Guardian Community Trust, Inc.
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Pooled Trusts

The Pooled Trust program at Community Trust is our flagship platform, currently serving more than 800 beneficiaries in every corner of the Commonwealth. Our beneficiaries include seniors living in the community with family, in their own homes, and in a variety of congregate housing arrangements, including public housing, assisted living, rest homes and others. We also have many beneficiaries who reside in skilled nursing facilities across the state.

People come to us because they require Medicaid or Supplemental Security Income (SSI), and those programs do not allow them to have more than $2,000 in assets. Whatever savings or other assets they own will have to be spent—unless they can set them aside in a Medicaid-exempt trust—in order to qualify for public benefits. There are other public programs, as well, such as Food Stamps, public housing and Veterans Benefits, that can be affected by assets, unless the individual can put them in trust.

Assets in a Pooled Trust can be used for an enormous variety of personal needs that public programs cannot provide. These include recreational and social activities, clothing, a bedside telephone and cable TV, access to a chair car and other transportation, companionship visits, denture replacement and non-medical dental care, social work and legal expenses, and many other uses. For a comprehensive list of the kinds of support that a trust can provide, please go to Uses of Disability Trusts.

What Is the "Pool" in Pooled Trusts?

The "pooling" of accounts in a Pooled Trust means simply that all of the separate trusts in the program are invested and administered under a common set of rules, while distributions are determined completely separately, in accordance with the individual needs and resources that each beneficiary has. Each individual may benefit solely from his or her assets alone.

Having common rules for investment and management allows the trustee to pool assets into common investments, which are managed professionally with seasoned investment counsel. Community Trust invests with low risk tolerance, due to the current investment climate and the relatively short investment horizon for the vast majority of our accounts.

Age and Account Size

Two important reasons that people choose a Pooled Trust are (1) if the person is age 65 or older, a Pooled Trust is the only Medicaid-exempt trust option that is offered to them by the Medicaid and SSI programs; and (2) people with relatively small amounts of assets do not have any other access to high-quality, professional trustee services.

Pooled Trust programs must be administered by a non-profit trustee, whose beneficiaries must be disabled and largely reliant on public benefits. As a charity, Community Trust has no minimum account size, and no minimum annual fee.

Requirements for a Pooled Trust

To qualify as Medicaid-exempt, a Pooled Trust must meet the following criteria, all of which are satisfied by the Pooled Trust program at Community Trust:

1. the beneficiary must be disabled;
2. the trust must be for the "sole benefit" of the disabled beneficiary;
3. only certain individuals—a parent, grandparent, guardians/conservator, court, or the individual himself or herself—can be the one who establishes the trust;
4. except for a trust-retained amount, the state Medicaid program must be the primary remainder beneficiary upon the death of the beneficiary, up to the amount that was paid by Medicaid for that persons benefit during lifetime; and
5. the trustee must be a non-profit organization.

Joining the Pooled Trust Program

A Pooled Trust account is created by signing a short document that creates the account and joins it to the **master trust, Guardian Community Trust for supplemental needs** . This master trust was established originally in 2004 and has been joined by over 2,000 separate beneficiaries over the ensuing years.

There is no application or acceptance fee at the time of joining the Guardian Community Trust program. The joinder instrument is called a "Sponsor Agreement". The Sponsor Agreement should be created with the help of qualified legal counsel. When completed the beneficiary sends in the sponsor agreement with deposit of funds. If the trust is being created by an agent under power of attorney, a conservator or other fiduciary, a copy of the authorizing documents must be included. An account being creating by a court also must include a reference to the legal action or to the petition that authorizes creation of the account.

Steps to Establish a Trust

Step One

Gather the information you need in order to create a trust. Exactly what you need will depend upon what kind of trust you will be creating. Information on this website can help you answer that question, but you should confer with a lawyer with knowledge of public benefits laws and trusts for advice on the type of trust.

The options are:

- Individual SNT with Medicaid payback (if the settlor needs public benefits)

- Individual SNT without Medicaid payback (if the settlor does not need public benefits)
- Pooled Trust

Step Two

Prepare the papers. Usually your lawyer will do this. The time and cost of this step depends on whether you need an individual SNT or a Pooled Trust.

- A Pooled Trust does not require drafting of a separate trust instrument. The trust is created by completing and signing a three-page form, called a "Sponsor Agreement," that joins your trust to the master trust, Guardian Community Trust for Supplemental Needs.
- An individual SNT, whether it is a Medicaid-payback trust or not, requires that you have your own trust instrument. This must be drafted by qualified legal counsel. The cost of this kind of trust varies tremendously, depending upon the hourly rate of the lawyer and many other factors. If you have concerns about the cost, seek a second opinion.

The information that you have gathered (see information you need in order to create a trust) will come in very handy in Step Two. There are still some decisions to make—like who will be the remainder beneficiaries, if there are funds to distribute after the beneficiary's death—but having the names, addresses and other personal information ready will facilitate this process enormously.

Step Three

Step Three is for a trust that will be signed by an Agent under a Durable Power of Attorney, or by a Conservator. If the person who is creating the trust has full capacity to sign it themselves, and intends to do so, this step can be skipped. If not, you need to do the following:

- For an Agent under Durable Power of Attorney (DPOA), you must e-mail a PDF of the DPOA to Community Trust to review. Some DPOA's do not provide the Agent with sufficient trust-making or gift-giving authority to establish the type of trust that you seek to create, and we therefore need a copy of the DPOA to review. If the authority is not sufficient, we will accept the account, pending your assurance that you will go forward with the appointment of a Single-Transaction Conservatorship, where the transaction can be ratified.
- Sometime a Conservator is needed in order to establish a disability trust. Please take a look at our Special Circumstances page if you think that you might have a situation like that. If so, Community Trust will need to review a PDF of the Decree that grants authority to the Conservator to create the trust, before we can accept it. We strongly recommend that you show us the proposed Decree before it is filed, to be sure that the language will be adequate for us to accept the Conservator's authority to sign.

Step Four

Step Four is to marshal your assets for the transfer into trust. This step should be started while the trust instrument is being prepared, in order to prevent delay in establishing the trust once the documents are signed.

Except in rare circumstances, Community Trust accepts deposits only in the form of cash. If any of the assets for the trust are held in securities, insurance contracts, annuities or other investment instruments, normally they should be liquidated and transferred as cash. (Please check with your lawyer, however, before starting any irreversible transactions.) Liquidation can take a couple of weeks, or even longer for insurance contracts.

When you fund the trust, best practice usually is to use a bank check. Bank checks will show the funds being withdrawn on the date of the check. That date will be documented on the bank statement as the date of transfer for purposes of a Medicaid application or notice, as long as the trust instrument has been signed before that date.

You're not quite ready to create trust at this point, but you're very close!

Step Five

Meet with your lawyer and sign the trust instrument or Sponsor Agreement, whichever you are using. You should coordinate with him or her to bring the check for funding the account with you, or otherwise arrange to deliver it to counsel.

Step Six

Step Six is for your lawyer. He or she will mail in the trust instrument and funding check to Community Trust. A Pooled Trust normally will be accepted and established within one business after the day that we receive the signed instrument and deposit check. Individual SNTs can take quite a bit longer.

Distributions

Community Trust manages each trust in ways that avoid interfering with public benefits, so that the benefits from the trust don't simply replace public benefits. We make about 300 distributions per week, which is enough volume that we have a "system" in place, and we try to stay within those boundaries. In emergencies, of course, we make exceptions.

The preferred way of requesting distributions is by regular first-class ("snail") mail, although fax also is used routinely. Community Trust provides forms on its website to simplify the process of requesting distributions. Every request for distributions must be supported by invoices and/or receipts. As Trustee, we are responsible to account to our beneficiaries, as well as to public benefits programs on demand, and so we have to keep records to document every distribution.

We do not accept requests or documentation via e-mail, except under special circumstances, and we discourage physically dropping off of documents, because it can cause papers to be misplaced. Our "system" serves our beneficiaries well, and we don't disrupt it unless doing so is critical to the needs of our beneficiaries.

The time between a distribution request and the mailing of a check to the vendor or other provider can be as short as one day, or as long as four days, depending upon when during our distribution cycle the request and supporting documents are received. Processing normally is done on Tuesdays and Fridays, and checks normally are ready for mailing the next business day.

Distribution Challenges

Most beneficiaries are aware that their trust cannot distribute income or principal to them directly, because the purpose of the trust is to preserve public benefits. Virtually all public benefits consider any receipt of funds from a trust as income, which reduces their benefits for that month, and sometimes for longer. Part of the value that we bring to our role as trustee is to understand and play by these rules.

There are other rules that we have to follow. One of the most general rules is that distributions must be for the "sole benefit" of the beneficiary.

For example, sometimes a beneficiary may want Community Trust to use the account for expenses that only indirectly, if at all, benefit the person, such as holiday gifts, support for a grandchild, expenses of real estate that the beneficiary does not occupy, or other purposes that directly or indirectly benefit other individuals. The fact that our beneficiary may *want* the distribution to be approved may not be sufficient to characterize it as a *benefit* to him or her; if not, then we have to say "no."

Others factors that we must take into account include—

- the size of the trust;
- whether there are enough funds to meet other present and future needs;
- any other financial resources available to provide the support;
- other rules and limits imposed by MassHealth or SSI;
- any clinical recommendations as to the particular needs of the individual;
- input from care providers, family members and interested parties.

Denial of distributions is a rare occurrence. If there is a question or concern, we will contact the beneficiary or responsible party and learn more about the circumstances. Most of the time these interactions are short, simple and agreeable. Some can be longer and more complicated. If we have to decline a distribution, almost always we are able to explain our reasoning and preserve a good relationship, even when we can't do as requested.

Uses of Disability Trust

One of a trustees most important jobs is to use trust assets and income to support each beneficiary's independence, comfort and dignity, without unintentionally impacting other benefits. As trustee, we are accountable for the use of assets, and therefore we are required to make all distribution decisions. We rely, however, on guidance from our beneficiaries, their families, their caregivers and other responsible persons, as well as evaluations and recommendations from our Clinical Relationship Managers, to inform our decisions.

Below is a representative list of uses that we have covered over the years. This is not a "menu," and it does not represent a list of entitlements. Each distribution decision is handled individually, based upon our best judgement of the present and future needs of the beneficiary, and the ability of the trust, working with other benefits, to meet his or her needs over a lifetime.

Representative List of Possible Uses of a Special Needs Trust Account

Social Support

- Private case management
- Companion services
- Outings
- Travel

Medical Services Not Covered by Medicare or Medicaid

- Hearing aids
- Dentures and other Dental Care
- Podiatry Services
- Glasses and other Eye Care
- Co-pays for Medical Visits and Prescriptions
- Physical therapy
- Massage therapy
- Counseling/Psychiatry
- Customized wheelchairs

Professional Services

- Legal Fees
- CPA/accountants
- Fiduciary services
- Music therapy

Communications Media

- Cable TV
- Bedside Telephone
- Cell Phone
- Electronic Tablets
- Computers
- Home Security Systems

Transportation

- Payment for The Ride
- Charlie Cards
- Ambulance
- Automobile Costs (Accounts over $100,000 only)
- Hired transport (Cabs, Uber, Lyft)
- Chair van for special occasions

Household

- Flower delivery
- Gardening tools

Other Personal needs items

- Sewing machine
- Craft Supplies
- Art Supplies
- Magazines
- Newspapers
- Hair care
- Manicure
- Pedicure
- Clothing
- Shoes
- Dog therapy
- Cat therapy
- Meals out at restaurants
- Milestone birthday celebrations
- Trips/Outings

End of Life Planning

- Pre-need Funeral Contract
- Burial plots
- Headstone/monument
- Burial Expense Account
- Life insurance (if policy assigned to funeral home)

Investing Your Funds

With assets in trust averaging $60M, management and investment are high-priority concerns for Community Trust. We work with four different custodians, in slightly different capacities with each, based upon the type of trust. Our Trust Administrators represent decades of trust management experience, during which time they have administered well over 3,000 trust accounts, ranging in size from tiny Pooled Trust accounts for disabled seniors, to individual trust accounts in well in excess of $1M.

To learn more about the specific Investment and Administration services that Community Trust provides, choose from the following options:

Investment

Community Trust retains the services of four different custodians, in slightly different capacities with each, based upon the type of trust. Each custodian is a seasoned, highly professional financial entity. Like Community Trust itself, each custodian is bound by fiduciary law to act in absolute good faith and fair dealing, the best interests of our beneficiaries with respect to the funds that they hold.

1. Almost all of the assets in the Pooled Trust program are invested through our primary custodian, Wilmington Trust Company, a subsidiary of M & T Bank, which is a $130B full-service financial institution based in Buffalo, NY. Funds at Wilmington Trust are held in a money market account and in conservatively-managed mutual funds, consisting primarily of short-term bond funds. Mutual funds are invested through omnibus positions held by Wilmington Trust for the benefit of a variety of its custodial clients. While all of the Pooled Trust assets are managed collectively, the amount of each security that a particular beneficiary account holds is customized for that individual account. Customization can result in very slightly different risk exposures among accounts, but these differences represent mere variations of low-risk options, due to the conservative nature of all of the Wilmington Trust investments.
2. A small percentage of Pooled Trust assets are invested with FSC Securities, a subsidiary of AIG, Inc., one of the largest financial services companies in the world. Our agent with FSC Securities is Duffield Financial Group, located in Concord, MA, a boutique investment advisory group that specializes in mutual fund investments. FSC Securities also serves as custodian for almost all of the funds that Community Trust has in individual trusts, which presently ranges from $5-10M. As with funds in the Pooled Trust program, Duffield Financial Group provides investment advice for individual trust assets. The investment profiles for individual trusts vary substantially from one to the other, based upon the age, disability, family circumstances and multiple other factors. For accounts of significant size, the individual trust beneficiary and/or responsible party will meet with Duffield Financial Group periodically to review investment goals and returns, for the purpose of maintaining alignment of the investment profile with the needs and expectations of the beneficiary.
3. M & T Bank (the parent company for Wilmington Trust) also provides Community Trust with a cash account that is used for distributions of the funds held at Wilmington Trust. Because of the larger number of distributions that we make, the account at M & T

has a substantial average balance, but funds flow in and out of this account very actively, as it funded only with amounts for which distribution checks have been posted.

4. Community Trust maintains checking and/or savings accounts for a small number of individual trusts, for the purpose of check-writing.

Management

Community Trust obtains independent financial advice for managing its trust accounts from Duffield Financial Group of Concord, Massachusetts. As a "Pooled Trust" program, these assets are managed collectively and are held in very low-risk investments that are designed to produce income. The amount of each security that any particular trust account holds is customized for that individual account. Customization can result in very slightly different risk exposures among accounts, but these differences represent mere variations among low-risk options.

Individual trust accounts are also advised by Duffield Financial Group. These trusts are managed differently, because they often involve younger beneficiaries. Unlike Pooled Trust accounts, individual trust investments are invested separately on the basis of relevant facts about the beneficiary and his or her circumstances. Each trust is reviewed and assigned its own investment objectives, which may include income, growth and/or preservation of principal.

Financial accounting, records of transactions, production of statement and other financial management tasks are handled by Fiduciary Technology Partners, a Connecticut company that handles accounts for 90 non-profit foundations with over $50B in assets.

When Someone Dies

Death of the Beneficiary

Most of the trusts that Community Trust manages are Medicaid-payback trusts, which affects dramatically the administration of the trust after the beneficiary's lifetime. Trusts that do not required Medicaid reimbursement are those that were created by an estate, or by a parent, grandparent or other benefactor who had no need of Medicaid or other public benefits for themselves. Because they did not have to worry about disqualifying asset transfers, these settlors were free to create a trust for the beneficiary during their own lifetime that did not default to the state when that beneficiary passed away.

Administration of Medicaid-Payback Trusts

If the trust requires Medicaid reimbursement, all funds remaining in the trust, with the exception of a very few allowed expenses, must be offered to the Medicaid program to reimburse medical benefits that were provided to individual during his or her lifetime. Only after reimbursing all Medicaid benefits can the remaining funds be passed on to others, such as a family member, charity or other "remainderman."

The restrictions upon paying debts can be very harsh. For example, neither a pooled trust account, nor an SNT, can pay for the beneficiary's funeral or burial expenses. Because of this strict limitation, Community Trust urges every beneficiary to ***purchase a pre-need funeral contract and other burial-related assets, before or immediately upon establishing a disability trust.*** We give notice to every new beneficiary of this important issue, and frequently we use assets of the trust to purchase funeral and burial-related assets.

Another severe (and sometimes very unfair) restriction is debts for services provided during the days or weeks immediately prior to the passing of the beneficiary. This can include legal fees, private home health or Social Worker charges, and fees for other services that were provided in good faith with an expectation of payment. The trustee has *no discretion* to pay debts, no matter how justified, after the beneficiary has died. Community Trust urges all such providers to ***submit invoices for retainers to cover fees that might be incurred during a final billing cycle***, in the event of an unexpected passing of the beneficiary.

Procedures

As soon as we learn that someone has died, Community Trust begins the process of closing the account. The normal steps for this process are—

1. We will contact the town in which the beneficiary passed away for a copy of the death certificate, or one will be provided by a family member.
2. We send notice, with a copy of the Death Certificate, to MassHealth, and to any other state Medicaid agency that we know or believe to have provided medical benefits to the beneficiary. We request a statement of the amount of the Medicaid claim against the remainder of the trust.
3. As soon as we receive the amount of the Medicaid claim, we prepare a final accounting of the trust. If the Medicaid claim is greater than the balance of the account, we send a copy of the accounting to any remaindermen named in the trust, pay out the balance to the state, and close all trust accounts. If any amount remains for remainder beneficiaries, those distributions are paid as soon as all of the remaindermen have received the accounting and returned a signed Assent to us.

Medicaid programs have up to a year to give us final notice of the amount of any claims. Because of this entitlement, we cannot close the account within the year unless we can be sure that there are no outstanding or unknown Medicaid liabilities.

When all of the checks have cleared and the funds are disbursed, the trust accounts are closed, and the trust itself at that point is considered closed. Trust records are maintained for seven years after the trust is closed.

Order of Final Distributions for All Trusts: Closing Fee

Community Trust does not charge an application fee, unlike any other pooled trust program in Massachusetts. If there are any funds remaining in the account upon the beneficiary's passing, Community Trust retains a $1,000 closing fee to cover all administrative expenses related to opening and closing the account.

Order of Final Distributions for Pooled Trusts: Retained Amount

The order of final distribution for pooled trust includes an amount that the non-profit trustee is permitted to retain for its charitable purposes under federal and state law. Community Trust limits this amount to not more than 15%, which is distributable prior to Medicaid reimbursement. Community Trust's charitable work includes its support of public guardianship for the indigent, which has been a feature of its mission since the organization was established in 2014.

Community Trust retains a varying amount, depending upon how long the account existed:

Schedule of Trust-Retained Amounts

Duration of Trust Prior to Death	Percentage Retained
Up to one year	5%
More than one year, but less than two years	10%
Two years or longer	15%

The trust-retained amounts are not cumulative. Only one percentage applies, based upon the number of years that the trust existed.

Amounts retained by Community Trust are added to an Endowment that was established in 2006 to support an Office of Public Guardian for Massachusetts. That work is continues through a collaboration with other public and private stakeholders, called the Massachusetts Guardianship Policy Institute, and recently has resulted in the opening of a pilot project through an affiliate, Public Guardian Services. For more information about how the Endowment is used, please visit www.guardianship.institute, or www.publicguardianservices.org.

Trust records are maintained for seven years after the trust is closed.

Fees

The fees assessed by Community Trust pay for the costs of operating its trust programs. Services for most individual trusts are priced below cost. Professional investment advice is included in all trustee fees, as is the cost of our Clinical Relationship Coordinator, annual accountings, and all other costs of administration, other than tax returns, which are billed at actual cost.

Fees are billed at the end of each quarter (March 31, June 30, September 30 and December 31), based upon the principal balance of the trust on the last day of the quarter. The amount billed each quarter is one-fourth of the annual fee.

Fee for Pooled Trust Accounts

Fees for Pooled Trust accounts are charged on a schedule, as follows:

Balance	Fee
$1 to $80,000	3.0%
$80,001 to $120,000	2.5%
$120,001 to $200,000	1.75%
Over $500,000	1.25%

Tax Preparation

There are two types of tax returns that Community Trust prepares each year, based upon how the IRS views the trust.

Grantor Trusts

If a trust benefits the same person who created it, the IRS calls that a "grantor trust," and all of the income and expenses of the trust pass through directly to the beneficiary. For those kinds of trusts (which includes almost all of our Pooled Trusts), the trustee's job is simply to report the income and expenses. We do this in a document called a "Grantor Letter." If, as a result of trust income, the beneficiary actually owes tax (which is very, very rare), Community Trust will distribute funds from the trust account to pay the tax.

Complex Trusts

The other type of trust that the IRS recognizes is a "complex trust." This is any trust that is made by someone other than the beneficiary, and which gives the trustee discretion to distribute income or to hold it in trust, as the trustee sees fit. Many of our individual SNTs are complex trusts. In addition, when a beneficiary passes away, the trust become a complex trust for the remainder of the year in which death occurred. We therefore must file two tax returns for that trust.

A complex trust pays its own taxes, using IRS Form 1041 and Massachusetts Form 2. Since tax rates for trusts are higher than most individual tax rates, it usually is best if whatever distributions were made during the year are treated as income of the trust. Treating them as income distributions allows the trust to deduct the income, and the beneficiary then must report it. But again, the individual pays a much lower tax rate. If, as a result of trust income, the beneficiary actually owes tax, Community Trust will distribute funds from the trust account to pay the tax.

Tax Prep Fees

The only fees that Community Trust charges for taxes are the actual amount billed by the accounting firm that does the taxes. For 2019, these amounts were: Grantor Trusts: annual Grantor Letter: $125 and Final Return (after death): $110; Complex Trusts: $355/return