve as an advisor.

WisPACT Trust I & II - Fee Explanations and Disclosure Effective September 1, 2011

- A Statewide Pooled Trust for People with Disabilities Regardless of Age -
Trust Manager - WisPACT, Inc., a Wisconsin charitable, non-profit corporation
Trustee - Associated Trust Company, N.A., a Wisconsin-based corporate trustee

TRANSACTION FEES:

SET UP FEE:
Funded Trust Accounts \$400

FREE DISTRIBUTIONS: 5 checks per month
Additional checks over 5 will be charged a processing fee of \$10.00 each.

ANNUAL FEES:

Trust Account Size	Administrative & Investments
\$750 to \$10,000	None on these interest free accounts
\$10,001 to \$30,000	\$15 per month plus 2.20% per year
\$30,001 to \$100,000	\$25 per month plus 1.90% per year
\$100,001 to \$150,000	\$33 per month plus 1.70% per year
\$150,001 to \$250,000	\$46 per month plus 1.50% per year
\$250,001 and more	\$67 per month plus 1.15% per year

INCOME STREAMS: \$30 per month or 5% per payment, if greater

Important:

The annual fees above are estimated percentages which may vary due to account activity. If you'd like to review your investment management fee with the Trustee or request online access to your account, please call Lisa Olson at 414-278-1818, or toll free at 1-800-236-4940, or email your questions to Lisa at Lisa.Olson@associatedbank.com.

The Trustee may retain outside legal and tax advice for the most complex matters including, but not limited to, trust and estate settlements and may charge a reasonable fee for all such services.

**A WisPACT Trust Has The Advantage
Of Familiarity**

- WisPACT forms are preapproved by SSA and Medicaid.
- Many government employees are familiar with WisPACT.
- Many judges are familiar with WisPACT.

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