

GUIDELINES FOR POOLED TRUST ORGANIZATIONS

GUIDELINES FOR POOLED TRUST ORGANIZATIONS Version 4 October 2025

Preamble: How to Read and Understand these Guidelines

The Guidelines for Pooled Trust Organizations were initially developed in 2016 to support quality service delivery and develop standards for consistency in Pooled Special Needs Trust administration and management. They identify key factors to benchmark development of quality Pooled Special Needs Trust (PSNT) programs. These Guidelines reflect views freely offered by many pooled trust organization executive directors with volunteer technical assistance offered by attorneys who have in some cases represented pooled trust programs for many years.

With our work specifically authorized by federal law (42 USC 1396(p)(d)(4)(C)) and with origins going back more than a century, it is recognized that developing aspirational Guidelines applicable across many states is challenging because of varying local circumstances, unique fact patterns and practical limitations.

These Guidelines may at times exceed what federal or state law requires. Discretionary trust decision making in a social services context serving people with disabilities is complex and important. With all of that said, these Guidelines should provide another milestone reference for our nonprofit pooled trust profession. They are to be consulted on a discretionary basis in conjunction with other reference guides and the exercise of independent research and professional judgement.

The National PLAN Alliance adopted the Guidelines for Pooled Trust Organizations in September 2017 as aspirational standards and recommend that members and others use them to compare their services, policies and procedures and guide organizational growth and development. Smaller trusts organizations, newer trusts, growing trusts, will all find constraints in their budgets that preclude them from fully achieving the goals these Guidelines reflect. The Guidelines are a further step in the exploration of ideals to assist those who perform this important work.

It is our experience that the nonprofit pooled trust profession has largely been created and sustained by people with a great sense of public service seeking to provide services in a nonprofit context for people who have disabilities, and we thank everyone who has or will in the future help form these Guidelines.

Any entity adopting or referencing these guidelines should give attribution to the National Pooled Trust Standards Committee.

1) PURPOSE

- a) To provide pooled trust services with integrity. The pooled trust program's mission and primary purpose should be adherence to its fiduciary duties and the sole benefit status of each trust beneficiary's account.

2) CHARITABLE STATUS

- a) A pooled trust program must be a **nonprofit association**. All money earned through pursuing the organization's mission should be used to benefit people with disabilities and to further the mission of the organization.
- b) Organizations should provide charitable services and seek donations and grants as needed in keeping with their charitable non-profit status.

3) COMPETENCE

- a) Organizations should hire competent staff and provide staff with ongoing training.
- b) Organization staff should possess or know where to obtain knowledge of trust laws specific to the applicable state, Medicaid laws and regulations specific to the applicable state; Social

GUIDELINES FOR POOLED TRUST ORGANIZATIONS

Security laws and regulations; HUD Section 8 laws and regulations; laws pertaining to other major programs; and law changes.

- c) Staff should possess or know where to obtain knowledge of the population served and receive ongoing training regarding the population served and changes in disability services.
- d) Organizations should conduct regular evaluations of staff *including Board of Directors review of compensation of key staff using metrics related to position, responsibilities and locale.*
- e) At times it may be helpful to have a Certified Public Accountant, physician, Certified Financial Planner or attorney, or others with relevant skills to serve on the Board of Directors.

4) POLICIES / INTERNAL OPERATIONS / FINANCIAL INTEGRITY

a) Board of Directors

- i. Non-profit board members should comply with applicable laws, regulations and the organizations' governing documents. Important Board considerations should include financial oversight, transparency and accountability, due diligence, seeking legal advice, liability protection and collegiality.
- ii. Organizational policies should be approved by the board of directors.
- iii. The Pooled Trust Program should have a conflict-of-interest policy that is signed by Board members and key staff annually. All board members and key staff must disclose any real or potential conflict of interest at the time it arises and should annually disclose any real or potential conflicts. Overlapping board members and staff members of non-profit organizations who are Directors of for-profit Boards with whom the non-profit has a relationship have an obligation to disclose their roles. The Board of Directors should determine if a conflict exists. When a conflict of interest is identified, the board should take appropriate steps to protect the pooled trust organization from injury or undue influence arising from the conflict.
- iv. Board members and officers should serve without compensation (other than expense reimbursement) except to the extent they are employees of the pooled trust organization.
- v. No board member or officer should receive compensation or any other remuneration from any entity doing business with the pooled trust organization.
- vi. This does not preclude a board member or officer from being paid out of an individual trust account for work on behalf of that beneficiary, or on behalf of the organization if approved by a disinterested member of the Board of Directors.

b) Organization Policies

- i. The organization should have policies for the confidentiality of information and the privacy of beneficiaries.
- ii. Organizations and their boards of directors should actively and regularly evaluate their operating reserves.
- iii. Organizations should have regular audits of the organization, including internal financial operations, trust activity and Information Technology (IT) security.
- iv. The Board of Directors must review the findings of the independent auditor and vote on its acceptance.
- v. The Board of Directors must review the organization's IRS Form 990 prior to submission and vote on its acceptance.
- vi. The organization should hold directors and officers and professional liability insurance.
- vii. The organization should have systems for tracking information and processes for accurate and timely availability of needed information.

GUIDELINES FOR POOLED TRUST ORGANIZATIONS

c) Trust Administration Policies

- i. The organization's program trust operations should be reasonably transparent for a beneficiary or that beneficiary's representative as applicable for that beneficiary's account.
- ii. Organizations should have a brief trust summary of each trust under management which could include names and contact information for grantors, trustees, beneficiaries and remainder beneficiaries, unusual provisions, financial restrictions, and examples of permissible purchases.
- iii. Individual trust accountings should be provided on a regular schedule.
- iv. When trusts are Court supervised, the organization should account to the Court for such trusts as required or upon request.
- v. Lateral transfers to and from another similar pooled trust should not be unreasonably denied to promote choice and options for beneficiaries, as appropriate.
- vi. The organization may refuse appointment as trustee, resign as trustee, name a disinterested co-trustee or other fiduciary to make a decision, make application to a Court for instructions or do trust modification as appropriate.

5) PRACTICES/ FIDUCIARY DUTY

- a) The pooled trust program should follow the terms of the trust instrument and applicable law.
- b) Subject to applicable law, the trustee / trust administrator shall act to benefit the beneficiary rather than themselves or the organization.
- c) Internal Controls: The organization should implement internal control policies and procedures for records, assets, data, financial and accounting information. The organization demonstrates a commitment to competence, oversight, responsibility, adherence to laws and regulations and fraud prevention. Controls may include segregation of duties; authorization; access controls; physical audits; standardized financial documents; periodic trial balances, periodic reconciliations, approval authority and others. No single person should have unchecked control over critical processes. Non-profit organizations may contract to receive the services of a for-profit person or entity such as an auditor or investment advisor but should not be owned or controlled by a for-profit organization or diverted from its non-profit purposes.
- d) Upon request, the organization should make the most recent audited financial statements and IRS Form 990s available.
- e) The organization, with permission from the beneficiary or that person's representative as applicable, should provide public benefits authorities with an individual financial accounting upon request to avoid public benefits disqualification.
- f) The organization should not make a warranty of eligibility for public benefits.
- g) The organization should make supplemental support services such as case management and advocacy available to enhance fiduciary services and quality of life, either by direct service provision or referral or purchase of service. Services should be individualized, and person-centered.

6) TRUST CREATION TRANSPARENCY

- a) The pooled trust program should disclose the operational features of its Trusts to each prospective beneficiary or that person's representative as applicable to set expectations of how the Trust may assist the beneficiary. The program should provide information related to trust irrevocability, sole benefit restrictions, in-kind support and maintenance restrictions, Trustee discretion, and restrictions on direct payments to beneficiaries.
- b) The pooled trust program should provide information to a prospective beneficiary or that person's representative as applicable about the details of how remaining funds are distributed upon the beneficiary's death, including the possibility of payback of funds to Medicaid

GUIDELINES FOR POOLED TRUST ORGANIZATIONS

agencies and retention of remaining funds by the organization pursuant to 42 USC 1396p (d)(4)(C).

- c) The beneficiary or that person's representative as applicable should be informed of the pooled trust program's typical time frame for processing distributions.
- d) The pooled trust program should encourage a prospective beneficiary or that person's representative as applicable to meet with independent counsel to discuss trust features and specific circumstances of Trust creation.

7) DISTRIBUTIONS TO BENEFICIARIES FROM POOLED TRUST ACCOUNTS

- a) The pooled trust program should maintain a professional relationship with the beneficiary and that person's representative as applicable, consider the needs of the beneficiary and respond to requests for trust distributions. Distribution decisions should be based on the terms of the trust and organization policy.
- b) Organizations should provide options for appealing distribution decisions. Information for this process should be made available to beneficiaries and representatives.
- c) The pooled trust program should have full discretion to decide if a beneficiary should have a written spending plan for each beneficiary that is provided to each beneficiary and that person's representative as applicable. This may include review of prior year spending, anticipated life of the trust, and considerations of principal and interest spending.
- d) The pooled trust program must not take retention by the organization into consideration when making distributions.

8) INVESTMENTS

- a) Pooled trust programs should develop or approve written investment policy statements and consider prudent investments and risk tolerance.
- b) Investment managers should comply with the organization's investment policy statement.
- c) Pooled trust programs should conduct regular investment performance reviews of the performance of the investment manager and should provide a written report of the findings of such reviews to the organization's Board of Directors.
- d) Pooled trust programs should, upon request, make written investment policy statements available to each beneficiary or that person's representative as applicable.
- e) Pooled trust programs should, upon request, provide information to each beneficiary or that person's representative as applicable regarding who manages investments.
- f) It is the trustee's duty to make the investment selection option. The Trustee may obtain and consider relevant information on beneficiary preference and risk tolerance.
- g) Roles should be clearly delineated between trustee and investment manager.

9) FEES/EXPENSES

- a) Fees charged by the pooled trust program should be reasonable and regularly reviewed.
- b) The executive director in consultation with staff should develop a fee schedule that is reviewed and approved by the board of directors on a regular basis to see whether the fees are reasonable and are sufficient to meet basic organization expenses. The Board does not review each specific bill sent out.
- c) Fee schedules: The fees and expenses charged pertaining to individuals should be disclosed to that person or that person's representatives or grantors as applicable and should indicate that fees are subject to change upon advance notice.
- d) Legal fees incurred by the organization should not be paid by a beneficiary's account if the expense is not related to that account. A decision that legal fees are related to individual trust

GUIDELINES FOR POOLED TRUST ORGANIZATIONS

accounts should be approved by the organization's Board of Directors. A particular matter might impact just a group within a pooled trust or just one person, or all the pooled trust beneficiaries.

- e) The pooled trust organization should monitor and consider all fees associated with investment management of trust accounts.

10) RETAINED FUNDS

- a) Funds retained by the organization upon the death of a pooled trust beneficiary should be used to benefit people with disabilities and to further the mission of the organization.
- b) Distribution decisions shall be based on the needs of the beneficiary not the needs of the organization.
- c) The pooled trust organization should chart the use of charitable remainder funds and make that information available upon request.
- d) The pooled trust program must not take retention by the organization into consideration when making distributions.

11) QUALITY CONTROL

- a) The organization should adopt procedures to evaluate its processes including customer feedback and adjust its procedures accordingly.
- b) Organizations should adopt a grievance policy and procedure. This information should be made available to beneficiaries and representatives.

GUIDELINES FOR POOLED TRUST ORGANIZATIONS

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These Guidelines were developed as part of an informal working group, the “National Pooled Trust Standards Committee”, comprised of members listed below, all stakeholders in non-profit organizations providing pooled trust services for beneficiaries with disabilities. Each author holds an undivided ownership interest in and to the final product in perpetuity until such right is extinguished by assignment back to the National Pooled Trust Standards Committee. It is the intent of the Committee that these Guidelines will be used in future academic, professional and industry publications, so as to advance and aid in standardizing the practices of pooled trust administration and management. To the extent these Guidelines are adopted or incorporated into subsequent publicly accessible third party publications, proper attribution must be made to the National Pooled Trust Standards Committee and its authors.

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