

**Trust Transfers Demystified:
Legal and Practical Essentials**

**Haley D. Greer, JD
The Arc of Texas**

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Trustees change. Beneficiaries' needs evolve. And pooled trusts play an increasingly important role in managing assets for people with disabilities while preserving benefits eligibility. Trust transfers are often necessary but rarely straightforward. Whatever the reason, transferring a trust requires navigating state law, federal benefit rules, and the practical realities of pooled trust administration. This paper provides guidance on transfers from Section 1917(d)(4)(A) trusts ("D(4)(a)") to Section 1917(d)(4)(C) pooled trusts ("D(4)(c)"), and between D(4)(c) trusts. While not the main focus here, the same principles usually apply to third-party trust transfers.

Read the Trust

No matter the situation, the first step is always the same: **read the original trust document**. It contains the key terms and restrictions that will guide every decision in the transfer process.

Statutory Authority for Transfers

Most states do not have statutes that directly address transfers to pooled trusts. As a result, the method used will depend largely on how the original trust was established and the language contained in that document. If the trust was created by court order, a petition to the court will almost always be required to authorize a transfer.

Texas is an exception. The Texas Legislature has enacted statutes that specifically govern the transfer to pooled trusts. Under these laws, the court may order the transfer of funds from the existing D(4)(a) special needs trust to a D(4)(c) pooled trust. The resulting pooled trust sub-

account is established by court order, and the transfer is treated as a continuation of the original trust — not the creation of a new one — even though the trust no longer exists in the same form.

The legislature recognized the need to allow self-settled management trusts created under Section 1301 of the Texas Estates Code to a pooled trust. In 2014, the legislature created Texas Estates Code Section 1302 which governs the establishment of a pooled trust sub-account and Section 1301.202, which explicitly authorizes the transfer of a self-settled management trust to a pooled trust sub-account.

Sec. 1301.202. TRANSFER TO POOLED TRUST SUBACCOUNT. (a) If the court determines that it is in the best interests of the person for whom a management trust is created, the court may order the transfer of all property in the management trust to a pooled trust subaccount established in accordance with Chapter [1302](#).

(a-1) For purposes of a proceeding to determine whether to transfer property from a management trust to a pooled trust subaccount, the court may, but is not required to, appoint an attorney ad litem or guardian ad litem to represent the interests of a person who has only a physical disability for whom the management trust was created.

(b) The transfer of property from the management trust to the pooled trust subaccount shall be treated as a continuation of the management trust and may not be treated as the establishment of a new trust for purposes of 42 U.S.C. Section 1396p(d)(4)(A) or (C) or otherwise for purposes of the management trust beneficiary's eligibility for medical assistance under Chapter [32](#), Human Resources Code.

(c) The court may not allow termination of the management trust from which property is transferred under this section until all of the property in the management trust has been

transferred to the pooled trust subaccount.

Then in 2019, the Texas Legislature extended the same transfer authority for court created management trusts established under Texas Property Code Section 142 (Management Of Property Recovered In Suit By A Next Friend Or Guardian Ad Litem). An important piece to note in both statutes is *“The court may not allow termination of the management trust from which property is transferred under this section until all of the property in the management trust has been transferred to the pooled trust subaccount. (emphasis added)”* A sample order is included in Appendix A of this paper.

Before these statutory changes, transfers of a D(4)(a) trust to a D(4)(c) pooled trust were possible but often complex. The enactment of these statutes has created a clear, streamlined path to effectuate these transfers.

Federal Guidance: POMS and Decanting

In addition to state statutes, federal rules — especially The Social Security Administration’s (SSA) Program Operating Manual Systems (POMS) — influence how transfers are treated for benefits eligibility. SSA’s POMS has two provisions regarding decanting and transfers between trusts. The POMS include a definition and examples for decanting and language for early termination provisions.

POMS SI 01120.199D.7: Decanting (*Definition*)

Trust decanting generally refers to the distribution or transfer of trust property from one trust to one or more other trusts, usually with more favorable terms. Decanting may involve the early termination of the first trust, or the effect of decanting may be materially the same as the effect of an early termination. In such a situation, we generally

evaluate the decanting provision under the instructions on early termination in this section. However, decanting can be complex and can vary depending on applicable State law. It may be appropriate for the RO to seek input from OPLaw.

POMS SI 01120.199E.2: Exception for transfers to a secondary trust upon early termination.

An early termination provision in a section 1917(d)(4)(A) special needs trust or section 1917(d)(4)(C) pooled trust does not need to meet the above criteria if the provision allows solely for a transfer of the beneficiary's assets to a secondary section 1917(d)(4)(A) or section 1917(d)(4)(C) trust of which the same individual is the beneficiary.

The early termination provision must contain specific limiting language that precludes the early termination from resulting in disbursements other than to the secondary section 1917(d)(4)(A) or section 1917(d)(4)(C) trust or to pay for the administrative expenses listed in [SI 01120.199E.3](#) in this section and in [SI 01120.201F.4](#).

The Dallas SSA region has accepted transfers — whether completed before or initiated after the POMS revisions — without imposing penalties or raising eligibility concerns.

Understanding Pooled Trusts

To understand if a pooled trust transfer is right for a client's situation, the attorney first must understand how pooled trust sub-accounts are established and how they operate. Pooled Trust administrators will often find their role includes educating attorneys and families on what pooled trusts are and how they work. Pooled Trusts are not always the best solution and sometimes not a solution at all.

Most pooled trusts — including The Arc of Texas Master Pooled Trust (The Arc MPT) — use a single master trust(s) document for all beneficiaries. It is imperative that you discuss with the pooled trust you have chosen to determine their established procedures before moving forward. I will discuss how The Arc MPT works as an example, with a general understanding that many pooled trusts work similarly.

1. Pooled Trusts' Trustees are not Successor Trustees

Pooled Trusts' Trustees are not successor Trustees and cannot accept your trust as written. The transfer must be to a sub-account held under the Master Trust documents provided by the pooled trust. Generally, these documents are only changed or amended for the entire pool of beneficiaries that fall under that Trust. The Trust documents have language for amendments, but the Court does not have the authority to make amendments to the document as it is a master document.

2. The Court Does Not Appoint or Change the Trustee.

The Trust provisions govern the trustee, not the Court. These documents remain as written unless amendments are made to the master document, which in turn impacts all individuals in sub-accounts under that master trust document.

3. Joinder Agreements

Individuals join the pooled trust through an application document often called a Joinder Agreement. These joinder agreements are also static documents and cannot be individually amended or changed by the Grantor or court, only the Manager and/or Trustee. Review the trust agreement carefully to determine if this is the appropriate route for your client.

4. Assets to be Transferred and Pooled Investments

Pooled trusts often combine all the assets into a single pool for investment purposes. Some pooled trusts have different pools within their control, but they are not individually held. You must consider what assets are being held in trust and if the pooled trust can take such assets. Some pooled trusts will accept real property or other assets, however, The Arc MPT is only able to accept cash assets. The Arc MPT and many other pooled trusts cannot accept assets in kind, such as stocks or other investment vehicles, due to the pooled nature of the assets.

Understanding both the benefits and limitations of using a pooled trust is essential when determining if it is the right choice for the beneficiary's unique needs. If there are specific individual needs that the beneficiary has that do not fit the pooled trust model, then another option should be reviewed. Trying to fit a square peg in a round hole is never the right option.

Checklist: Questions to Ask Before Transfer

Before initiating a transfer or terminating an existing trust, carefully assess whether a pooled trust is the best solution. Use the following questions as a framework to determine whether a pooled trust sub-account meets the beneficiary's needs and circumstances.

1. Does the beneficiary meet SSA's definition of disability?

Medicaid eligibility alone does not establish disability for SSA purposes. You must confirm that the beneficiary meets the Social Security Administration's definition. Review the individual's Title II and Title XVI benefit status carefully — particularly for minors, who may receive Medicaid but not meet SSA's criteria for disability. If the beneficiary does not qualify under SSA's definition, a D(4)(C) pooled trust transfer is not an option (though other types of pooled trusts may still be).

2. Where does the beneficiary reside?

Choose a pooled trust that serves the state where the beneficiary lives or one that operates nationally. The Alliance of Pooled Trusts (<https://aptrusts.org/about/members/>) and Special Needs Answers (<https://specialneedsanswers.com/pooled-trust>) both offer useful directories to help you identify potential options.

3. What type of assets does the originating trust hold?

The nature of the trust's assets can determine whether a pooled trust is appropriate. Many pooled trusts accept only cash or easily liquidated assets. If the original trust holds real property, stocks, or other non-cash assets, verify that the chosen pooled trust will accept them before proceeding.

4. Will the pooled trust accept this particular sub-account?

Pooled trusts are not required to accept every applicant. Confirm — before filing anything with the court — that the pooled trust is willing and able to accept the beneficiary.

Completing a joinder agreement or preliminary application in advance is strongly recommended.

5. Was the original trust court-established?

If the trust was created by court order, a new court order will almost always be required to authorize the transfer. This order should include specific language establishing the pooled trust sub-account. The sample order included specifically references the information required under Texas Estates Code §1301.202 or Texas Property Code §142.010, but can be modified for other jurisdictions.

6. Who will complete the joinder agreement or application?

Most pooled trusts, including The Arc of Texas Master Pooled Trust, require a designated individual or entity — such as the original trustee, an ad litem, the beneficiary, their

guardian, or another party appointed by the court — to complete and sign the joinder documents. These documents must be accurate and should be reviewed and approved by the pooled trust before filing. The individual, a parent, grandparent, guardian or COURT must establish a self-settled account for SSA to accept the trust as exempt.

Practical Considerations:

1. **Verify SSI exception compliance.** Decanting is generally permissible if the new trust also qualifies for the same SSI exception — for example, when transferring from one compliant special needs trust (SNT) to another.
2. **Submit both trusts for review.** SSA requires copies of both the original and the new trust documents. All requirements under POMS SI 01120.203 must be met before and after the transfer. If the original trust was noncompliant, the decanting may be treated as the creation of a new trust.
3. **Do not terminate the original trust prematurely.** The original trust should remain in place until SSA confirms that the new trust is accepted.
4. **Be aware of transfer penalty risks.** If the new trust fails to meet SSA's requirements, the decanting may be treated as a transfer of assets for less than fair market value, potentially triggering a penalty.
5. **Transfer all irrevocably assigned assets.** Ensure that any assets previously assigned to the original trust are properly transferred to the new trust. If there was an irrevocable assignment (e.g., Court order, divorce decree, etc.) ensure that it is addressed appropriately.

Court Orders: Key Requirement

Depending on the situation, a court order may be required to authorize a trust transfer. If the trust was originally established by court order, the court typically retains jurisdiction over any subsequent transfer. Additionally, if the transfer involves a trust located in another state, court involvement may be required in both the originating and receiving jurisdictions.

In Texas, a court order is required to transfer funds from a management trust to a pooled trust sub-account. The following items should be included in the transfer application and order. (A sample order is included in Appendix A.)

1. **Establishment of the new trust sub-account.**

The court must explicitly order the creation of the pooled trust sub-account.

2. **Direction to complete all necessary paperwork.**

The order should identify the individual or organization responsible for preparing and submitting all documents required to establish the sub-account with the pooled trust.

3. **Terminate the original trust AFTER TRANSFER AND ACCEPTANCE**

The original trust must remain in place until all funds have been transferred to the new sub-account and acceptance by SSA/Medicaid has been completed. Premature termination could render the funds available to the beneficiary and jeopardize their benefits eligibility.

4. **Disclosure of continued funding sources.**

The application and order should include details about any ongoing or recurring funding sources associated with the trust. The order should direct payors to transfer the payments to the new trust/trustee.

5. **Direction to update beneficiary or payee designations.**

The order should require the originating trustee to update the beneficiary or payee

information on all ongoing funding sources. These entities typically will not make changes without proper documentation and a copy of the court order.

6. Timeline for updating payment designations.

The order should specify that any changes to payee or beneficiary designations for continued funding sources must be completed within 60 days of the court order.

7. Annual accounting requirements (if applicable).

If the court requires annual accountings, this must be stated explicitly. *Texas-specific note:* Sub-accounts established under Texas law do not require inventories or annual accountings unless ordered by the court.

Preparing for a Smooth Transfer

When assets or a trust is transferred to a new trust or trustee, clear communication and thorough documentation are essential. The following steps will help ensure the process goes smoothly and minimize disruptions for the beneficiary:

1. Confirm the new sub-account is established.

Before transferring funds or halting existing payments, verify that the pooled trust sub-account has been officially established and is ready to receive assets.

2. Communicate with the beneficiary and their representatives.

Notify the beneficiary (and anyone assisting them) when funds are sent. Remind them that it can take several weeks for funds to become available after transfer. Whenever possible, use electronic deposit to avoid delays.

3. Provide a copy of the court order.

Send the finalized court order to the pooled trust administrator to confirm authority for the transfer and guide account setup.

4. Share financial records.

Include recent trust statements or a balance sheet from the previous year to help the new trustee understand the account's history and activity.

5. Document recurring expenses.

Provide details on any ongoing or recurring disbursements — such as caregiver payments, regular bills, or structured payouts — along with addresses or other identifying information needed to continue those payments without interruption. If applicable, disclose ABLE account information and include relevant details so the pooled trust administrator can coordinate distributions appropriately.

6. List major past purchases.

Supply information on significant expenditures made in recent years (e.g., vehicles, home modifications, durable medical equipment, computers, or assistive technology) to provide context for ongoing needs and spending patterns.

7. Provide comprehensive beneficiary information.

Ensure the pooled trust has accurate contact information, benefit details, and living arrangement data for the beneficiary. If applicable, share information about housing stability, mental health considerations, or other recurring issues that may impact disbursement decisions.

8. Identify key individuals.

Notify the pooled trust of any individuals involved in the beneficiary's life (e.g., guardians, caregivers, case managers) who may need to be contacted or consulted.

9. Include funding source contracts.

When initiating changes to annuities, structured settlements, or other funding sources, request copies of those contracts and provide them to the pooled trust.

10. Address tax and TIN considerations.

Determine how the original trust was titled and whether it had its own Tax Identification Number (TIN). For example, The Arc of Texas Master Pooled Trust requires the original trustee to file tax returns for their period of service. Often, the pooled trust will obtain a new TIN and handle future tax filings but work with the new pooled trust to determine the appropriate steps.

Anytime there is a change in the way a beneficiary or their family requests or receives funds from their trust can be difficult. By providing thorough documentation and proactive communication, you can significantly reduce delays, prevent interruptions of benefits, and ensure the transition occurs as smoothly as possible.

Properly transferring a trust — especially from a D(4)(a) to a D(4)(c) pooled trust — requires careful attention to both legal requirements and practical realities. By understanding the statutory framework, SSA expectations, and pooled trust operations, practitioners can avoid pitfalls and ensure a seamless transition that preserves the beneficiary's eligibility and quality of life.