

Pooled Trust: 42 U.S.C. §1396p(d)(4)(C)

(C) A trust containing the assets of an individual who is disabled (as defined in section 1382c (a)(3) of this title) that meets the following conditions: (i) The trust is established and managed by a non-profit association. (ii) A separate account is maintained for each beneficiary of the trust, but, for purposes of investment and management of funds, the trust pools these accounts. (iii) Accounts in the trust are established solely for the benefit of individuals who are disabled (as defined in section 1382c (a)(3) of this title) by the parent, grandparent, or legal guardian of such individuals, by such individuals, or by a court. (iv) To the extent that amounts remaining in the beneficiary's account upon the death of the beneficiary are not retained by the trust, the trust pays to the State from such remaining amounts in the account an amount equal to the total amount of medical assistance paid on behalf of the beneficiary under the State plan under this subchapter. To the extent that funds which belonged to the beneficiary before going into the trust are "not retained by the nonprofit trustee to benefit other people with disabilities, then the State has the opportunity to make a claim for reimbursement for Medicaid funds provided, subject to hardship considerations under 42 USC 1396p(d)(5), and then the balance- may be inherited by persons selected by the grantor or as determined by the laws of intestacy

What is a special needs trust?

A special needs trust is a trust agreement, authorized by federal law,¹ which excludes certain assets and income from being counted against eligibility for certain need-based government benefits. If an otherwise impoverished disabled person comes into money, that person will lose his or her Medicaid health insurance. Because Medicaid is often the only health insurance a disabled person can obtain, the new money is often absorbed totally by health care costs. The disabled person then has no recourse other than discontinuing health care until the "new" Medicaid may be obtained upon "reimpoverishment." It is, therefore, critical to keep Medicaid eligibility intact. Special needs trusts allow disabled people to keep the benefit of their savings but only to supplement government benefits which fall short of actual need. The disabled person is able to keep the benefit of the money and the Medicaid health insurance subject to state and federal law. Under some special needs trusts, the government then gets paid back upon the death of the disabled person.

What is a pooled special needs trust?

A pooled special needs trust is a big "master" special needs trust with many subaccounts, one for each disabled person who enrolls in the pooled trust. By "pooling" together these subaccounts, enrollees benefit from the economies of scale. Pooled trusts can accept accounts of any size, whereas banks and other professional trust companies cannot ordinarily accommodate smaller accounts. Pursuant to federal law, pooled trusts must be administered by a not-for-profit trustee.²

What are some of the differences between an individual special needs trust and a pooled special needs trust?

An individual special needs trust is a trust created for the sole benefit of one disabled person. Individual special needs trusts that accept deposits of the disabled person's own funds are called "first-party" trusts.³ First-party individual special needs trusts are irrevocable documents in which almost any adult person or trust company may be appointed. Pooled special needs trusts must be administered by a not-for-profit trustee and are created for many disabled persons at once. With first-party individual special needs trusts, the government must be repaid any monies remaining in the trust upon the death of the disabled individual. With pooled special needs trusts, the government also may be repaid but only to the extent not retained by the pooled trust itself.⁴

Congress created this rule so that the not-for-profits could retain the funds to further their not-for-profit purpose of assisting the disabled. The pooled special needs trust allows the monies to benefit disabled persons during their lifetimes and for any remaining monies to be available to fulfill the not-for-profit's mission. Used properly, it is a true public-private partnership where the public good is served.